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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 90–27 of June 22, 1990

Renewal of Trade Agreement With the Republic of Hungary

Memorandum for the United States Trade Representative

Pursuant to my authority under subsection 405(b)(1) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)), I have determined that actual or foreseeable reductions in U.S. tariffs and non-tariff trade barriers resulting from multilateral negotiations are satisfactorily reciprocated by the Republic of Hungary. I have further found that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and the Republic of Hungary.

These determinations and findings shall be published in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, June 22, 1990.

Editorial note: For the statement by Press Secretary Fitzwater on the renewal of the agreement, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 25).

[FR Doc. 90–14972
Filed 6–25–90; 9:06 am]
Billing code 3195–01–M

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430, 432, and 540

Performance Management and Recognition System

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations implementing the Performance Management and Recognition System (PMRS) to reflect comments on interim regulations published November 29, 1989. The Performance Management and Recognition System Reauthorization Act of 1989 extended the PMRS from October 1, 1989, to March 31, 1991. These regulations modify the formula used to determine merit increases and establish new procedures for dealing with employees who are performing below the fully successful level, as authorized by the Act.

DATES: Effective Date: July 26, 1990.

Due Date: PMRS Performance Management Plans must be revised and submitted to the Office of Personnel Management for review and approval within 90 days from the date of publication of these regulations.

ADDRESSES: Send or deliver agency Performance Management Plans to Barbara L. Fiss, Assistant Director for Pay and Performance, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., room 7H30, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Thomas T. Campagna (202) 606–2720, concerning questions about the changes in parts 430 and 540; Sharon C. Snellings, (202) 606–2920, concerning changes in part 432.

SUPPLEMENTARY INFORMATION: On November 29, 1989, OPM published (at 54 FR 49075) interim regulations on implementation of the Performance Management and Recognition System Reauthorization Act of 1989. These regulations modified the formula used to determine merit increases and established new procedures for dealing with employees who are performing below the fully successful level, as authorized by the Act. OPM received comments from 7 agencies. Following is a discussion of the comments received and OPM's response to these comments. The final regulations follow the comment and response material.

1. Section 430.204 Agency Performance Appraisal Systems

Comments: A number of agencies have questioned OPM concerning the different requirements in § 430.204(j)(3) (non-PMRS) and § 430.405(j)(2) (PMRS) regarding whether an agency "must" or "may" take a performance based action when an employee's performance remains unacceptable or below fully successful following an opportunity to improve or a Performance Improvement Plan (PIP).

Response: OPM does not intend that agency discretion in taking a performance based action be different for PMRS and non-PMRS employees. Therefore, OPM has made a conforming change to § 430.204(j)(3) which allows agency discretion in determining whether to take a performance based action if a non-PMRS employee's performance is unacceptable at the conclusion of an opportunity period.

2. Section 430.405 Agency Performance Appraisal Systems

Comments on paragraph (i): Two agencies believed that the use of the word "rated" in this paragraph was confusing and was not consistent with the use of the word "determined" in § 432.105. Both agencies recommended that the word "rated" be changed to "determined". In addition, one of these agencies suggested that OPM put a short parenthetical statement in both of the above citations (as well as in 5 CFR 432.104 for PMS employees) to the effect that neither a summary rating nor a rating of record is required to put an employee on a PIP (or an opportunity period for PMS employees).

Response: OPM agrees with the agencies' comments that using the word "rated" in one citation and "determined" in another citation could be confusing and that the wording should be consistent in both sections of the regulations. Therefore, OPM has changed the word "rated" in § 430.405(i) to "determined". With this change, OPM believes it is clear that the requirement to provide the employee with a PIP arises whenever the agency makes a determination (not necessarily a rating) that the employee is performing below fully successful on one or more critical elements. Therefore, OPM has not adopted the suggestion to add a parenthetical statement to the regulations.

Comment on §§ 430.405(i)(2) and 432.105: One agency suggested that OPM edit the language in these two citations to read "inform the employee of the performance requirement(s) or standard(s) that must be met, including a description of the types of improvements that the employee must demonstrate, in order to attain fully successful performance in his or her position." The agency indicated that it understood that the language in the interim regulations was repeating the language in the new legislation but found that language, standing alone, vague and insufficient. In addition, the agency pointed out that this language is not consistent with the requirements in 5 CFR 432.104 for PMS employees.

Response: OPM's interim regulations are consistent with the clear language of the Performance Management and Recognition System Reauthorization Act of 1989 which requires that the employee be provided with a description of the types of improvements that the employee must demonstrate to attain the fully successful level of performance. With respect to the agency's concerns that employees know specifically of the performance requirements or standards that must be met, OPM notes that agencies are required under the Performance Management and Recognition System (PMRS) regulations to provide an employee with written standards for the fully successful level on each of the elements in the employee's performance plan. Therefore, under the new regulations, employees will be fully informed of the standards and requirements they must meet to achieve

a fully successful level of performance. For this reason, OPM has not adopted the agency's suggestion.

Comment on paragraph 430.405(i)(3): One agency suggested that this paragraph be modified to include examples of assistance to help employees performing below the fully successful level, similar to the examples provided in § 430.405(i) of the old regulations. It found these examples, e.g., formal training, conseling, etc., to be helpful in the operation of its Performance Management System.

Response: OPM recognizes that these examples of assistance can be of value to supervisors and managers, and, therefore, has incorporated some examples of assistance into the final regulations.

Comment on paragraph 430.405(i)(3): One agency suggested that the word "Offer" in this paragraph be changed to "Provide". The agency believed that the word "Offer" may be construed to mean that the employee would have to approach the supervisor if assistance is desired in improving below fully successful performance.

Response: The Civil Service Retirement Spouse Equity Act of 1984, which enacted the PMRS, required that employees performing below fully successful be provided with assistance. However, the Performance Management and Recognition System Reauthorization Act of 1989 makes no reference to assisting employees who are performing below fully successful. Since the current legislation does not provide OPM with the authority to require agencies to assist employees who are performing below fully successful, OPM does not believe it can use the word "Provide" in this paragraph. However, even though the current law is silent in this respect, OPM believes it is necessary, as a part of a bona fide PIP, for agencies to offer assistance to PMRS employees performing below the fully successful level. For that reason, OPM is requiring that agencies offer to assist the PMRS employee in improving his or her performance to the fully successful level, recognizing the type and degree of assistance offered to the employee will depend on the circumstances of each particular situation.

Comment on the requirement for a performance improvement plan: One agency recommended that a performance improvement plan only be required when management determines that the performance deficiencies are such that, if they are not corrected, it must take the employee out of the job. The agency argues that a "blanket" requirement for a performance improvement plan whenever a PMRS employee is determined to be below fully successful will discourage managers from making that determination and thus defeat the purpose of the new law.

Response: The new law is clear that agencies must provide a performance improvement plan whenever a PMRS employee is determined to be performing below fully successful, whether or not management anticipates taking a reduction in grade or removal action if the employee's performance does not improve. OPM's regulations are consistent with the law and, therefore, have not been changed to adopt the agency's recommendation.

3. *Comment on critical element rating and summary rating:* One agency stated the belief that the OPM regulations allow agencies to give an employee a fully successful summary rating when one critical element is rated at minimally successful. The agency recognizes that the new PMRS legislation requires that any employee performing below fully successful on one critical element must be put on a PIP, and if his/her performance does not improve to fully successful, the agency may initiate a performance-based action. However, the agency does not believe that an employee who receives an overall rating of fully successful should be given a PIP or potentially be subject to a performance-based action because of minimally successful performance on one critical element.

Response: The new law specifically states that performance-based actions taken pursuant to its provisions will be carried out consistent with section 4303. Section 4303 of title 5, U.S.C., refers only to the use of critical elements in determining when a performance based action will be initiated against an employee who is performing at an unacceptable level. There is no reference in law or regulation for taking a performance-based action based on a summary rating. Moreover, section 4301(3) of title 5, U.S.C., links performance to ratings on critical elements. Therefore, OPM is without authority to propose regulations which would allow agencies to take part 432 actions based on summary ratings. For this reason, OPM believes no change is necessary to the PMRS rating provisions. If the new PIP requirements in the PMRS regulations create problems for an agency in relation to its current summary rating procedures, the agency has the flexibility to change the summary rating derivation scheme and submit it to OPM for approval.

4. *Comments on submission of changes to agencies' PMRS Performance Management Plans:* A number of agencies telephoned OPM and wanted to know if they had to submit the changes to their PMRS Performance Management Plan, due to the new requirements in the interim PMRS regulations, to OPM for review and approval.

Response: As indicated in the "**DATES**" section above, agencies must submit their PMRS Performance Management Plans to OPM for review and approval within 90 days from the date of publication of these regulations. The Plans must contain the new formula used to determine merit increases and the new procedures for dealing with employees who are performing below the fully successful level.

5. *Comment on Implementing New PIP Procedures Prior to Plan Approval:* One agency commented that OPM should issue guidance on whether or not an agency can proceed with performance improvement plans and possible part 432 actions for PMRS employees, when changes to the agency's performance appraisal system (reflecting the new requirements created by Pub.L. 101–103) have not been officially approved by OPM.

Response: The PMRS Reauthorization Act of 1989, Public Law 101–103, went into effect on October 1, 1989, and mandated that agencies implement its requirements immediately. Thus, agencies have the authority and responsibility to proceed with appropriate actions under Public Law 101–103 (even if an agency has not yet received official OPM approval of changes to its performance appraisal system) as long as its actions are in conformance with the provisions of law and OPM regulation. This includes the requirement to provide performance improvement plans for PMRS employees who are determined to be performing below fully successful on or after the effective date of the law. OPM notes that agencies acted in a similar fashion in adjusting their merit increase determination procedures when issuing merit increases on or after October 1, 1989, despite the fact that agencies did not have those changes to their system reviewed and approved by OPM at the time. Further, before OPM can fulfill its responsibility for reviewing agency performance appraisal systems to ensure compliance with statutory and regulatory provisions (5 U.S.C. 4304), final regulations must be in effect. In this regard, agencies should follow the requirements specified in the "**DATES**" section and section 4 above for submission of their revised Performance Management Plans to OPM.

6. Section 432.103 Definitions

Comment on definitions in § 432.103(a) "Acceptable performance" and (h) "Unacceptable performance": One agency suggested that the language in these two definitions be revised to reflect that performance at either the "minimally successful" or "unacceptable" levels be considered "unacceptable" for purposes of a part 432 reduction in grade or removal of a PMRS employee. The agency feels this is necessary to avoid possible confusion during third party litigation of part 432 actions where the agency performance appraisal system provides for two rating levels below fully successful for each critical element.

Response: OPM is unable to adopt this suggestion because the new law no longer speaks in terms of "unacceptable" performance as the standard for taking a part 432 action in connection with a PMRS employee. The language of the new law is clear in describing "below fully successful" as performance which requires agencies to initiate a PIP and allows action to be taken to remove or reduce in grade a PMRS employee under part 432.

7. Section 432.105 Addressing Below Fully Successful Performance by PMRS Employees

Comment on the last sentence: One agency suggests that the wording of the sentence be revised to read: "The agency *will* also inform the employee that, unless his or her performance in the critical element(s) improves to and is sustained at a fully successful level, the employee may be reduced in grade or removed." The substitution of the word "will" in place of the current "may" would require agencies to inform employees, at the time they are provided a performance improvement plan, that unless their performance improves to and is sustained at a fully successful level, the employee may be reduced in grade or removed.

Response: The new law governing performance based actions for PMRS employees does not require such a notice and OPM does not wish to deny agencies the flexibility to choose alternative means (such as providing additional PIP's, training, etc.) of addressing performance problems which arise after an initial PIP has been provided. However, notifying an employee of the possibility that he or she may be reduced in grade or removed if performance is not improved to, and sustained at least at, an acceptable level, constitutes a sound performance management practice which enhances communication and puts employees on notice regarding the possible consequences of continued poor performance. Therefore, the sentence in 5 CFR 432.105 will be amended to read: "The agency should also inform the employee that, * * *." An identical change will be made to a similar sentence in 5 CFR 432.104, "Addressing unacceptable performance by non-PMRS employees" so that OPM's regulations reflect a consistent policy.

8. Section 432.109 Agency Records

Technical changes were made to this section to clarify that agency recordkeeping procedures also apply to actions taken for below fully successful performance by PMRS employees as well as non-PMRS employees.

9. *Comment on Reassignments:* One agency suggested that the part 432 regulations addressing below fully successful performance by PMRS employees, and related FPM chapter material, should include the option of reassignment in addition to removal and reduction in grade.

Response: OPM notes that the last paragraph of 5 U.S.C. 4302a(b), states that "The provisions of section 4303 relating to the reduction in grade or removal of an employee for unacceptable performance, shall apply with respect to any reduction in grade or removal under paragraph (6)." Because OPM's part 432 regulations (and associated FPM chapter 432 material) are based on 5 U.S.C. 4303, reduction in grade and removal actions for PMRS employees, just as for non-PMRS employees, are the only personnel actions which may be taken under part 432. Thus, OPM is not able to adopt the agency's suggestion. However, even though reassignment actions do not involve part 432 procedures, agencies may reassign PMRS employees following completion of a PIP. (See also answer to comment #10 below).

10. *Comment on PIP Requirement and Reassignments:* One agency questioned if the regulations needed to be clarified as to whether or not an agency is required to provide a PIP to a PMRS employee who has been determined to be below fully successful before it could reassign him or her.

Response: The law clearly provides that a performance improvement plan shall be given to any PMRS employee determined to be performing below fully successful. Thus, if an employee has been determined to be performing below fully successful in one or more critical elements of his or her position, a PIP must be provided in that position under the provisions of 5 U.S.C. 4302a(b)(5). The regulations, as written, reflect this requirement. However, this requirement does not preclude a reassignment action before a determination is made.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees and agencies.

List of Subjects

5 CFR Parts 430 and 432

Administrative practice and procedure; Government employees.

5 CFR Part 540

Government employees; Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, the interim regulations under 5 CFR parts 430, 432 and 540 published on November 29, 1989, at 54 FR 49075 are adopted as final with the following revisions:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53 and 54.

2. In § 430.204, paragraph (j)(3) is revised to read as follows:

§ 430.204 Agency performance appraisal systems.

* * * * *

(j) * * *

(3) If, at the conclusion of the opportunity to demonstrate acceptable performance, referred to in paragraph (j)(1) of this section, the employee's performance is "Unacceptable," the agency may reassign, reduce-in-grade, or remove the employee, as provided by 5 U.S.C. 4320(b)(6) and 4303(a).

* * * * *

3. In § 430.405, paragraph (i) introductory text and paragraph (i)(3) are revised to read as follows:

§ 430.405 Agency performance appraisal systems.

* * * * *

(i) Each appraisal system shall provide for a performance improvement plan (PIP) for each employee whose performance has been determined to be

below fully successful on one or more critical elements. The PIP must:

* * * * *

(3) Offer assistance to the employee in improving to the fully successful level (which may include: Formal training, on-the-job training, counseling, and closer supervision); and

* * * * *

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

4. The authority citation for part 432 continues to read as follows:

Authority: 5 U.S.C. 4302a, 4303, 4305.

5. In § 432.103, paragraph (e) is revised to read as follows:

§ 432.103 Definitions.

* * * * *

(e) *Performance improvement plan* means the plan agencies are required to provide to a PMRS employee whose performance in one or more critical elements has been determined to be below the fully successful level. As part of the plan, agencies shall notify the employee of the critical element(s) in which he or she is performing below the fully successful level; describe the types of improvements that the employee must demonstrate to attain fully successful performance; offer assistance to the employee in attaining fully successful performance; and provide the employee with a reasonable period of time, commensurate with the duties and responsibilities of the employee's position, to demonstrate fully successful performance. The agency may include, as part of the performance improvement plan, other information and matters that the agency considers appropriate.

* * * * *

6. § 432.104 is revised to read as follows:

§ 432.104 Addressing unacceptable performance by non-PMRS employees.

At any time during the performance appraisal cycle that a non-PMRS employee's performance is determined to be unacceptable in one or more critical elements, the agency shall notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his or her position. The agency should also inform the employee that unless his or her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed. For each critical element in which the employee's performance is unacceptable, the agency shall afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. As part of the employee's opportunity to demonstrate acceptable performance, the agency shall offer assistance to the employee in improving unacceptable performance.

7. § 432.105 is revised to read as follows:

§ 432.105 Addressing below fully successful performance by PMRS employees.

At any time during the performance appraisal cycle that a PMRS employee's performance is determined to be below fully successful in one or more critical elements, the agency shall afford the employee an opportunity to improve through a performance improvement plan. As part of the plan, the agency shall notify the employee of the critical element(s) in which he or she is performing below the fully successful level; describe the types of improvements that the employee must demonstrate to attain fully successful performance; offer assistance to the employee in attaining fully successful performance; and provide the employee with a reasonable period of time, commensurate with the duties and responsibilities of the employee's position, to demonstrate fully successful performance. The agency may include, as part of the performance improvement plan, other information and matters that the agency considers appropriate. The agency should also inform the employee that, unless his or her performance in the critical element(s) improves to and is sustained at a fully successful level, the employee may be reduced in grade or removed.

8. Section 432.109 is revised to read as follows:

§ 432.109 Agency records.

(a) *When the action is effected.* The agency shall preserve all relevant documentation concerning a reduction in grade or removal which is based on unacceptable performance for non-PMRS employees, or below fully successful performance for PMRS employees, and make it available for review by the affected employee or his or her representative. At a minimum, the agency's records shall consist of a copy of the notice of proposed action, the answer of the employee when it is in writing, a summary thereof when the employee makes an oral reply, the written notice of decision and the reasons therefor, and any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

(b) *When the action is not effected.* As provided at 5 U.S.C. 4303(d), if, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advanced written notice provided in accordance with §§ 432.106(a)(4)(i) and 432.107(a)(4)(i), any entry or other notation of the unacceptable, or below fully successful, performance for which the action was proposed shall be removed from any agency record relating to the employee.

[FR Doc. 90-14747 Filed 6-25-90; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 90-039]

Importation of Grapes from Australia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Plant Protection and Quarantine regulations by adding provisions to allow the importation of grapes from Australia into the United States, and by giving notice that we are adding a fumigation and cold treatment for grapes from Australia to the Plant Protection and Quarantine Treatment Manual. These actions allow the shipment of grapes from Australia into the United States without significant risk of introducing insect pests into the United States. The Plant Protection and Quarantine Treatment Manual is incorporated by reference in the regulations at 7 CFR 300.1.

EFFECTIVE DATE: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: Frank E. Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8367.

SUPPLEMENTARY INFORMATION:

Background

Chapter III of title 7, Code of Federal Regulations (regulations), contains the

regulations of Plant Protection and Quarantine (PPQ) of the Animal and Plant Health Inspection Service (APHIS). The regulations in 7 CFR 319.56 prohibit or restrict the importation of certain fruits and vegetables, as well as plants and portions of plants used as packing materials, into the United States because of the risk that they could introduce insect pests.

Prior to the publication of this document, grapes from Australia were prohibited entry into the United States because they may carry two species of fruit flies, the Mediterranean fruit fly (*Ceratitis capitata*) and the Queensland fruit fly (*Dacus tryoni*), as well as the light brown apple moth (*Epiphyas postvittana*). Until recently, there was no effective treatment for grapes from Australia. However, recent research indicates that a methyl bromide fumigation and cold treatment for these grapes will destroy the exotic pests of concern.

On February 6, 1990, we published a document in the **Federal Register** (55 FR 3965–3968, Docket No. 89–164) proposing the following changes to the regulations:

(1) That grapes from Australia be allowed importation into the United States if they are inspected—in Australia—by an APHIS inspector, and if they receive an authorized treatment—under the supervision of an APHIS inspector in Australia—for the Mediterranean fruit fly (*Ceratitis capitata*), the Queensland fruit fly (*Dacus tryoni*), and the light brown apple moth (*Epiphyas postvittana*); and that in the event a pre-treatment inspection by an APHIS inspector reveals evidence of any other insect pests, and a treatment is specified in the Plant Protection and Quarantine Treatment Manual for these pests, the grapes be allowed to be shipped to the United States only if they are also treated for the insect pests in Australia under the supervision of an APHIS inspector;

(2) That the regulations be amended to show that the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference and on file at the Office of the **Federal Register**, is revised to include a methyl bromide fumigation and cold treatment for grapes from Australia; and

(3) That the importation of grapes from Australia be contingent upon the national plant protection service of Australia entering into a trust fund agreement with APHIS.

We solicited comments concerning the proposed rule for a 30-day period ending March 8, 1990, and received nine comments. The commenters included the Australian Quarantine and Inspection Service, a customs broker/freight forwarding company, a grocery store chain, a port authority, a quarantine fumigation service, two fruit industry groups, a transportation company, and a State department of food and agriculture. Two commenters supported the proposed rule unconditionally, while three commenters opposed it. The remaining commenters supported the proposed rule in general, but recommended that certain provisions be omitted or changed.

Several commenters stated that the requirement for grapes to be fumigated exclusively in Australia should be changed to allow the option of fumigation upon arrival in the United States. It was argued that fumigation can sometimes affect the quality of a product, and that waiting to fumigate the product after it arrives in the United States may allow it to reach the consumer in better condition than if it had been fumigated days earlier in its country of origin.

We are implementing this recommendation. Upon further consideration, we have determined that fumigation upon arrival, in combination with refrigeration as specified in the Plant Protection and Quarantine Treatment Manual, will destroy the pests of concern and allow Australian grapes to be imported without presenting a significant risk of introducing insect pests into the United States. Under the fumigation upon arrival option, the grapes will undergo the refrigeration phase of their treatment en route to the United States, and then undergo inspection and fumigation upon reaching their first port of arrival in the United States. Refrigeration will inactivate or destroy the insect pests of concern—should these insects be present—and fumigation at the first port of arrival will complete the treatment. It should be emphasized that fumigation will always follow inspection, regardless of whether insect pests are discovered during inspection. Should inspection reveal the presence of other insect pests, then an effective treatment for such pests can be employed in addition to the refrigeration and fumigation treatment, thereby allowing the grapes to be imported into the United States. If an effective treatment is not available, the grapes are refused entry into the United States.

Three commenters recommended that we omit from our final rule the requirement that an APHIS inspector be present in Australia to inspect and supervise treatment of the grapes. It was argued that an APHIS inspector is not needed in Australia because that country's inspection procedures are extensive and thorough, and because the treatment specified in the proposed rule is severe enough to destroy the pests of concern. One commenter recommended that a protocol and certification procedure be substituted for the APHIS treatment supervision and inspection described in the proposed rule.

We are making no changes based on these comments. We have determined that no matter where fumigation occurs—whether in Australia or the United States—APHIS inspection and treatment supervision are necessary lines of defense against the introduction of insect pests into the United States.

It should be noted that, due to the inspection and treatment site option we are implementing as a result of commenter recommendations, the presence of an APHIS inspector in Australia will be required only if the fumigation phase of the treatment occurs in Australia.

One commenter requested that we remove the provision requiring that Australian grapes undergo an additional treatment should an inspection reveal evidence that the grapes are infested with insects other than those specifically mentioned in the proposed rule. The commenter asserted that the treatment specified in the proposed rule is severe, and will therefore serve as a "catch all" for any incidental infestations. The commenter also suggested that an additional treatment may not be an option, since the proposed rule stipulates that a treatment cannot be used if it is not authorized in the Plant Protection and Quarantine Treatment Manual. The absence of an authorized treatment in such a situation, argued the commenter, could lead to the rejection of the grapes presented for inspection.

We are making no changes based on this comment. The fumigation and refrigeration treatment described in the proposed rule has been determined to be effective against the insect pests that are known to infest grapes from Australia. However, other insect pests not known to infest Australian grapes may nonetheless be present in certain grape shipments, having found their way into the shipment by chance. The treatment described above may not be effective against such "hitchhiker" pests. Therefore, the option of taking action against insect pests not specifically mentioned in the proposed rule is indispensable to our ability to protect the United States against the introduction of harmful exotic pests. If an inspection reveals the presence of such pests, and if no treatment is

authorized for these pests in the Plant Protection and Quarantine Treatment Manual, then the grapes must be refused entry into the United States.

One commenter asserted that our proposed treatment provides for a shorter fumigation time and a longer refrigeration time than the standard combination fumigation/refrigeration treatment listed in the Plant Protection and Quarantine Treatment Manual, and asked if efficacy data has been developed to demonstrate the effectiveness of this treatment against the insect pests of concern.

The Plant Protection and Quarantine Treatment Manual contains combination fumigation/refrigeration treatments with varying fumigation and refrigeration times. Our research indicates that the treatment schedules appearing in the proposed rule and in this document will destroy the exotic pests of concern.

The commenter also expressed concern that ambient residues in the containers holding the fumigated grapes may exceed the 5 parts-per-million maximum tolerance that is mandated by California law. The commenter asked whether research has been done to determine what ambient residue levels will be encountered in this situation.

Our review of relevant literature revealed no information concerning ambient residue levels that may be produced when fumigated grapes are containerized for an extended period of time. When handling this product, importers are advised to adhere to the safety procedures described in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1.

One commenter stated that the agency-to-agency trust fund arrangements described in the proposed rule are contrary to the usual arrangements that Australia's national plant protection service makes with plant protection authorities such as APHIS. The commenter stated that such arrangements should be between APHIS and the industry involved, not between APHIS and Australia's national plant protection service.

Recently developed policy changes within APHIS dictate that such trust fund agreements must be intergovernmental in nature. Section 607(a) of the Foreign Assistance Act (21 U.S.C. 2357) (Act) provides that agencies of the United States Government must enter into reimbursement agreements with the governments of friendly countries. The United States Department of State has authorized APHIS to participate in a preclearance program under the Act to enable fruits, vegetables, and nursery products to be inspected before shipment to the United States. This authorization requires the exporting country's national plant protection service to enter into a trust fund agreement to establish a preclearance program.

Three commenters argued that Australian grapes should not be allowed importation into the United States because California's grape producers do not have access to the Australian market. Two commenters argued further that the California grape-producing industry will be harmed by Australian grape importations if domestic growers are not given corresponding access to the Australian market. The commenters stated that the proposed rule should not be adopted until this situation is resolved. One commenter also asserted that APHIS failed to consult with the domestic grape industry concerning these matters and failed to work with other government agencies during the course of this rulemaking process.

We are making no changes based on these comments. These reasons are inadequate for refusing to allow the importation of Australian grapes into the United States. The regulations in 7 CFR part 319 are established pursuant to the Federal plant quarantine and related laws that generally provide authority to take action to prevent the introduction or dissemination of insects and other plant pests. These statutory provisions do not provide authority to establish regulations based merely on factors relating to economic competition. Although we consider the economic impact of our regulations in accordance with Executive Order 12291 and the Regulatory Flexibility Act, we do not have authority to prohibit the importation of Australian grapes to protect domestic grape producers from competition, or to employ a prohibition on Australian grape imports as a means of obtaining access to the Australian grape market.

Miscellaneous

We are making several nonsubstantive changes for the purpose of clarity. In addition, we are correcting a typographical error that occurred in the treatment schedules incorporated in the proposed rule. We have reproduced the treatment schedules below to show this correction. The error occurred in the first treatment schedule, entitled "Fumigation Plus Refrigeration for Australian Grapes," and appears in the sentence, "Followed by Refrigeration for 21 days at 0.55°C (35°F), or below." The correct temperature is 33°F.

Fumigation Plus Refrigeration for Australian Grapes.

Methyl Bromide at Normal Atmospheric Pressure—Chamber or tarpaulin.

32 g/m³ (2 lb/1000 ft³ for 2 hrs at 4.5°–9.5°C (40°–49°F)

(30 g (oz) minimum concentration at ½ hr)

(25 g (oz) minimum concentration at 2 hrs)

24 g/m³ (1 ½ lb/1000 ft³) for 2 hrs at 10°–15°C (50°–59°F)

(23 g (oz) minimum concentration at ½ hr)

(20 g (oz) minimum concentration at 2 hrs)

Load not to exceed 80% of chamber.

Followed by Refrigeration for 21 days at 0.55°C (33°F), or below.

Time lapse between fumigation and start of cooling not to exceed 24 hours.

Refrigeration Plus Fumigation for Australian Grapes.

Refrigeration for 21 days at 0.55°C (33°F) or below, followed by:

Methyl Bromide at Normal Atmospheric Pressure—Chamber or tarpaulin.

48 g/m³ (3 lb/1000 ft³) for 2 hrs at 4.5°C–15°C (40°–59°F)

(44 g (oz) minimum concentration at ½ hr)

(36 g (oz) minimum concentration at 2 hrs)

40 g/m³ (2 ½ lb/1000 ft³) for 2 hrs at 15.5°–20.5°C (60°–59°F)

(36 g (oz) minimum concentration at ½ hr)

(28 g (oz) minimum concentration at 2 hrs)

32 g/m³ (2 lb/1000 ft ³) for 2 hrs at 21°–26°C (70°–79°F)

(30 g (oz) minimum concentration at ½ hr)

(25 g (oz) minimum concentration at 2 hrs)

Load not to exceed 80%.

These treatment schedules also reflect corrections published in the Federal Register on April 25, 1990 (55 FR 17530).

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule, with the changes noted.

Effective Date: This is a substantive rule which relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the Federal Register. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for Australian grapes is in progress. Making this rule effective immediately will allow interested producers and others in

the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of APHIS has determined that this rule should be effective upon publication.

Executive Order 12291 and Regulatory Flexibility Act

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

We do not anticipate that grape production, importation, or distribution activities in the United States will be significantly affected by the introduction of Australian grapes into the U.S. market. Australia exported 17,318 tons of fresh grapes in 1987. We anticipate that considerably fewer tons will reach the United States, largely because Australia currently has established markets for grapes in approximately 45 other countries. By comparison, in 1987 the United States produced 5,263,950 tons of grapes, and imported 340,895 tons of grapes from other countries, primarily Chile and Mexico. Although the exact quantity of grapes that Australia will export to the United States is unknown, we project that Australian grapes will comprise less than one-half of one percent of the total amount of grapes available to U.S. consumers.

Further, we anticipate that Australian grapes will be marketed at the off season for marketing most domestically produced grapes, since the growing season for Australian grapes differs from the United States growing season by 6 months.

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

Paperwork Reduction Act.

The regulations in this rule contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 7 CFR Parts 300 and 319

Incorporation by reference, Plant diseases, Plant pests, Imports, Fruits, Quarantine.

Accordingly, title 7, chapter III of the Code of Federal Regulations is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. Section 300.1, paragraph (a), is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1985, and includes all revisions through June 21, 1990, has been approved for incorporation by reference in 7 CFR Chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

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

4. In Subpart—Fruits and Vegetables, a new § 319.56–2h is added to read as follows:

§ 319.56–2h Regulations governing the entry of grapes from Australia.

(a) *Importations allowed.* (1) Grapes from Australia may be imported into the United States only if they are inspected by an inspector of the Animal and Plant Health Inspection Service [APHIS], either in Australia or the United States, and treated with an authorized treatment under the supervision of an APHIS inspector for the following pests: the Mediterranean fruit fly (*Ceratitis capitata*), the Queensland fruit fly (*Dacus tryoni*), and the light brown apple moth (*Epiphyas postvittana*).

(2) If an APHIS inspector finds evidence of any other insect pests for which a treatment authorized in the Plant Protection and Quarantine Treatment Manual is available, the grapes will remain eligible for importation into the United States only if they are treated for the pests in Australia, or at their first port of arrival in the United States, under the supervision of an APHIS inspector.

(b) *Authorized treatments.* Authorized treatments are listed in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference."

(c) *Trust Fund Agreement.* Grapes that undergo the fumigation phase of their treatment in Australia may be imported into the United States only if the national plant protection service of Australia has entered into a trust fund agreement with APHIS. This agreement requires the national plant protection service of Australia to pay in advance all costs that APHIS estimates it will incur in providing services in Australia. These costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses, and other incidental expenses incurred by APHIS inspectors in performing these services. The agreement requires the national plant protection service of Australia to deposit a certified or cashier's check with APHIS for the amount of these costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the national plant protection service of Australia to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the grapes may be imported. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the national plant protection service of Australia, or held on account until needed.

(d) *Department not responsible for damage.* The treatment for grapes from Australia prescribed in the Plant Protection and Quarantine Treatment Manual is judged from experimental tests to be safe. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment.

Done in Washington, DC, this 15th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-14765 Filed 6-25-90; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 25; Doc. No. 7728S]

General Crop Insurance Regulations; Sugarcane Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, by adding a new section, 7 CFR 401.133, the Sugarcane Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on sugarcane in an endorsement to the general crop insurance policy.

EFFECTIVE DATE: July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1994.

John Marshall, Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC hereby adds to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.133, the Sugarcane Endorsement, effective for the 1991 and succeeding crop years, to provide the provisions for insuring sugarcane.

Upon publication of 7 CFR 401.133 as a final rule, the provisions for insuring sugarcane contained therein will supersede those provisions contained in 7 CFR part 417, the Sugarcane Crop Insurance Regulations, effective with the beginning of the 1991 crop year. The present policy contained in 7 CFR part 417 will be terminated at the end of the 1990 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR part 417 by separate document so that the provisions therein are effective only through the 1990 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Sugarcane Endorsement to 7 CFR part 401, FCIC makes other changes in the provisions for insuring sugarcane as follows:

1. Section 4—Change the language to indicate that insurance will attach on stubble cane in Florida and Texas the day following harvest if there is no damage before harvest. This change was made because ratoon cane in these two States is not as susceptible to freeze damage as in other States where this endorsement is offered. Language was also added to clarify that if the stubble cane is damaged before harvest, insurance will not attach for the following crop year until the later of April 15 or 30 days after harvest. This will allow us to conduct a stand reduction appraisal.

2. Section 5—Add language to provide for unit division guidelines under the endorsement.

3. Section 6—Add the words "per acre" in the second sentence to clarify that, if we do not appraise the acreage, the per acre production guarantee for the unit will be considered production to count. This assures that sugarcane that will be cut for seed is now insurable. This change was made to relieve insureds of paying premium on uninsurable acreage since most growers do not know by the acreage reporting date what acreage will be cut for seed cane.

4. Section 7—Add language to establish that on irrigated acreage, appraised production to be counted will include production lost due to inadequate irrigation. This change was made due to continued problems associated with determination of production to count when there is inadequate irrigation.

An appraisal for inadequate stand will no longer be made on all stubble acreage over 3 years old in Florida and Texas. It will continue to be made on any acreage in which insurance does not attach the first day following harvest.

FCIC's Board of Directors recently adopted a change which allows a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for sugarcane, appropriate explanatory language has been added to the annual premium and unit division sections of this endorsement.

On Tuesday, October 24, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 43295, to add a new section, 7 CFR 401.133, the Sugarcane Endorsement, to provide the provisions of crop insurance protection on sugarcane in an endorsement to the general crop insurance policy.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the proposed rule published at 54 FR 43295 is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 401

Crop Insurance; Sugarcane.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), effective

for the 1991 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.133, Sugarcane Endorsement, effective for the 1991 and succeeding crop years, to read as follows:

§ 401.133 Sugarcane Endorsement.

The provisions of the Sugarcane Crop Insurance Endorsement for the 1991 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Sugarcane Endorsement

1. Insured Crop and Acreage

a. The crop insured will be sugarcane grown for processing for sugar or for seed.

b. The acreage insured for each crop year will be plant and stubble cane grown on insurable acreage.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table.

4. Insurance Period

In addition to the provisions in section 7 of the general crop insurance policy, the following will apply.

a. Insurance attaches on plant cane at the time of planting unless otherwise provided for in writing by us and on stubble cane on the first day following harvest unless the cane was damaged by conditions occurring before harvest. If the stubble cane was damaged before harvest, insurance will attach on the later of April 15 or 30 days following harvest. Notwithstanding the first sentence of this paragraph, insurance will attach on stubble cane in Louisiana, after the second crop year, only on the later of April 15 or 30 days after harvest.

b. The calendar dates for the end of insurance period are:

(1) Louisiana.....January 31;
(2) All other states.....April 30.

5. Unit Division

Sugarcane acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee;

b. The acreage planted to insured sugarcane is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate Agricultural Stabilization and Conservation Service (ASCS) Farm Serial Numbers, provided:

(1) The boundaries of the sections or Farm Serial Numbers are clearly identifiable and the insured acreage can be determined; and

(2) The sugarcane is planted in such a manner that the planting pattern does not continue into the adjacent section or Farm Serial Number; and

c. The acreage planted to the insured sugarcane is located in a single section or Farm Serial Number and consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Sugarcane planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with applicable recognized good dry-land and irrigated farming practices for the area.

If you have a loss of any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined. If your sugarcane acreage is not divided into optional units as provided in this section, your premium will be reduced as provided by the actuarial table.

6. Notices

a. You must give us notice at least 15 days before you begin cutting any sugarcane for seed. During this time we may make an appraisal for the sugar potential. If we do not appraise the acreage, the production to count will be the per acre production guarantee for the unit. Your notice must include the unit number and the number of acres you intend to harvest as seed.

b. For the purposes of section 8 of the general crop insurance policy, in case of damage or probable loss and you intend to harvest, the required representative samples of unharvested sugarcane must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

If an indemnity is to be claimed on any unit, you must leave the stalks on unharvested acreage and the stubble on harvested acreage intact until inspected by us.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sugar to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

(b) The total production (in pounds of sugar) to be counted for a unit will include all harvested and appraised production.

(1) Sugar production to count from acreage damaged by freeze within the insurance period, which cannot be processed for sugar by the boiling house operation, will be determined by dividing the dollar amount received from the mill for the damaged sugarcane by the price per pound of raw sugar (The applicable price for raw sugar will be the local market price on the earlier of the day the loss is adjusted or the day such sugar is sold);

(2) Appraised production to be counted will include:

(a) Any appraisal under subsections 6.(a), 7.b.(3) and 7.b.(4);

(b) Unharvested production on harvested acreage, potential production lost due to uninsured causes, and failure to follow recognized good sugarcane farming practices;

(c) Not less then the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Any unharvested production.

Appraisals and harvested production not processed for sugar will be given in pounds of sugar.

(3) We will make an appraisal of not less than the production guarantee per acre on any harvested acreage on which the stubble is destroyed prior to our inspection.

(4) An appraisal for inadequate stand will be made at the time of inspection on sugarcane acreage where insurance did not attach the first day following harvest. If the product of the number of stalks per acre multiplied by 2, multiplied by the factor (percentage of sugar) contained in the actuarial table for that purpose does not equal the per-acre guarantee, the per acre appraisal for inadequate stand will be the difference between the appraised production and the production guarantee.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production to count unless such acreage is:

(a) Not put to another use before harvest of sugarcane becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination date is September 30.

9. Contract Changes

The date by which contract changes will be available in your service office is June 30 preceding the cancellation date.

10. Report of Production

There is a one-year lag period for reporting your sugarcane production. You must report production for the previous crop year before the cancellation date for the subsequent crop year.

11. Meaning of Terms

a. "*Crop year*" means the period from planting for plant cane and the day following harvest for stubble cane until the end of the insurance period and is designated by the calendar year in which the sugarcane harvest normally begins in the county.

b. "*Harvest*" means the cutting and removing of sugarcane from the field.

c. "*Plant cane*" (see definition of sugarcane).

d. "*Stubble cane*" (see definition of sugarcane).

e. "*Sugarcane*" means either:

(1) Plant cane growing from seed planted that crop year; or

(2) Stubble cane growing from the stubble left to produce another crop from previously harvested sugarcane.

Done in Washington, DC on June 20, 1990.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-14789 Filed 6-25-90; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV-90-129FR]

Fresh Pears, Plums and Peaches Grown in California; Modification of Grade, Container and Container Marking Requirements for Pears for the 1990 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule: (1) Modifies existing and specifies new container-marking requirements for Bartlett or Max-Red (Max Red Bartlett and Red Bartlett) pears grown in California, and (2) relaxes grade requirements for organically grown pears of those varieties for the 1990 season. The changes in container requirements clarify requirements applicable to volume-filled containers and authorize shipments of consumer packages (15 pounds net weight or less) either packed in master containers or shipped separately. The container-marking requirements assure that the labeling of such packages clearly identifies the contents. Organically grown pears are produced without application of synthetically compounded fertilizers, pesticides and growth regulators. Under this action, shipments of organically grown pears are required to grade at least U.S. Combination grade, with at least 50 percent, by count, grading U.S. No. 1 and the balance of each lot grading at least U.S. No. 2, except that russeting is not scored as a defect. These changes will facilitate the marketing of pears grown in California.

EFFECTIVE DATE: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone: (202) 475-3919, or Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., Suite 102-B, Fresno, California 93721; telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under amended Marketing Agreement and Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears, plums and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with the criteria contained in Executive Order 12291 and Departmental Regulation 1512-1, and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of pears subject to regulation under the pear, plum and peach marketing order (7 CFR part 917), and there are approximately 300 producers of pears in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those whose gross annual receipts are less than $3,500,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of handlers and producers of California pears may be classified as small entities.

Shipments of California Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) pears (hereinafter referred to as pears) are regulated by grade, size and pack under Pear Regulation 12 (7 CFR 917.461). Because these regulations do not change substantially from season to season, they have been issued on a continuing basis, subject to amendment, modification or suspension as may be recommended by the Pear Commodity Committee (committee) and approved by the Secretary.

Notice of this action was published as a proposed rule in the Federal Register [55 FR 12663] on April 5, 1990. Comments were invited to be submitted by May 7, 1990. No comments were received.

Fresh California pears shipped during the 1989 season totalled approximately 3,378,786 containers. The packinghouse door value of the pears in 1989 was approximately $19.2 million.

This final rule is based upon unanimous recommendations of the committee and other available information.

Container and Container-Marking Requirements

The committee recommended that two changes be authorized in container requirements for pears and that corresponding changes be made in container-marking requirements. This rule authorizes shipments of pears in consumer packages, weighing 15 pounds net weight or less, packed in master containers. This rule also authorizes shipment of pears in consumer packages, 15 pounds net weight or less, which are shipped individually (i.e., not packed in master containers). These two relaxations will enable the pear industry to market individual consumer packages similar to those successfully marketed by the California nectarine, peach and plum industries. Consumer packages for those fruits are small mesh and plastic bags (usually packed in master containers) and four to 14-pound hard-sided, family-sized boxes. Such packages have become popular in certain retail markets and have been sought by food service outlets, particularly hotels and restaurants, and in some European countries. The committee believes that the use of different sized packages will help meet the needs of the marketplace. The committee authorized for the 1989 season, with the Department's approval, the test marketing of consumer-sized packages. This action authorizes such shipments on a permanent basis to provide handlers additional marketing opportunities.

These changes in container and container-marking requirements are implemented by revising the following provisions in § 917.461, Pear Regulation 12.

Paragraph (a)(2) of § 917.461 provides a minimum size requirement of size 165 for all pears. In paragraph (a)(2), the words ", including consumer packages in master containers and consumer packages not in master containers," is inserted after the word "container." This requires that pears packed in consumer packages meet the same minimum size requirements currently in effect for pears packed in boxes or containers. Such boxes or containers include: 44-pound standard pear boxes, 36, 22 and 18-pound volume-filled containers, 22-pound volume-filled L.A. lugs, and bulk bins containing 300 pounds or more of pears.

Paragraph (a)(3) of § 917.461 specifies marking requirements for containers of pears. In paragraph (a)(3), the words ", other than consumer packages in master containers and consumer packages not in master containers," are inserted following the words "Any box or container" to exempt consumer packages from the marking requirements of paragraph (a)(3). New marking requirements for consumer packages are specified in new paragraphs (a)(7) and (a)(8), discussed later in this document.

Paragraph (a)(4) of § 917.461 specifies pack requirements for containers of pears. In paragraph (a)(4), the words ", other than consumer packages in master containers and consumer packages not in master containers," are inserted following the words "closed containers,." This change exempts consumer packages from the requirements of standard pack as found in the U.S. Standards for Summer and Fall Pears (7 CFR 51.1260 to 51.1280). Standard pack requirements specify that pears shall be of similar size and number, and shall be tightly packed and arranged lengthwise in well filled containers. However, the consumer packages contemplated by the committee include plastic and net mesh bags. It is impractical to apply to bag containers the standard pack requirements on tightness of pack and arrangement of the fruit. Therefore, the committee recommended that all consumer packages, whether bags or small boxes, be exempt from the requirements of standard pack.

The requirements of paragraph (a)(6) § 917.461 are intended to apply only to volume-filled boxes or containers of pears not packed in rows and not wrap packed. For clarification, this action revises the wording at the beginning of existing paragraph (a)(6) by inserting the words "volume-filled" before the words "box or container" and removing the words "in volume-filled cartons" later in the first sentence to remove the reference to boxes or containers packed inside such cartons. Also, for consistency and clarity, the words "carton" and "cartons" appearing in (i), (iii), (iv), and in the proviso, is replaced with the words "box or container" or "boxes or containers" as appropriate.

Additionally in paragraph (a)(6), the words ", other than consumer packages in master containers and consumer packages not in master containers," are inserted following the words "* * * not wrap packed)." This action exempts consumer packages from the volume-fill requirements specified in paragraph (a)(6) (listed below) because it is impractical to pack consumer bags to the same standards as hard-sided boxes. The committee expects that smaller, hard-sided consumer boxes, authorized under this final rule, will be shipped to specialty markets which usually require fruit to be packed in rows and wrap packed. Fruit so packed is currently exempt from the requirements of paragraph (a)(6) and the committee recommended that smaller consumer packages also be exempt.

Thus, under this final rule, paragraph (a)(6) is revised to read as follows:

> Any volume-filled box or container of Bartlett or Max-Red (Max-Red Barlett, Red Bartlett) varieties of pears (not packed in rows and not wrap packed), other than consumer packages in master containers and consumer packages not in master containers, unless (i) such boxes or containers are well filled with pears fairly uniform in size; (ii) such pears are packed fairly tight; (iii) there is an approved top pad in each box or container that will cover the fruit with no more than ¼ inch between the pad and any side or end of the box or container; and (iv) the top of the box or container shall be securely fastened to the bottom: Provided, That 10 percent of the boxes or containers in any lot may fail to meet the requirements of this paragraph.

This final rule also adds provisions defining consumer packages and specifying marking requirements for master containers of consumer packages and individual consumer packages. The committee indicated that a new definition is necessary to differentiate consumer packages from other packages or containers currently authorized. Therefore, a new paragraph (b)(6) is added to § 917.461, Pear Regulation 12, defining consumer packages to mean packages or boxes holding 15 pounds or less net weight of pears. According to the committee, such consumer packages, for example, could be one or two pound mesh and plastic bags (usually packed in master containers) or four to 14 pound hard-sided, family-sized boxes. As discussed above, such consumer packages have become popular in certain retail and specialty markets, and have been sought by food service outlets, hotels and restaurants.

Revised marking requirements will assure that labels on master containers of consumer packages and labels on individually shipped consumer packages clearly describe the contents of such containers and packages. This information will facilitate the marketing of such packages. A new paragraph (a)(7) is added to § 917.461, Pear Regulation 12, establishing marking requirements for master containers when filled with consumer packages of pears. Such master containers shall be marked with the following information: (1) The varietal name and size description of the contents; (2) the number of consumer packages in the master container; (3) the net weight of each consumer package; and (4) the name and complete address of the handler. This information shall be printed, in plain sight and in plain letters, on one outside end of each master container.

Also, a new paragraph (a)(8) is added to § 917.461, Pear Regulation 12, establishing marking requirements for individual consumer packages of pears. All consumer packages (including those packed in master containers) shall be marked with the name and complete address of the handler and the net weight of the consumer package. In addition, consumer packages shipped individually (not packed in master containers) must also be marked with the varietal name, number and size description of the pears contained in the package. This additional information on consumer packages shipped individually will provide more information on the contents of the consumer packages and thus, will facilitate marketing of the pears in such packages.

It is the Department's view that these changes allowing the shipment of different sized consumer packages will provide handlers with more marketing flexibility and permit them to meet the needs of the marketplace more effectively. These changes will be beneficial to the California pear industry and will not result in additional marketing costs.

Organically Grown Grade Requirements

This final rule relaxes grade requirements for organically grown pears for the 1990 season to allow handlers to better meet the market needs for such pears. This rule permits the shipment of organically grown pears with an increase in appearance defects

and enables handlers of organically grown pears to better meet the needs of their buyers.

At the committee's recommendation, the Department issued an interim final rule (54 FR 32794, August 10, 1989) and a final rule (54 FR 46714, November 7, 1989) that relaxed grade requirements for organically grown pears for the 1989 marketing season only. That relaxation required organically grown pears to be at least U.S. Combination grade, and lowered from 80 percent to 50 percent, by count in any lot, pears grading at least U.S. No. 1, with the balance of the lot grading at least U.S. No. 2 quality.

"Organically grown" pears are defined as pears produced, harvested, distributed, stored, processed and packaged without the application of synthetically compounded fertilizers, pesticides or growth regulators. Additionally, no synthetically compounded fertilizers, pesticides or growth regulators shall be applied by the grower to the orchard in which the pears are grown for 12 months prior to the appearance of flower buds and throughout the entire growing and harvest season for pears (54 FR 32796). This definition is consistent with applicable provisions of the term "organically grown" as defined in § 26569.11(a) (1) and (2) of the California Health and Safety Code, as enacted by the California Organic Food Act of 1979, as amended. Also, the California Department of Food and Agriculture (CDFA) currently requires that all agricultural producers register their chemical use. Most California producers of organic fruit are members of associations which certify that produce is grown without the aid of synthetically compounded fertilizers, pesticides or growth regulators.

Handlers who shipped organic pears had to provide, upon request, proof that the pears were grown in accordance with organic provisions cited above. The relaxation permitted the shipment of organically grown pears with an increase in appearance defects and enabled handlers of organically grown pears to better meet the needs of their buyers.

After review of organic pear production and marketing during the 1989 season, the committee recommended to continue, for the 1990 pear marketing season, the 1989 requirements (54 FR 46714, November 7, 1989) for organically grown pears. The committee also recommended that russeting should not be scored as a defect against organically grown pears. While 1989 crop quality was high, the committee found that russeting continued to be a problem for organically grown pears. There is no organically acceptable way to control russeting. Because russeting is a cosmetic defect that does not affect flavor or eating quality, and does not have a significant effect on the marketing of organic pears, the committee recommended that regulations should not restrict the marketing of such pears with russeting defects during the 1990 season.

The Department believes that the increase in appearance defects, i.e., russeting, in organically grown pears, does not adversely affect marketing conditions for non-organically grown pears, particularly since organic fruit is normally sold in specialty markets. This action allows organic pear producers to market a larger portion of their production and provides them with the flexibility to meet the needs of their market.

The committee believes that the organic pear market continues to be a viable market with growth potential for the industry. It is a market that the committee believes handlers should be allowed to meet. This action provides additional opportunities for producers to utilize organic cultural practices to meet consumer demand in this market.

Field officers of the committee will closely monitor the packing of organically grown pears during the 1990 season. Handlers who intend to ship organically grown pears in accordance with this rule will be required to provide upon request to the committee, with the approval of the Secretary, information to indicate that the pears were produced in accordance with the provisions of paragraph (b)(5) of § 917.461. This will help assure that the relaxed requirements will be applied only to organically grown pears. The committee, with the approval of the Secretary, has the authority to require handlers to furnish information as may be necessary to perform its duties under the marketing order.

Size, container and pack requirements specified in § 917.461, including changes authorized in this rulemaking, shall apply to organically grown pears. For the 1990 marketing season, the grade requirement for non-organically grown pears is at least U.S. Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1, with the balance of the fruit grading at least U.S. No. 2.

The information obtained in the marketing of organically grown pears in the 1990 shipping season will be used to evaluate continuation of such shipments in future seasons.

In addition, a change is made to § 917.461(b)(3) for clarity.

Based on available information, the Administrator of the AMS has determined that this rulemaking will not have a significant impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the committee's recommendations, it is found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The requirements set forth below are identical to those published as a proposed rule on April 5, 1990, which has been presented to the industry with no negative response, (2) the shipping season is expected to begin shortly and the rules issued herein should be applied to the industry for as much of the season as possible, and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 917

Marketing agreements, Peaches, Pears, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 917 is amended as follows:

1. The authority citation for 7 CFR part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

2. Section 917.461 is amended by republishing the introductory text of paragraph (a), by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(6) and (b)(3), and by adding new paragraphs (a)(7), (a)(8), and (b)(6) to read as follows:

Note: The following sections will appear in the annual publication of the Code of Federal Regulations.

§ 917.461 Pear Regulation 12.

(a) No handler shall ship:

(1) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears which do not grade at least U.S. Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1: *Provided,* That for the 1990 crop year, no handler shall ship organic pears of these varieties unless they grade at least U.S. Combination with not less than 50 percent, by count,

grading at least U.S. No. 1 and the remainder grading at least U.S. No. 2, except that russeting shall not be scored as a defect for such organically grown pears. Handlers who intend to ship organic pears in accordance with this paragraph shall provide, upon request of the committee, with the approval of the Secretary, information to indicate that the pears were grown in accordance with the provisions of paragraph (b)(5) of this section.

(2) Any box or container, including consumer packages in master containers and consumer packages not in master containers, of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such pears are of a size not smaller than the size known commercially as size 165;

(3) Any box or container, other than consumer packages in master containers and consumer packages not in master containers, of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such box or container is stamped or otherwise marked, in plain sight and in plain letters, on one outside end with the name of the variety;

(4) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears, when packed in closed containers, other than consumer packages in master containers and consumer packages not in master containers, unless such box or container conforms to the requirement of standard pack, except that such pears may be fairly tightly packed;

* * * * *

(6) Any volume-filled box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears (not packed in rows and not wrap packed), other than consumer packages in master containers and consumer packages not in master containers, unless (i) such boxes or containers are well filled with pears fairly uniform in size; (ii) such pears are packed fairly tight; (iii) there is an approved top pad in each box or container that will cover the fruit with no more than ¼ inch between the pad and any side or end of the box or container; and (iv) the top of the box or container shall be securely fastened to the bottom: Provided, That 10 percent of the boxes or containers in any lot may fail to meet the requirements of this paragraph.

(7) Each master container, when filled with pears packed in consumer packages, shall bear on one outside end in plain sight and plain letters the varietal name and size description of the contents; the number of consumer packages packed in the master container; the net weight of each consumer package; and the name and address, including zip code, of the handler.

(8) Each individual consumer package shall bear the name and address, including the zip code, of the handler and the net weight of the contents. When a consumer package is not shipped in a master container, it must also bear the varietal name, number and size description of pears contained in the package.

(b) * * *

(3) "U.S. No. 1", "U.S. No. 2", "U.S. Combination", and "Standard Pack" mean the same as defined in the United States Standards for Summer and Fall Pears (7 CFR 51.1260 to 51.1280).

* * * * *

(6) "Consumer package" means a package holding 15 pounds or less net weight of pears.

Dated: June 20, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-14665 Filed 6-25-90; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 926

[Docket No. FV-90-168]

Tokay Grapes Grown in San Joaquin County, CA; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenses and establishes an assessment rate under Marketing Order 926 for the 1990-91 fiscal period. Authorization of this budget will allow the Tokay Grape Industry Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1990 through March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 93 and Marketing Order No. 926 (7 CFR part 926), both as amended, regulating the handling of Tokay grapes grown in San Joaquin County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 9 handlers of California Tokay grapes currently subject to regulation under this marketing order each season and approximately 380 California Tokay grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1990-91 fiscal year was prepared by the Tokay Grape Industry Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are producers of Tokay grapes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Tokay grapes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the

committee before the new fiscal year starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The committee met on May 8, 1990, and unanimously recommended a 1990–91 budget of $13,535 and an assessment rate of $0.07 per 23-pound lug. This year's assessment rate is the same as last year's. This year's budget is less than last year's due to a reduction in the expenditures for office supplies. The assessment rate, when applied to anticipated fresh market Tokay grape shipments of 200,000 lugs, will yield $14,000 in assessment revenue which will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on May 29, 1990 (55 FR 21754). That document contained a proposal to add § 926.229 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through June 8, 1990. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1990–91 fiscal period began on April 1, and the marketing order requires that the rate of assessment apply to all assessable Tokay grapes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 926

Grapes, marketing agreements, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 926 is amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 926 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 926.229 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 926.229 Expenses and assessment rate.

Expenses of $13,535 by the Tokay Grape Industry Committee are authorized and an assessment rate of $0.07 per 23-pound container of grapes is established for the fiscal period ending March 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: June 20, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–14663 Filed 6–25–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 959

[Docket No. FV–90–120]

South Texas Onions; Redistricting and Reapportionment of Committee Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule reestablishes the districts that comprise the production area for South Texas onions and reapportion committee membership among the new districts. These changes are intended to provide more equitable industry representation on the South Texas Onion Committee in view of changes that have occurred in the distribution of onion acreage and production among the current districts.

EFFECTIVE DATE: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR Part 959), both as amended, regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of South Texas onions under this marketing order, and approximately 80 onion producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers of South Texas onions may be classified as small entities.

Notice of this action was given by a proposed rule published in the May 22, 1990, issue of the Federal Register (55 FR 21041). Interested persons had until June 6, 1990, to file written comments. None were filed.

The South Texas Onion Committee (committee) is established under the terms of the marketing order to work with the Department in administering the program. The committee consists of 17 members, of which 10 are producers and 7 are handlers. Committee membership is currently allocated geographically among four districts.

The committee met on October 31, 1989, and unanimously recommended reestablishing the districts and reapportioning committee membership among the reestablished districts. This recommendation was made pursuant to § 959.25 of the marketing order.

The marketing order covers onions grown in 35 counties in South Texas. To provide a basis for selecting committee

membership, the production area is currently divided into four districts. District 1, known as the Coastal Bend area, consists of 15 counties in the eastern portion of the production area. District 1 is represented on the committee by two producer members and one handler member. District 2, commonly referred to as Laredo, is comprised of three counties in the western portion of the production area, and is allocated one producer and one handler member position on the committee. District 3, known as the Lower Valley, consists of the four southernmost counties of the production area. Four producer and three handler members represent District 3 on the committee. Finally, District 4, known as the Winter Garden district, consists of the 13 northern counties of the production area. This district is represented on the committee by three producer and two handler members.

Since the districts were last reestablished in 1975, changes have occurred in the distribution of onion acreage and production among the four districts. In recent seasons, both acreage and production have become increasingly concentrated in District 3 (the Lower Valley). In the 1988–89 season, the Lower Valley accounted for about 85 percent of the total planted acreage and about 90 percent of South Texas onion production.

The remaining acreage (about 15 percent of the total) was planted in District 2 (Laredo) and District 4 (Winter Garden). During the 1988–89 season, about 4 percent of the South Texas onions produced were grown in Laredo and about 6 percent in the Winter Garden district. No commercial onion production has been reported in the Coastal Bend area (District 1) for the past 5 years.

This action reestablishes the current districts by combining Districts 1 and 3 (Coastal Bend/Lower Valley) and Districts 2 and 4 (Laredo/Winter Garden). The Coastal Bend/Lower Valley district will be allocated six producer and four handler member positions on the committee. This action, therefore, increases representation of the Lower Valley area by three committee members in recognition of the large share of total onion acreage and production in that area. The Coastal Bend region will no longer be provided separately with three positions on the committee. Since commercial onion production has ceased in the Coastal Bend area, the committee does not believe it is justified to have 3 of the 17 members allocated to that area as is currently the case. In addition, the three Coastal Bend positions currently are vacant.

The committee also recommended that the newly established Laredo/Winter Garden district be allocated four producer members and three handler members. The combined representation of these two regions therefore remains the same. Although the Laredo/Winter Garden district accounts for only about 10 percent of total South Texas onion production, that district will be allocated about 40 percent of total committee membership. While the committee considered reducing the number of positions allocated to the Laredo/Winter Garden district, it concluded that it is not in the best interest of the industry to do so at the present time.

The marketing order requires nine concurring votes, or two-thirds of the votes cast (whichever is greater), to approve any committee action. Providing the Laredo/Winter Garden district with more than one-third of the committee members should ensure that the interests of this district's producers and handlers are taken into consideration during committee deliberations. The committee believes this to be particularly important because of the large, 16-county area this district encompasses.

Additionally, growing and marketing conditions in the Laredo/Winter Garden district differ from those in the Lower Valley. The growing season is several weeks earlier in the Lower Valley, for example, and the Laredo/Winter Garden district's later shipping season results in a different marketing situation in terms of pricing and competitive supplies.

After consideration of all relevant factors, the committee recommended these actions as a means of improving the operation of the marketing order by providing more equitable industry representation on the committee.

Committee members serve 2-year terms of office beginning August 1 with about one-half of the membership selected each year. Of the current members, six are serving terms of office that expire in 1990 and eight are serving terms that expire in 1991. Three positions (those allocated to the Coastal Bend district) are vacant. The present committee members will continue to serve for the remainder of the term to which they were appointed and this change in districting and apportionment of membership will be effective for nominations for members to serve the term beginning August 1, 1990. At that time, nominations will be solicited for three growers and two handlers to represent the Coastal Bend/Lower Valley district, and two growers and two handlers to represent the Laredo/Winter Garden district.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because (1) the term of office begins August 1 and the order requires that any changes in committee composition be effective not less than 30 days prior to August 1, and (2) this action was recommended in a public meeting, notice was given in the Federal Register, and an opportunity for public comment was provided. No comments were received.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: Secs. 1.19, 48 Stat. 31, as amended; 7 U.S.C. 601.74.

2. Section 959.110 is revised to read as follows:

Note: This section will be published in the Code of Federal Regulations.

§ 959.110 Reestablishment of districts.

Pursuant to § 959.25, the following districts are reestablished:

(a) *District 1 (Coastal Bend-Lower Valley):* The counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, McMullen, Cameron, Hidalgo, Starr, and Willacy.

(b) *District 2 (Laredo-Winter Garden):* The counties of Zapata, Webb, Jim Hogg, De Witt, Wilson, Atascosa, Karnes, Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and LaSalle.

3. Section 959.111 is revised to read as follows:

§ 959.111 Reapportionment of committee membership.

Pursuant to § 959.25, committee membership is reapportioned among districts as follows:

(a) *District 1 (Coastal Bend-Lower Valley):* Six producer members and four handler members.

(b) *District 2 (Laredo-Winter Garden):* Four producer members and three handler members.

Dated: June 20, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-14664 Filed 6-25-90; 8:45 am]

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Agricultural Marketing Service

7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139

[Docket Nos. AO-356-A27, etc.; DA-89-028]

Milk in Certain Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule

7 CFR part	Marketing area	AO nos.
1006	Upper Florida	AO-356-A27
1007	Georgia	AO-366-A30
1011	Tennessee Valley	AO-251-A33
1012	Tampa Bay	AO-347-A30
1013	Southeastern Florida	AO-286-A37
1030	Chicago Regional	AO-361-A26
1032	Southern Illinois—Eastern Missouri.	AO-313-A37
1033	Ohio Valley	AO-166-A58
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A53
1040	Southern Michigan	AO-225-A40
1046	Louisville-Lexington-Evansville.	AO-123-A59
1049	Indiana	AO-319-A36
1050	Central Illinois	AO-355-A25
1064	Greater Kansas City	AO-23-A58
1065	Nebraska-Western Iowa	AO-86-A45
1068	Upper Midwest	AO-178-A42
1076	Eastern South Dakota	AO-260-A28
1079	Iowa	AO-295-A39
1093	Alabama-West Florida	AO-386-A8
1094	New Orleans-Mississippi	AO-103-A50
1096	Greater Louisiana	AO-257-A37
1097	Memphis, Tennessee	AO-219-A44
1098	Nashville Tennessee	AO-184-A53
1099	Paducah, Kentucky	AO-183-A43
1106	Southwest Plains	AO-210-A49
1108	Central Arkansas	AO-243-A40
1120	Lubbock-Plainview, Texas	AO-328-A27
1124	Pacific Northwest	AO-368-A17
1126	Texas	AO-231-A57
1131	Central Arizona	AO-271-A27
1132	Texas Panhandlke	AO-262-A37
1134	Western Colorado	AO-301-A20
1135	Southwestern Idaho—Eastern Oregon.	AO-380-A7
1137	Eastern Colorado	AO-326-A24
1138	Rio Grande Valley	AO-335-A33
1139	Great Basin	AO-309-A28

SUMMARY: This action makes permanent the previously adopted interim changes to the Class II milk pricing provisions in those orders that have three classes of milk utilization. These amendments make permanent the arrangement whereby the Class II milk price announced by the 15th of each month will be the final or effective Class II milk price for the following month. However, to the extent that the announced Class II price for a given month is less than the Class III price for that same month, the difference will be included in computing the second succeeding month's Class II milk price. These changes are based on evidence presented at a public hearing held in Alexandria, Virginia, on August 22, 1989. More than the required number of producers in each of the marketing areas affected have approved these amendments on a permanent basis to the order for their market.

EFFECTIVE DATE: August 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Prior documents in this proceeding:

Notice of Hearing: Issued August 10, 1989; published August 16, 1989 (54 FR 33709).

Recommended Decision: Issued October 31, 1989; published November 8, 1989 (54 FR 46904).

Tentative Decision: Issued November 8, 1989; published November 15, 1989 (54 FR 47527).

Interim Amendment to Orders: Issued November 28, 1989; published December 4, 1989 (54 FR 49955).

Final Decision: Issued March 25, 1990; published March 29, 1990 (55 FR 11599).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of these amendments to each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders; and

(3) The issuance of these amendments to each of the specified orders is approved by more than the required number of producers who during the determined representative period were

engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended, and as hereby further amended, as follows:

1. The authority citation for CFR Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

2. In Section 1006.50(b), the introductory text is revised to read as follows:

§ 1006.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1006.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the basic formula price for the second preceding month.

* * * * *

3. Section 1006.53 is revised to read as follows:

§ 1006.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the basic formula price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1006.50(b).

PART 1007—MILK IN THE GEORGIA MARKETING AREA

4. In § 1007.50(b), the introductory text is revised to read as follows:

§ 1007.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1007.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

5. Section 1007.53 is revised to read as follows:

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1007.50(b).

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

6. In § 1011.50(b), the introductory text is revised to read as follows:

§ 1011.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1011.51a for the month plus the amount that the value computed pursuant to paragraphs (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraph (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

7. Section 1011.53 is revised to read as follows:

§ 1011.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1011.50(b).

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

8. In § 1012.50(b), the introductory text is revised to read as follows:

§ 1012.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1012.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the basic formula price for the second preceding month.

* * * * *

9. Section 1012.53 is revised to read as follows:

§ 1012.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the basic formula price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1012.50(b).

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

10. In § 1013.50(b), the introductory text is revised to read as follows:

§ 1013.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the

Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1013.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the Class II price for the second preceding month was less than the Class III price for the second preceding month.

* * * * *

11. Section 1013.53 is revised to read as follows:

§ 1013.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1013.50(b).

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

12. In § 1030.50(b), the introductory text is revised to read as follows:

§ 1030.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1030.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceeding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

13. Section 1030.53 is revised to read as follows:

§ 1030.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1030.50(b).

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

14. In § 1032.50(b), the introductory text is revised to read as follows:

§ 1032.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1032.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

15. Section 1032.53 is revised to read as follows:

§ 1032.53 Announcement of class prices.

The market administrator shall announce publicly on or before fifth day of each month the Class I price for the following month, the Class III price for the preceeding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1032.50(b).

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

16. In§ 1033.27, paragraphs (k)(1) and (k)(3) are revised to read as follows:

§ 1033.27 Additional duties of the market administrator.

* * * * *

(k) Publicly announce on or before:

(l) The 5th day of each month:

(i) The Class I price for the following month;

(ii) The Class III price for the preceding month;

(iii) The butterfat differential for the preceding month;

(2) * * *

(3) The 15th day of each month, the Class II price for the following month computed pursuant to § 1033.51(b).

* * * * *

17. In § 1033.51(b), the introductory text is revised to read as follows:

§ 1033.51 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1033.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

18. In § 1036.50(b), the introductory text is revised to read as follows:

§ 1036.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1036.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

19. Section 1036.53 is revised to read as follows:

§ 1036.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1036.50(b).

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

20. In § 1040.50(b), the introductory text is revised to read as follows:

§ 1040.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the

Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1040.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (F)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

21. Section 1040.53 is revised to read as follows:

§ 1040.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class II price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1040.50(b).

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

22. In § 1046.50(b), the introductory text is revised to read as follows:

§ 1046.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1046.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

23. Section 1046.53 is revised to read as follows:

§ 1046.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1046.50(b).

PART 1049—MILK IN THE INDIANA MARKETING AREA

24. In § 1049.50(b), the introductory text is revised to read as follows:

§ 1049.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1049.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

25. Section 1049.53 is revised to read as follows:

§ 1049.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1049.50(b).

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

26. In § 1050.50(b), the introductory text is revised to read as follows:

§ 1050.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1050.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

27. Section 1050.53 is revised to read as follows:

§ 1050.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1050.50(b).

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

28. In § 1064.50(b), the introductory text is revised to read as follows:

§ 1064.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1064.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

29. Section 1064.53 is revised to read as follows:

§ 1064.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1064.50(b).

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

30. In § 1065.50(b), the introductory text is revised to read as follows:

§ 1065.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1065.51a for the month plus the amount that the value computed

pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

31. Section 1065.53 is revised to read as follows:

§ 1065.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1065.50(b).

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

32. In § 1068.50(b), the introductory text is revised to read as follows:

§ 1068.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1068.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

33. Section 1068.53 is revised to read as follows:

§ 1068.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1068.50(b).

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

34. In § 1076.50(b), the introductory text is revised to read as follows:

§ 1076.50(b) Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1076.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price of the second preceding month.

* * * * *

35. Section 1076.53 is revised to read as follows:

§ 1076.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1076.50(b).

PART 1079—MILK IN THE IOWA MARKETING AREA

36. In § 1079.50(b), the introductory text is revised to read as follows:

§ 1079.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1079.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

37. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1079.50(b).

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

38. In § 1093.50(b), the introductory text is revised to read as follows:

§ 1093.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1093.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

39. Section 1093.53 is revised to read as follows:

§ 1093.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1093.50(b).

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

40. In § 1094.50(b), the introductory text is revised to read as follows:

§ 1094.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1094.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted

pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price of the second preceding month.

* * * * *

41. Section 1094.53 is revised to read as follows:

§ 1094.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1094.50(b).

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

42. In Section 1096.50(b), the introductory text is revised to read as follows:

§ 1096.50 Class prices.

* * * * *

(b) *Class II price.* The class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1096.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

43. Section 1096.53 is revised to read as follows:

§ 1096.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1096.50(b).

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

44. In § 1097.50(b), the introductory text is revised to read as follows:

§ 1097.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Diary Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1097.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

45. Section 1097.53 is revised to read as follows:

§ 1097.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1097.50(b).

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

46. In § 1098.50(b), the introductory text is revised to read as follows:

§ 1098.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1098.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

47. Section 1098.53 is revised to read as follows:

§ 1098.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1098.50(b)

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

48. In § 1099.50(b), the introductory text is revised to read as follows:

§ 1099.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1099.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

49. Section 1099.53 is revised to read as follows:

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1099.50(b).

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

50. In § 1106.50(b), the introductory text is revised to read as follows:

§ 1106.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1106.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

51. Section 1106.53 is revised to read as follows:

§ 1106.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1106.50(b).

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

52. In § 1108.50(b), the introductory text is revised to read as follows:

§ 1108.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1108.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

53. Section 1108.53 is revised to read as follows:

§ 1108.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1108.50(b).

PART 1120—MILK IN THE LUBBOCK-PLAINVIEW, TEXAS MARKETING AREA

54. In § 1120.50(b), the introductory text is revised to read as follows:

§ 1120.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1120.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

55. Section 1120.53 is revised to read as follows:

§ 1120.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1120.50(b).

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

56. In § 1124.50(b), the introductory text is revised to read as follows:

§ 1124.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1124.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

57. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1124.50(b).

PART 1126—MILK IN THE TEXAS MARKETING AREA

58. In § 1126.50(b), the introductory text is revised to read as follows:

§ 1126.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1126.51(a) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

59. Section 1126.53 is revised to read as follows:

§ 1126.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1126.50(b).

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

60. In § 1131.50(b), the introductory text is revised to read as follows:

§ 1131.50 Class prices

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1131.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

61. Section 1131.53 is revised to read as follows:

§ 1131.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for

the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1131.50(b).

PART 1132—MILK IN THE TEXAS PANHANDLE MARKETING AREA

62. In § 1132.50(b), the introductory text is revised to read as follows:

§ 1132.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1132.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

63. Section 1132.53 is revised to read as follows:

§ 1132.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1132.50(b).

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

64. In § 1134.50(b), the introductory text is revised to read as follows:

§ 1134.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1134.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

65. Section 1134.53 is revised to read as follows:

§ 1134.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1134.50(b).

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

66. In § 1135.50(b), the introductory text is revised to read as follows:

§ 1135.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1135.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

67. Section 1135.53 is revised to read as follows:

§ 1135.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1135.50(b).

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

68. In § 1137.50(b), the introductory text is revised to read as follows:

§ 1137.50 Class prices.

* * * * *

I(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1137.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

69. Section 1137.53 is revised to read as follows:

§ 1137.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1137.50(b).

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

70. In § 1138.50(b), the introductory text is revised to read as follows:

§ 1138.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1138.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

71. Section 1138.53 is revised to read as follows:

§ 1138.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1138.50(b).

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

72. In § 1139.50(b), the introductory text is revised to read as follows:

§ 1139.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1139.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

73. Section 1139.53 is revised to read as follows:

§ 1139.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th of each month, the Class II price for the following month computed pursuant to § 1139.50(b); and

(c) The 5th day after the end of each month, the Class III price and the prices for butterfat, milk protein and skim milk computed pursuant to § 1139.50 (d), (e) and (f) for each month.

* * * * *

Effective date: August 1, 1990.

Signed at Washington, DC, on June 20, 1990.

John E. Frydenlund,

Deputy Assistant Secretary.

[FR Doc. 90-14682 Filed 6-25-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AEA-04]

Alteration of Transition Area; Marion, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the 700-foot Transition Area at Marion, VA to that amount of controlled airspace which is deemed necessary by the FAA to segregate aircraft operating under instrument flight rules from those aircraft operating under visual flight rules in controlled airspace. This action is necessary due to the reorganization of air traffic control procedures in the area.

EFFECTIVE DATE: 0901 u.t.c. August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

On March 14 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the 700-foot Transition Area at Marion, VA due to the reorganization of air traffic control procedures in the area (55 FR 13286). The proposed action would reduce the amount of controlled airspace to that which is required for the Mount Empire Airport, Marion/Wytheville, VA. This action is necessary because of the proposed cancellation of the NDB-A Standard Instrument Approach Procedure (SIAP) and the development of a new NDB Runway 26 SIAP, as well as the installation of a new Localizer (LOC) at the airport to support a new LOC Runway 26 SIAP. This action will return that amount of controlled airspace not needed by the FAA, back to the general public.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F, January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the 700-foot Transition Area at Marion, VA, due to the reorganization of air traffic control procedures in the area. This action reduces that amount of controlled airspace deemed necesssary by the FAA to that which is required for current and planned SIAPs at the Mountain Empire Airport, Marion/Wytheville, VA. This action also returns that amount of controlled airspace not needed by the FAA for such operations, back to the general public.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Marion, VA [Revised]

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the center of Mountain Empire Airport, Marion/Wytheville, VA (lat. 36°53'41"N. long. 81°21'00"W.).

Issued in Jamaica, New York, on May 25, 1990.

Billy E. Commander,

Acting Manager, Air Traffic Division.

[FR Doc. 90-14703 Filed 6-25-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASW-55]

Revision of Transition Area: Carthage, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule; delay of effective date.

SUMMARY: This corrective action makes a minor editorial change to the latitude of the Carthage Nondirectional Radio Beacon (NDB) and changes the effective date of the revision to the Carthage, TX, Transition Area from June 28, 1990, to August 23, 1990. The intended effect of this action is to make a minor editorial change to the legal description of the transition area and to delay the revision of the transition area by 56 days.

EFFECTIVE DATE: 0901 u.t.c., August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket No. 89-ASW-55, revising the transition area located at Carthage, TX, was published in the Federal Register (55 FR 14237) on April 17, 1990. An unforeseen delay in the commissioning of the Carthage NDB has necessitated the delay of the effective date of the revision to the Carthage, TX, Transition Area. Additionally, a minor error was discovered in the latitude coordinate of the Carthage NDB. This action corrects that error and also delays the effective date of the final rule.

The FAA has determined that this 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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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

Aviation safety, Transitions areas.

Correction to Final Rule and Delay of Effective Date

PART 71—[AMENDED]

§ 71.181 [Amended]

The coordinates of the Carthage NDB (page 14236, column 3) published on April 17, 1990 (55 FR 14236) are corrected to read as follows:

Latitude—32°10'48" N.
Longitude—94°17'46" W.

Additionally, the effective date of this final rule is delayed from June 28, 1990, to August 23, 1990.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Fort Worth, TX, on May 30, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-14704 Filed 6-25-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin, Tylosin-Sulfamethazine, Hygromycin B

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of three new animal drug applications (NADA's) held by Old Monroe Elevator & Supply Co., Inc. One NADA provides for the use of a tylosin Type A article to make a Type C swine, beef cattle, and chicken feed; the second for the use of a tylosin-sulfamethazine Type A article to make a Type C swine feed; and the third for the use of a hygromycin B Type A article to make a Type C swine and chicken feed. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA's 119-261, 128-834, and 128-835 sponsored by Old Monroe Elevator & Supply Co., Inc. NADA 119-261 provides for the use of a tylosin Type A medicated article for making a Type C medicated swine, beef cattle, and chicken feed. NADA 128-834 provides for the use of a hygromycin B Type A medicated article to make a Type C medicated swine and chicken feed. NADA 128-835 provides for the use of a tylosin-sulfamethazine Type A medicated article to make a Type C medicated swine feed. This document amends 21 CFR 510.600(c)(1) and (c)(2), 558.274(a)(4) and (c)(1), 558.625(b)(69), and 558.630(b)(10) to reflect withdrawal of the approval of these NADA's.

In addition, since Old Monroe Elevator & Supply Co., Inc., is no longer the sponsor of any approved NADA's, § 510.600 is amended by removing the company from the list of sponsors.

List of Subjects in 21 CFR

Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications is amended in the table in paragraph (c)(1) by removing the entry "Old Monroe Elevator & Supply Co., Inc.," and in the table in paragraph (c)(2) by removing the entry "026948".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.274 [Amended]

4. Section 558.274 Hygromycin B is amended in paragraph (a)(4) and in the table in paragraph (c)(1) in entries (i) and (ii) under the "Sponsor" column by removing "026948,".

§ 558.625 [Amended]

5. Section 558.625 Tylosin is amended by removing and reserving paragraph (b)(69).

§ 558.630 [Amended]

6. Section 558.630 Tylosin and sulfamethazine is amended in paragraph (b)(10) by removing "026948,".

Dated: June 19, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-14701 Filed 6-25-90; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 514

Medicated Feed Applications; Interpretation of Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Interpretation of regulations.

SUMMARY: The Food and Drug Administration (FDA) has been reviewing its regulations regarding requirements for supplemental medicated feed applications (MFA's) and, for multimill MFA's, original and supplemental MFA's. FDA is announcing that, effective June 26, 1990, it is revising its interpretation of certain requirements for the filing of supplemental applications and, for multimill firms, of certain requirements for the filing of supplemental and original MFA's.

EFFECTIVE DATE: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV-221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.

SUPPLEMENTARY INFORMATION: The American Feed Industry Association has informed FDA of several administrative problems encountered by feed firms in preparing MFA's (Form FDA 1900's), particularly, the interpretation and implementation of § 514.9 Supplemental applications for animal feeds bearing or containing new animal drugs (21 CFR 514.9). Section 514.9(c) requires a fully completed Form FDA 1900 for any change which deviates from the conditions of the original approval. FDA now interprets § 514.9(c) to require filling out only certain items, namely, items: 1. Name of Applicant, 2. Address, 3. Establishment Registration Number, 4. Date Last Registered, 6. Type of Application, 20. Certification, and each item which requires a change. For those items not requiring a change, the applicant may state "See previous MFA approval."

FDA has also revised its interpretation of the requirements for filing MFA's for multimill firms. The agency suggests establishing a list (mill list or facilities) master file (LMF) to simplify approvals and supplemental approvals for a firm's revised mill list (item 5). A multimill firm may request by letter that FDA's, Center for Veterinary Medicine (CVM) establish an LMF. The request is to be accompanied by a signed Form FDA 1900 (in triplicate), with items 1 through 6 and item 20 filled out. For item 5, the applicant is to provide an up-to-date mill list for each approved MFA. For item 6, the applicant is to check the "original" box. For all other items, the applicant may insert "See previous MFA approvals." All information in the LMF is incorporated into the respective MFA's by reference. Hence, approval of future changes in the mill list for any of the referenced MFA's can be obtained by submitting to the LMF a Form FDA 1900 (in triplicate) filled out as above, except that item 6 would be filled out with the previously established LMF number and a check in the "supplemental" box. For mill list changes, there is no need to further supplement each approved MFA.

On its own initiative, CVM may establish LMF's for multimill firms when it appears that LMF's would be beneficial.

If a multimill firm with an LMF is submitting a new MFA for a newly approved new animal drug (or combination), the firm is to submit a fully completed Form FDA 1900 (in triplicate). For item 5, however, the firm should put "See LMF (*LMF number*) submission of (*date*)." In addition, the firm is to simultaneously file an LMF supplement (as above) for the mill list for the newly approved product, giving the date of submission of the MFA (Form FDA 1900) for that product.

If the only proposed change is the deletion of a mill from a mill list, a letter signed by the responsible person is to be submitted to the appropriate MFA or LMF, in triplicate, stating the establishment registration number, and name and address including zip code. A mill that is deleted from the mill list may no longer manufacture any medicated feed that requires an approved MFA.

FDA is publishing this notice in order to inform the public of this interpretation of § 514.9. Applications should conform to these procedures.

Dated: June 19, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-14697 Filed 6-25-90; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 540

Penicillin Antibiotic Drug for Animal Use; Sterile Benzathine Penicillin G Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove the regulation reflecting approval of a new animal drug application (NADA) held by Wyeth Laboratories. The NADA provides for the use of a benzathine penicillin G injection in horses and dogs for the treatment of bacterial infections. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of Wyeth Laboratories' NADA 55-009. The NADA provides for the intramuscular use in horses and dogs of a benzathine penicillin G suspension for the treatment of bacterial infections. By letter of September 8, 1989, the sponsor requested withdrawal of the approval because the product is no longer manufactured or marketed. This document removes 21 CFR 540.255a, which reflects approval of the NADA.

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR part 540 continues to read as follows:

Authority: Secs. 507, 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357, 360b).

§ 540.255a [Removed]

2. Section 540.255a *Sterile benzathine penicillin G suspension* is removed.

Dated: June 18, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-14700 Filed 6-25-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8302]

RIN 1545 AL05

Low-Income Housing Credit for Federally-assisted Buildings; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations concerning the low-income housing credit for certain Federally-assisted buildings under section 42 of the Internal Revenue Code of 1986.

FOR FURTHER INFORMATION CONTACT: Susan Reaman at 202-377-6349 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations concern the low-income housing credit for certain Federally-assisted buildings under section 42 of the Internal Revenue Code of 1986, as enacted by section 252 of the Tax Reform Act of 1986 and, as amended by sections 1002(1) and 4003 of the Technical and Miscellaneous Revenue Act of 1988. The changes to section 42 under section 7108 of the Omnibus Reconciliation Act of 1989 were not reflected in the final regulations but will be the subject of a separate notice of proposed rulemaking.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

PART 1—[AMENDED]

Accordingly, the final regulations published May 23, 1990 (55 FR 21187) FR Doc. 90-1752, are corrected as follows:

§ 1.42-2 [Corrected]

Par. 1. On page 21189, column 3, the eighth line of § 1.42-2(c)(1) should be corrected to read "operated under section 8 of the United".

Dale D. Goode,

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

[FR Doc. 90-14656 Filed 6-25-90; 8:45 am]

BILLING CODE 4830-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Rules of Procedure

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission is making an editorial revision to its authority citations in 29 CFR part 2700. This revision is made at the request of the Office of the Federal Register. This action does not represent a change in agency policy.

EFFECTIVE DATE: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: L. Joseph Ferrara at 202-653-5610, (202-708-9300 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: This editorial revision in the Commission's 29 CFR part 2700—Procedural Rules is made at the request of the Office of the Federal Register to conform to Federal Register style requirements.

Accordingly, the authority citation following 29 CFR 2700.42 is removed and the authority citation for 29 CFR part 2700 is revised to read as follows:

Authority: 30 U.S.C. 815, 820, and 823.

Ford B. Ford,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 90-14692 Filed 6-25-90; 8:45 am]

BILLING CODE 6735-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AD60

Basic Eligibility Determinations; Education

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: Department of Veterans Affairs (VA) is amending the regulation which provides authority and guidelines for making a service-connected discharge determination needed to determine eligibility for educational assistance under the Vietnam Era GI Bill and the Post-Vietnam Era Veterans Educational Assistance Program (VEAP). The amended regulation adds a second rule for determining eligibility for VEAP, rules for deciding when such a determination must be made for a veteran who has applied for benefits under the Montgomery GI Bill—Active Duty, and a rule for deciding when such a determination of service connection for a disability must be made for a reservist who otherwise would be eligible for benefits under the Montgomery GI Bill—Selected Reserve.

EFFECTIVE DATES: This amendment is effective on July 26, 1990.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 40684 through 40686 of the Federal Register of October 3, 1989, there was published a notice of intent to amend 38 CFR part 3 in order to show when a service-connected discharge determination is needed in determining eligibility for educational assistance under the Montgomery GI Bill—Active Duty. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Accordingly, VA is making the proposal final.

The Department of Veterans Affairs has determined that this amended regulation does not contain a major rule as that term is defined by Executive Order 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in

costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.124.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: June 1, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

In 38 CFR part 3, Adjudication is amended as follows:

PART 3—[AMENDED]

1. In § 3.315, paragraph (c) is revised to read as follows:

§ 3.315 Basic eligibility determinations—dependents, loans, education.

* * * * *

(c) *Veterans' educational assistance.* (1) A determination is required as to whether a veteran was discharged or released from active duty service because of a service-connected disability (or whether the official service department records show that the veteran had at time of separation from service a service-connected disability which in medical judgment would have warranted discharge for disability) whenever any of the following circumstances exist:

(i) The veteran applies for benefits under 38 U.S.C. chapter 34 and is eligible for such benefits except for the 181 days active duty requirement;

(ii) The veteran applies for benefits under 38 U.S.C. chapter 32, the minimum active duty service requirements of 38 U.S.C. 3103A do not apply to him or her, and the veteran is eligible for such benefits except for the 181 days active duty requirement;

(iii) The veteran applies for benefits under 38 U.S.C. chapter 32, the minimum active duty service requirements of 38 U.S.C. 3103A apply to him or her, and the veteran would be eligible for such benefits only if—

(A) He or she was discharged or released from active duty for a disability incurred or aggravated in line of duty, or

(B) He or she has a disability that VA has determined to be compensable under 38 U.S.C. chapter 11; or

(iv) The veteran applies for benefits under 38 U.S.C. chapter 30 and—

(A) The evidence of record does not clearly show either that the veteran was discharged or released from active duty for disability or that the veteran's discharge or release from active duty was unrelated to disability, and

(B) The veteran is eligible for basic educational assistance except for the minimum length of active duty service requirements of § 21.7042(a) or § 21.7044(a) of this chapter.

(2) A determination is required as to whether a veteran was discharged or released from service in the Selected Reserve for a service-connected disability or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA determines is not service connected when the veteran applies for benefits under 38 U.S.C. chapter 30 and—

(i) Either the veteran would be eligible for basic educational assistance under that chapter only if he or she was discharged from the Selected Reserve for a service-connected disability, or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA finds is not service connected, or

(ii) The veteran is entitled to basic educational assistance and would be entitled to receive it at the rates stated in § 21.7136(a) or § 21.7137(a) of this chapter only if he or she was discharged from the Selected Reserve for a service-connected disability or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA finds is not service connected.

(3) A determination is required as to whether a reservist has been unable to pursue a program of education due to a disability which has been incurred in or aggravated by service in the Selected Reserve when—

(i) The reservist is otherwise entitled to educational assistance under 10 U.S.C. chapter 106, and

(ii) He or she applies for an extension of his or her eligibility period.

(4) The determinations required by paragraphs (c)(1) through (c)(3) of this section are subject to the presumptions of incurrence under § 3.304(b) and aggravation under § 3.306 (a) and (c) of this part, based on service rendered after January 31, 1955, and before August 5, 1964, or after May 7, 1975, and § 3.306(b) based on service rendered during the Vietnam era.

(Authority: 38 U.S.C. 1411(a)(1)(A)(ii), 1412(b)(1), 1602(1)(A), 1652(a), 10 U.S.C. 2133(b))

[FR Doc. 90–14768 Filed 6–25–90; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 21

RIN 2900–AE67

Accountability for Authorization and Payment of Training and Rehabilitation Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending current rules governing the approval of program costs for training and rehabilitation services. These rules establish a simpler and more flexible system under which the expenditure of funds for training and rehabilitation services is subject to review as the amount needed to pay for tuition, fees and other costs increases. Under the revised procedures most of the specific monetary limits used for determining the necessary level of administrative review are no longer specified in the regulation. These regulatory amendments will enable VA to move more rapidly to change review limits administratively as increases in the cost of living forces changes in program costs.

EFFECTIVE DATE: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Veterans Benefits Administration (226), 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–6496.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs has a regulatory system under which expenditures of funds for training and rehabilitation services are subject to review by higher level management as the amount needed to pay for tuition, fees and other costs increases. These provisions are contained in §§ 21.258 and 21.430. Experience has shown that

appropriate review can be effectuated at lower administrative levels than currently provided, except in certain limited situations. Furthermore, changes in the cost of living have resulted in significant and frequent increases in the cost of providing vocational rehabilitation services. Therefore, it has been determined that the existing procedures need to be amended to allow for more flexible administration. This increased flexibility may best be achieved by permitting the limits to be determined administratively within a broader range set by rule. The new rule increases from $15,000 to $25,000 the program costs incurred during a calendar year which may be approved by the field station Director and limits the types of cases in which the approval of the Director, Vocational Rehabilitation and Education Service (VR&E) or designee is required. The Director, VR&E, or designee will continue to review certain types of cases in which program costs are estimated to exceed $25,000 per year such as purchasing supplies to help establish a small business.

VA finds that good cause exists for making these amendments final without prior publication for public notice and comment, and for making these amendments effective on the date of publication. The changes contained in these amendments concern the internal VA management rules by which the agency reviews charges for those training and rehabilitation services which are a part of the veteran's rehabilitation plan. These benefits and the type or level of services are not affected by these changes. Prior publication of these changes for public participation is therefore considered unnecessary and not in the interest of either the veteran or the government.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The change will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effect on the economy.

Since a notice of proposed rulemaking is unnecessary and will not be published the Regulatory Flexibility Act (RFA) does not apply to this change. In any case the Secretary of Veterans Affairs hereby certifies that these proposed amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the changes simply concern the method by which VA reviews the costs of training and rehabilitation services which are a part of the veteran's rehabilitation program. Thus, no regulatory burdens are imposed on small entities by these changes.

(The Catalog of Federal Domestic Assistance Number is 64.116.)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved June 4, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

§ 21.258 Special assistance for veterans in self-employment.

* * * * *

(c) * * *

(1) Self-employment is clearly shown to be the soundest method of achieving rehabilitation; or

* * * * *

2. In § 21.430, paragraph (c) is revised in its entirety to read as follows:

§ 21.430 Accountability for authorization and payment of training and rehabilitation services.

* * * * *

(c) *Review of program costs by the Director, Vocational Rehabilitation and Education (VR&E) Service.* The Director, VR&E Service or designee will review the program costs for the types of training and rehabilitation services listed in paragraphs (c)(1) through (c)(3) of this section when the case manager's estimate of program costs for a calendar year exceeds $25,000. The rehabilitation plan may not be signed nor any expenditures made or authorized until the review is completed and the station receives written approval of program costs. The types of services subject to review by the Director, VR&E Service or designee are:

(1) Providing supplies to help establish a small business;

(2) A period of extended evaluation; or

(3) A program of independent living services.

Authority: 38 U.S.C. 1515(a)(4))

[FR Doc. 90–14770 Filed 6–25–90; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 36

RIN 2900–AE21

Loan Guaranty: Discrimination on the Basis of Handicap or Family Status

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations to conform to the Fair Housing Amendments Act of 1988 which prohibits discrimination on the basis of handicap or family status.

EFFECTIVE DATE: These amendments are effective on July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Alan Schneider, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3042.

SUPPLEMENTARY INFORMATION: Under chapter 37 of title 38, United States Code, VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominium, or manufactured home, or to install certain energy conservation features or other home improvements. The guaranty is a promise by the Government to pay a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

VA regulations at 38 CFR 36.4253 and 36.4350 prescribe the estate which the veteran is required to obtain in the property which serves as security for the loan, generally a fee simple estate, with exceptions for certain easements and other restrictions. These regulations presently permit restrictions on title which limit the sale, lease or occupancy of a dwelling to persons based on age, including prohibitions against the permanent occupancy of the dwelling by children.

On November 24, 1989, VA published in the **Federal Register** (54 FR 48646) proposed amendments to these sections to conform to the requirements of Public Law 100–430, the Fair Housing Amendments Act of 1988. Under the new law, it is unlawful to discriminate in residential real estate transactions

against any person because of handicap or familial status. However, the law provides an exception for certain age restricted communities which meet the definition provided in the law for "housing for older persons." Since no public comments were received on the proposed regulatory amendments, they are being adopted as originally proposed. This is accomplished by amending §§ 36.4253(b)(7) and 36.4350(b)(5)(iv)(B) to provide that age restrictions will be considered acceptable only if they are acceptable under the provisions of the Fair Housing Act.

The Secretary hereby certifies that these regulatory amendments will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These regulations simply conform VA regulations to the requirements of the Fair Housing Act. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of §§ 603 and 604.

The Secretary hereby determines that these regulations do not contain a major rule as defined by Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.)

List of Subjects in 38 CFR Part 36

Condominium, Handicapped, Housing loan program-housing and community development, Manufactured homes, Veterans.

Approved: June 4, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 36, Loan Guaranty, is amended as set forth below:

PART 36—[AMENDED]

1. In § 36.4253, paragraph (b)(7) is revised to read as follows:

§ 36.4253 Title and lien requirements.

* * * * *

(b) * * *

(7) A recorded restriction on title designed to provide housing for older persons, provided that the restriction is acceptable under the provisions of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 *et seq.* The veteran must be fully informed and consent in writing to the restrictions. A copy of the veteran's consent statement must be forwarded with the application for manufactured home loan guaranty or the report of a manufactured home loan processed on the automatic basis;

Authority: 38 U.S.C. 210(c), 1803(c)(1), 1812(g))

* * * * *

§ 36.4350 [Amended]

2. In § 36.4350, the following paragraphs are redesignated as shown in the table:

Paragraph	Redesignated as
(b)(5)(i)(*a*)	(b)(5)(i)(A).
(b)(5)(i)(*b*)	(b)(5)(i)(B).
(b)(5)(i)(*c*)	(b)(5)(i)(C).
(b)(5)(ii)(*a*)	(b)(5)(ii)(A).
(b)(5)(ii)(*b*)	(b)(5)(ii)(B).
(b)(5)(iv)(*a*)	(b)(5)(iv)(A).
(b)(5)(iv)(*b*)	(b)(5)(iv)(B).
(b)(5)(iv)(*c*)	(b)(5)(iv)(C).

3. In § 36.4350, the undesignated flush paragraph following paragraph (b)(5)(iv)(A)(*3*) and newly-redesignated paragraph (b)(5)(iv)(B) are revised, and newly-redesignated paragraph (b)(5)(iv)(C) is removed, to read as follows:

§ 36.4350 Estate of veteran in real property.

* * * * *

(b) * * *

(5) * * *

(iv) * * *

(A) * * *

(*3*) * * *

The sale price of a property under any of the restrictions of paragraph (b)(5)(iv)(A) of this section shall not be less than the lowest of the following: The price designated by the owner as the asking price; the appraised value of the property; or the original purchase price of the property, increased by a factor reflecting all or a reasonable portion of the increased costs of housing or the percentage increase in median income in the area between the date of original purchase and resale, plus the reasonable value or actual costs of any capital improvements made by the owner plus a reasonable real estate commission less the cost of necessary repairs required to place the property in saleable condition; or other reasonable formula approved by the Secretary. The veteran must be fully informed and consent in writing to the housing restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis; or

Authority: 38 U.S.C. 1803(c))

(B) A recorded restriction on title designed to provide housing for older persons, provided that the restriction is acceptable under the provisions of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 *et seq.* The veteran must be fully informed and consent in writing to the restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis;

(Authority: 38 U.S.C. 210(c), 1803(c)(1))

* * * * *

[FR Doc. 90–14771 Filed 6–25–90; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL—3791–3]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This notice recharacterizes as more stringent certain amendments to the Resource Conservation and Recovery Act (RCRA) closure requirements. This recharacterization is intended to correct a previous Federal Register notice, which indicated that the provisions were less stringent. Today's notice makes it clear that authorized States must adopt these more stringent amendments in order to maintain an equivalent hazardous waste regulatory program. In addition, today's notice explains that the States must adopt certain provisions prior to or simultaneous with receiving authorization for the recently promulgated "Delay of Closure" rule.

DATES: The dates by which States must adopt the amendments to 40 CFR 264.113 and 265.113 as promulgated on May 2, 1986 (51 FR 16422) and reclassified as more stringent in today's notice are July 1, 1991, or, if a statutory change is

needed to effect necessary changes, July 1, 1992.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800)–424–9346 (toll free) or (202) 382–3000 in Washington, DC, or James Bachmaier, Office of Solid Waste (OS–342), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382–2222.

SUPPLEMENTARY INFORMATION: In a final rule published on May 2, 1986 (51 FR 16422), EPA promulgated amendments to portions of the closure and post-closure care requirements at 40 CFR subpart G, and the financial responsibility requirements at 40 CFR subpart H, which are applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities under RCRA. The May, 1986 preamble erroneously characterized as less stringent certain amended sections which were, in fact, more stringent than the Federal program provisions in effect at the time of that rulemaking. On March 10, 1988 (53 FR 7740), the Agency published a Federal Register notice that reclassified as more stringent most of the erroneously characterized sections. The notice did not, however, recharacterize the amendments to §§ 264.113 and 265.113, which were classified as less stringent in the May, 1986 preamble.

In the May, 1986 rule, the Agency made several changes to §§ 264.113 and 265.113. Conforming changes were made to §§ 264.113(a) and (b) and 265.113(a) and (b) to clarify that closure must be completed within 180 days after the final receipt of hazardous wastes rather than after the final receipt of wastes. In addition, time limits were imposed by a new paragraph (c) under §§ 264.113 and 265.113 within which the owner or operator must make the required demonstrations to qualify for the extensions of §§ 264.113(a) and (b) and 265.113(a) and (b). Because of these changes, amended §§ 264.113 and 265.113 are more stringent than the analogous sections that were in effect prior to the May, 1986 amendments. Thus, States must modify their programs to include the amended §§ 264.113 and 265.113 in order to maintain an equivalent program.

It should be noted, however, that the May, 1986 rule also expanded the extension allowed under §§ 264.113(a)(1)(ii)(B), 265.113(a)(1)(ii)(B), 264.113(b)(1)(ii)(B), and 265.113(b)(1)(ii)(B) to apply to the owner or operator of the facility as well as to another person. This expansion is a less stringent change, and the States need not modify their programs to include it.

As discussed above, authorized States must receive final authorization for the more stringent May, 1986 amendments to §§ 264.113 and 265.113 to maintain an equivalent program. In addition, such final authorization is necessary to receive final authorization for the Delay of Closure rule (54 FR 33376, August 14, 1989) since development of the Delay of Closure rule was premised upon the May, 1986 amendments and is, in effect, a variance from the May, 1986 amendments. Final authorization for the May, 1986 amendments can be granted prior to or simultaneous with final authorization for Delay of Closure. The Delay of Closure rule allows certain units to postpone closure and continue to receive non-hazardous wastes after receipt of the final volume of hazardous wastes. These Delay of Closure provisions are less stringent than the Federal closure requirements as amended in May, 1986, which required that closure be completed 180 days after receipt of the final volume of hazardous waste. Therefore, authorized States are not required to adopt the Delay of Closure rule, and States that choose not to adopt Delay of Closure are still required to adopt the May, 1986 amendments.

A State that has not amended its regulatory program to include the more stringent provisions of the May, 1986 amendments discussed in this notice must modify its program accordingly and submit a program revision application to EPA. In accordance with § 271.21(e)(2), the deadline for States to modify their programs to reflect the May, 1986 changes was July 1, 1987. However, because of the confusion related to the stringency characterization of §§ 264.113 and 265.113, the Agency is, for authorization purposes, treating those May 1986 amendments to §§ 264.113 and 265.113 that are reclassified as more stringent by today's notice as if they were promulgated today. Therefore, States have until July 1, 1991 to adopt the May 1986 changes (or until July 1, 1992 if a statutory change is needed to effect changes). A State whose program revision application is currently under review by EPA may submit a revised application, provided that the appropriate regulation changes have been adopted by the State.

Dated: June 18, 1990.

Mary A. Gade,

Acting Assistant Administrator.

[FR Doc. 90–14639 Filed 6–25–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 91160–0003]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restrictions.

SUMMARY: NOAA issues this notice modifying restrictions on fishing in 1990 for sablefish taken with nontrawl gear off the coasts of Washington, Oregon, and California. This action is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and is necessary to avoid exceeding the nontrawl quota and to accommodate the incidental catch of sablefish caught later in the year. This action is intended to prevent or reduce biological stress by virtually eliminating the directed fishery for sablefish while allowing small or unavoidable incidental catches to be landed through the end of the year. This action modifies fishing restrictions imposed on March 21, 1990, for sablefish caught with nontrawl gear.

DATES: *Effective:* 0001 hours (Pacific Daylight Time) June 24, 1990, until modified, superseded, or rescinded. *Comments:* Comments will be accepted through July 11, 1990.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney R. McInnis at 213–514–6199, or the Pacific Fishery Management Council at 503–221–6352.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR 663.22(a) authorize the Secretary of Commerce (Secretary) to reduce fishing levels, consistent with the objectives and priorities of the FMP, to prevent or reduce biological stress in any species or species complex.

At its April meeting, the Pacific Fishery Management Council (Council) recommended that the Secretary prevent or reduce biological stress on sablefish

by imposing a trip limit of 500 pounds on nontrawl landings when 300 metric tons (mt) of the nontrawl allocation remains, while at the same time removing the size and trip limits on sablefish smaller than 22 inches. At subsequent meetings, the Council will review the best data available and may recommend additional changes to the management measures for sablefish.

The purpose of the 500 pound trip limit is to prevent or reduce biological stress by eliminating target fishing for sablefish with most nontrawl gear, while enabling small nontrawl fisheries that operate in the year to continue landing small and often unavoidable catches of sablefish. By this means, the potential for exceeding the annual optimum yield (OY) quota, resulting in biological stress on sablefish, will be reduced. The 500 pound trip limit will apply to sablefish of any size. Therefore, it replaces the current trip limit of 1,500 pounds, or three percent of all sablefish on board, whichever is greater, for sablefish smaller than 22 inches (total length). The 500 pound trip limit, in conjunction with the management measures imposed earlier in the year, is part of a management regime designed to prevent biological stress, avoid exceeding gear quotas, minimize discards, and provide for equitable use of the sablefish resource by the trawl and nontrawl fleets.

The Council's Groundfish Management Team (GMT), using the best available scientific information based on observed and expected rates of landings available on June 11, 1990, has projected that 3,312 mt of the 3,612 mt quota for nontrawl gear will be taken by June 24, 2990. Accordingly, the 500 pound trip limit will become effective on that date.

If the nontrawl quota is reached before the end of the year, all further nontrawl landings of sablefish will be prohibited for the rest of the year. If the 8,900 mt OY quota for sablefish is reached before the end of the year, all further landings of sablefish by all gear types will be prohibited for the remainder of 1990.

Only the size and trip limit provisions for sablefish caught with nontrawl gear are changed. Therefore, this action modifies only the fishing restrictions imposed on March 21, 1990, (55 FR 11021, March 26, 1990), for sablefish caught with nontrawl gear off the coasts of Washington, Oregon, and California. All other provisions for sablefish caught with trawl or nontrawl gear announced at 55 FR 3747 (February 5, 1990), remain in effect. As in the past, all weights and percentages are based on round weight or round weight equivalents.

Secretarial Action

Pursuant to § 663.22(a)(3), the Secretary herein adjusts the management measures for sablefish at 50 CFR 663.27(b)(3) and at 55 FR 11021 by replacing paragraph 4(b) with the following:

(b) Nontrawl. No more than 500 pounds of sablefish caught with nontrawl gear may be taken and retained, possessed, or landed per vessel per fishing trip. This limit applies to sablefish of any size; the 22-inch size limit is removed as long as the 500-pound limit remains in effect.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The environmental impacts of this Notice of Fishing Restrictions are not significantly different than those considered in the EIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an Environmental Assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10 because the alternatives considered and their impacts have not changed significantly.

These actions are taken under the authority of 50 CFR 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are not subject to the Regulatory Flexibility Act because there is no notice and comment period preceding the effective date of this notice, and the actions do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Section 663.23 states that any notice issued under this section will be published in proposed form and will not be effective until 30 days after publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date. If unrestricted, nontrawl catches unquestionably will exceed the nontrawl allocation and total catches probably will exceed the OY for sablefish in 1990. As a result, nontrawl and possibly trawl fishermen operating later in the year will be forced to discard their unavoidable catches of sablefish in excess of the OY. If the OY is exceeded, incidental catches in excess of OY during the remainder of the year could result in biological stress. Prompt action to limit these fishing rates is necessary to protect the sablefish resource and alleviate the necessity for fishery closures before the end of 1990. Consequently, further delay of these actions is impracticable and contrary to the public interest, and for good cause these actions are taken in final form effective June 24, 1990.

The public has had opportunity to comment on these management measures. The public participated in the Groundfish Select Group, GMT, Groundfish Advisory Subpanel, and Council meetings in April 1990 that generated the management actions endorsed by the Council and the Secretary.

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fisheries, Fishing.

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

Dated: June 20, 1990.

David S. Crestin,

Deputy Director of Office of Fisheries Conservation and Management.

[FR Doc. 90–14749 Filed 6–21–90; 12:45 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 123
Tuesday, June 26, 1990

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-90-15]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. 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 August 27, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 26233, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 19, 1990.

Debbie Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26233.

Petitioner: Certain faculty and students of Embry-Riddle Aeronautical University-Western Campus at Prescott, Arizona.

Regulations Affected: 14 CFR 91.11(a)(1).

Description of Petition: The petitioner proposes to lengthen the 8-hour time prohibition to 12 hours between any consumption of alcohol and acting as a crewmember on any commercial flight.

[FR Doc. 90-14702 Filed 6-25-90; 8:45 am]

BILLING CODE 4910-33-M

14 CFR Part 71

[Airspace Docket No. 90-ASO-10]

Proposed Amendment to Control Zone, Key West, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Key West, FL, control zone. This proposed action would eliminate an arrival area extension predicated on the Key West Naval Air Station Ultrahigh Frequency Radio Beacon (NAS UHF RBN). The RBN is being decommissioned and the associated airspace is no longer required for protection of instrument flight rules (IFR) aircraft. The remainder of the control zone would remain unchanged.

DATES: Comments must be received on or before: August 3, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, System Management Branch, Docket No. 90-ASO-10, 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 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

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 aspects of the proposal. Communications should identify the airspace docket 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. 90-ASO-10." 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 the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request tothe Federal Aviation Administration, Manager, System Management Branch (ASO-530), 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 NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Key West, FL, control zone. This action would eliminate an arrival area extension based on the Key West NAS UHF RBN which is being decommissioned. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6F dated January 2, 1990.

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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this 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

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1.The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Key West, FL [Amended]

By removing the words: "Within 3.5 miles each side of the 251° bearing from Key West NAS UHF RBN, extending from the 5-mile radius zone to 10.5 miles west of the RBN."

Issued in East Point, Georgia, on June 6, 1990.

James G. Walters,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90–14075 Filed 6–25–90; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–AEA–16]

Proposed Establishment of Transition Area; Laurel, DE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) proposes to establish a new 700 foot Transition Area at Laurel, DE to support a new VOR/DME Runway 32 Standard Instrument Approach Procedure (SIAP) to the Laurel Airport, Laurel, DE. The FAA finds it necessary to establish a 700 foot Transition Area to segregate aircraft operating under instrument meteorological conditions from those operating under visual weather conditions in controlled airspace. Additionally, the status of the airport would be changed from VFR to IFR.

DATES: Comments must be received on or before July 9, 1990.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch, AEA–530, Docket No. 89–AEA–16, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917–0857.

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 aspects of the proposal. Communications should identify the airspace docket 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. 89–AEA–16". 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 the light of comments received. All comments submitted will be available for examination in the Rules Docket 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 Office of the Assistant Chief Counsel, AEA–7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430. 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 § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a new 700 foot Transition Area at Laurel, DE, to support the development of a new SIAP to the airport. § 71.181 of part 71 of

the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule 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

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Laurel, DE [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the center, lat. 38°32'30" N., long. 75°35'30" W., of the Laurel Airport within 4.5 miles either side of the Salisbury, MD VORTAC 342°(T) 350°(M) radial extending from the 5-mile radius area to 8.5 miles south of the airport.

Issued in Jamaica, New York, on May 25, 1990.

Billy E. Commander,

Acting Manager, Air Traffic Division.

[FR Doc. 90–14707 Filed 6–25–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Parts 120, 123, 126

[Public Notice 1222]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend and clarify the regulations implementing section 38 of the Arms Export Control Act, which governs the import and export of defense articles and defense services, by creating additional exemptions from licensing requirements for certain temporary imports of U.S.-origin defense articles and for exports and temporary imports of defense articles under the U.S. Foreign Military Sales program, and by clarifying when exemptions may be used. This proposed rule would reduce the burden on importers and exporters by eliminating the need for prior U.S. Government approval for certain transactions.

DATES: Comments must be submitted on or before July 26, 1990.

ADDRESSES: Written comments should be sent to: Rose Biancaniello, Chief, Arms Licensing Division, Office of Defense Trade Controls, Department of State, Washington, DC 20520. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Chief, Arms Licensing Division, Office of Defense Trade Controls, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: This proposed rule amends the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130), which implement section 38 of the Arms Export Control Act (22 U.S.C. 2778).

The proposed amendment primarily would create an exemption from licensing requirements for certain temporary imports of U.S.-origin defense articles. First, it exempts temporary imports of unclassified defense articles for servicing and repair exchanges (on a one-to-one basis). Second, it exempts temporary imports of unclassified defense articles for exhibition, demonstration and marketing in the United States. Third, it eliminates the need for export licenses for unclassified defense articles which are rejected for permanent import and are being returned to the country from which they were shipped to the United States. Fourth, the proposed exemption eliminates the license requirement for temporary imports of defense articles originally furnished under the U.S. Foreign Military Sales program. In addition, the proposed amendment sets forth certain requirements that must be met, and explains the procedures to be followed, in order to use the exemption. It also clarifies the language in the ITAR regarding temporary imports in general.

The proposed amendment would also broaden the exemption from licensing requirements for exports and temporary imports of defense articles under the U.S. Foreign Military Sales program to cover classified defense articles.

Finally, this amendment clarifies the eligibility requirements for exports made pursuant to any exemption in the ITAR.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, it is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close July 26, 1990. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

List of Subjects

22 CFR Part 120

Arms and munitions, Classified information, Exports.

22 CFR Parts 123 and 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulation, be amended as set forth below:

PART 120—PURPOSE, BACKGROUND AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 120.1, the current text in paragraph (b) is designated as new paragraph (b)(1) and paragraph (b)(2) is added to read as follows:

§ 120.1 General.

* * * * *

(b) *Eligibility.* (1) * * *

(2) The exemptions provided in this subchapter do not apply to transactions in which the exporter or any party to the export (as defined in § 126.7(e) of this subchapter) has been convicted of violating the U.S. criminal statutes enumerated in § 120.24 or debarred pursuant to part 127 of this subchapter, unless an exception has been granted pursuant to § 127.6(c) of this subchapter.

3. Section 120.12 is revised to read as follows:

§ 120.12 Imports—temporary.

"Temporary import" means bringing into the United States from a foreign country any defense article that is to be returned to the country from which it was shipped or taken, or any defense article that is intransit to another foreign destination. "Temporary import" includes withdrawal of a defense article from a customs bonded warehouse or foreign trade zone for the purpose of returning it to the country of origin or country from which it was shipped or for shipment to another foreign destination. (Permanent imports are generally regulated by the Department of the Treasury (see 27 CFR parts 47, 178 and 179)).

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

4. The authority citation for part 123 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

5. In § 123.1, the heading is revised and paragraphs (a) and (d) are revised to read as follows:

§ 123.1 Requirement for export or temporary import license.

(a) Any person who intends to export or to import temporarily a defense article must obtain a license from the Office of Defense Trade Controls prior to the export or temporary import unless the export or temporary import qualifies for an exemption under the provisions of this subchapter.

* * * * *

(d) Provisions for furnishing the type of "defense services" described in § 120.8(a) of this subchapter are contained in Part 124 of this subchapter. Provisions for the export or temporary import of technical data and classified defense articles are contained in part 125 of this subchapter.

6. Section 123.2 is revised to read as follows:

§ 123.2 Import licensing jurisdiction.

Imports of defense articles into the United States are generally regulated by the Department of the Treasury (see 27 CFR parts 47, 178 and 179). However, the Department of State regulates imports of defense articles if: the article is being returned to the United States under the authority of a temporary export license issued pursuant to § 123.27 of this subchapter, or if the article is brought in as a temporary import as defined in § 120.12 of this subchapter.

7. Section 123.3 is revised to read as follows:

§ 123.3 Temporary import licenses.

A license (DSP–61) issued by the Office of Defense Trade Controls is required for the temporary import and subsequent export of unclassified defense articles unless exempted from this requirement pursuant to § 123.4. Unless so exempted, this requirement applies to:

(a) Temporary imports of unclassified defense articles that are to be returned directly to the country from which they were shipped to the United States;

(b) Temporary imports of unclassified defense articles intransit to a third country; and

(c) Temporary imports of unclassified defense articles that are to be incorporated into another article prior to return to the country from which they were shipped to the United States or prior to shipment to a third country.

A bond may be required as appropriate. (See part 125 of this subchapter for license requirements for technical data and classified defense articles).

§ 123.4 [Redesignated as § 123.5]

8. Section 123.4 is redesignated as § 123.5 and a new § 123.4 is added to read as follows:

§ 123.4 Temporary import license exemptions.

(a) *General.* District directors of customs may permit the temporary import (and subsequent export), for a period of up to 3 years, of unclassified U.S.-origin defense articles (including any article manufactured abroad pursuant to U.S. Government approval) if the article:

(1) Is imported—

(i) For servicing (e.g., inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective articles, parts or components, but excluding any modification enhancement, upgrade or other form of alteration or improvement that changes the basic performance or productivity of the article), and

(ii) Is subsequently returned to the country from which it was imported; or

(2) Is imported for the purpose of exhibition, demonstration or marketing in the United States and is subsequently returned to the country from which it was imported; or

(3) Has been rejected for permanent import by the Department of the Treasury and is being returned to the country from which it was shipped; or

(4) Is approved for such import under the U.S. Foreign Military Sales (FMS) program pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (DD Form 1513).

(b) *Requirements.* (1) The temporary import must meet the eligibility requirements set forth in § 120.1(b)(2) of this subchapter;

(2) At the time of export, the ultimate consignee named on the Shipper's Export Declaration must be the same as the foreign consignee of record named at the time of import; and

(3) As stated in § 126.1 of this subchapter, the temporary import must not be from or on behalf of a proscribed country listed in that section.

(c) *Procedures.* To the satisfaction of the district director of customs, the importer and exporter must comply with the following procedures:

(1) At the time of import, file and annotate the applicable U.S. Customs document (e.g. Form CF 3461, 7512, 7501, 7523 or 3311) to read: "This shipment is being imported in accordance with and under the authority of 22 CFR 123.4"; and

(2) At the time of import, include, on the invoice or other appropriate documentation, a complete list and description of the defense article(s), including quantity and, where possible, the serial, model, unique part and National Stock number, as well as the number of any licenses, FMS cases or other written approvals under which the defense article was authorized for initial export; and

(3) At the time of import, post any bond required by the Department of State or the Department of the Treasury with the district director of customs; and

(4) At the time of export, file with the district director of customs at the port of exit a copy of the U.S. Customs documentation under which the article was imported and a Shipper's Export Declaration (Department of Commerce Form 7525–V) which indicates the nature of any one-to-one replacements of defective articles, parts or components and includes the following statement:

This shipment is being made in accordance with and under the authority of 22 CFR 123.4. The exporter hereby certifies that this export

meets the eligibility requirements set forth in 22 CFR 120.1(b)(2).

PART 126—GENERAL POLICIES AND PROVISIONS

9. The authority citation for part 126 continues to read as follows:

Authority: Sec. 38, Sec. 42, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658; Sec. 317, Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5067); E.O. 12571, 51 FR 39505.

10. In § 126.6, paragraphs (a) and (c)(1) are revised to read as follows:

§ 126.6 Foreign military aircraft and naval vessels, and the Foreign Military Sales program.

(a) *General.* A license is not required if:

(1)(i) An article to be exported was sold, leased, or loaned by the Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended; and

(ii) That article was delivered to representatives of such a country or organization in the United States; and

(iii) That article is to be exported from the United States on a military aircraft or naval vessel of that government or organization; or

(2) An article is being temporarily imported under the Foreign Military Sales (FMS) program of the Arms Export Control Act.

* * * * *

(c) *Procedures for the Foreign Military Sales program*—(1) *General.* District directors of customs are authorized to permit the export and temporary import of defense articles, defense services and technical data without a license if the articles were sold by the U.S. Department of Defense to foreign governments or international organizations under the Foreign Military Sales (FMS) program of the Arms Export Control Act. This procedure may be used only if a proposed export is:

(i) Pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (DD Form 1513); and

(ii) Accompanied by a properly executed DSP–94; and

(iii) Made by the relevant foreign diplomatic mission of the purchasing country or its authorized freight forwarder, provided that the freight forwarder is registered with the Office of Defense Trade Controls pursuant to part 122 of this subchapter, and, if classified defense articles of technical data are involved, has the appropriate U.S. Government clearance.

* * * * *

Dated: June 8, 1990.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

[FR Doc. 90–14756 Filed 6–25–90; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 780, 785, and 816

Surface Coal Mining and Reclamation Operations, Surface Mining Permit Applications, Special Categories of Mining, Permanent Program Performance Standards, Backfilling and Grading, and Multiple Seam and Mountaintop Removal Mining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Reopening of the public comment period.

SUMMARY: OSM published a Notice of Inquiry identified in the **Federal Register** of April 17, 1990. (55 FR 14319) The topics discussed concern adding regulations to ensure contemporaneous reclamation of multiple seam and mountaintop removal mining operations, and adding technical standards to the backfilling and grading regulations to prevent settlement of backfill material.

At the request of several interested parties, the public comment period on these issues will be extended. The original comment period announced in the **Federal Register** on April 17, 1990 (55 FR 14319), closed on May 30, 1990. The new comment period will extend until close of business on July 31, 1990.

DATES: The public comment period will close July 31, 1990.

ADDRESSES: Written comments on the issues addressed at 55 FR 14319 may be submitted to the Administrative Record, Office of Surface Mining, room 5215A–1, 1951 Constitution Ave., NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: For information regarding the public meeting, contact Raymond E. Aufmuth, PG, at (202) 343–7952 or Robert Wiles, PE, at (202) 343–1502.

Dated: June 20, 1990.

Harry N. Snyder,

Director.

[FR Doc. 90–14738 Filed 6–25–90; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 53

[OST Docket No. 46987; Notice 90–23]

RIN 2105–AB68

Coast Guard Whistleblower Protection

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This NPRM proposes to implement the whistleblower protection provisions contained in Public Law 100–456. The rule would apply to the United States Coast Guard, the Board for Correction of Military Records, and the Department of Transportation's Inspector General. It would establish procedures to ensure that members of the United States Coast Guard are protected from reprisals for making, or preparing to make, lawful communications to a Member of Congress or an Inspector General. In addition, the rule would specifically require the reporting and investigation of reprisal allegations, and provide for remedies when reprisal is found, including disciplinary action against any person taking reprisal and the correction of military records when appropriate.

DATES: Comments on the proposal must be received on or before August 27, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Documentary Services Division, Docket 46987, C–55, Department of Transportation, Room 4107, 400 Seventh Street, SW, Washington, DC 20590. In order to facilitate the Department's review, we request that four additional copies of the comments be submitted, and that the commenters include a reference to the docket number, which is listed above. Comments will be available for review by the public at this address from 9 a.m. through 5 p.m., Monday through Friday. Persons wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comments. The Documentary Services Division will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement (C–50), U.S. Department of Transportation, room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9306.

SUPPLEMENTARY INFORMATION: Public Law 100–456 amended section 1034 of title 10 of the United States Code to

include military whistleblower protections. The provision sets forth specific protections to be afforded to members of the Armed Forces who make lawful communications to a Member of Congress or to an Inspector General. Public Law 101–225, a technical correction, amended section 1034 of title 10 of the United States Code to clarify that, when the Coast Guard is not operating as a service in the Navy, Coast Guard members must submit complaints under this part to the Inspector General of the Department of Transportation, and that the Secretary of Transportation may, if necessary, provide final review of the action.

The legislative history indicates that Members of Congress were concerned that members of the Armed Forces who become aware of information evidencing wrongdoing or waste of funds should be able to communicate this information to Members of Congress or the Inspector General. Members of the Armed Forces generally have a duty to report such information through the chain of command. Public Law 100–456 establishes that those individuals also have the right to communicate directly with a Member of Congress or an Inspector General, unless the communication is unlawful under applicable law or regulation. When these individuals make lawful disclosures, the statute mandates that they should be protected from adverse personnel consequences, or the threat of such consequences. These individuals should have the right to a prompt investigation and administrative review of claims of reprisals. If any claim of reprisal is found meritorious, the Secretary of Transportation should initiate appropriate corrective action, and the Board for Correction of Military Records should entertain any application for correction of records submitted by an aggrieved member.

The statute, as enacted in 1988, applied to all members of the armed forces, including members of the Coast Guard. However, the statutory language was not consistent in its application to the Coast Guard. The statute was amended in 1989 (Pub. L. 101–225) to provide the proper relationships between the Secretary of Transportation, the DOT Inspector General, and the Coast Guard members. Therefore, the statute applies to the Department of Transportation insofar as it has responsibility for the Coast Guard when the Coast Guard is not operating as a service in the Navy. The Department of Transportation's proposed procedures applicable to whistleblower protection are simpler than those set out in the Department of Defense rule because the organizational structure of the Department of Defense has more levels within the chain of command than those found within the Department of Transportation.

Current Regulations

On February 13, 1990 (55 FR 4999), the Department of Defense published a final rule to implement the statute. See 32 CFR Part 98a. This NPRM closely follows the structure set out in the Department of Defense's rule. A member of the Armed Forces, other than the Coast Guard when not operating as a service in the Navy, has a right to appeal to the Assistant Secretary of Defense (Force Management and Personnel) for a review of the final action by the Secretary of the particular branch. This NPRM would provide for final review by the Secretary of Transportation in accordance with the Board for Correction of Military Records' regulations.

For the purposes of this NPRM, lawful communications that may not be restricted are those in which a member of the Coast Guard makes a complaint or discloses information that the member reasonably believes constitutes evidence of a violation of law or regulation, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. Any adverse personnel action arising out of such communication is deemed a prohibited action under the statute.

The statute requires that the Inspector General of the Department of Transportation expeditiously investigate any allegation of a prohibited action submitted by a member of the Coast Guard. The Inspector General is also required to investigate the information that was the subject of the lawful communication.

In resolving an application from a member of the Coast Guard for a correction of the member's military records, the Board for Correction of Military Records shall review the Inspector General's report, and if the Board needs additional information, it may request additional investigation of the matter. The Board, when appropriate, may conduct an evidentiary hearing. If the Board elects to hold an evidentiary hearing, the Coast Guard may provide the Coast Guard member with legal representation if certain conditions are met.

If the Board determines that a prohibited action has occurred, the Board may recommend that the Secretary of Transportation take appropriate disciplinary action against the individual or individuals responsible for such action. The Board may further direct that the Coast Guard member's records be changed. If the Board does not find that a prohibited action has occurred, the Coast Guard member may petition for reconsideration in accordance with the Board's regulations. If the Coast Guard member is not satisfied with the relief granted through the administrative process, the Coast Guard member may seek further relief through the judicial system.

Regulatory Impact

I certify under the criteria of the Regulatory Flexibility Act that this proposal, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities because of its highly localized impact. Furthermore, it is not a major rule under Executive Order 12291, nor a significant rule under DOT Regulatory Policies and Procedures, 44 FR 11034, for the same reason. The economic impact is so minimal that it does not warrant preparation of a full regulatory evaluation. The proposal has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and I have determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Finally, I have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and that an environmental impact statement is not required.

List of Subjects in 33 CFR Part 53

Coast Guard, Department of Transportation, Fraud, Investigations, Whistleblowers.

Accordingly, title 33 of the Code of Federal Regulations is amended to add part 53 as follows:

PART 53—COAST GUARD WHISTLEBLOWER PROTECTION

Sec.
53.1 Purpose.
53.3 Applicability.
53.5 Definitions.
53.7 Requirements.
53.9 Responsibilities.
53.11 Procedures.

Authority: 10 U.S.C. 1034, Pub. L. 100–456, Pub. L. 101–225.

§ 53.1 Purpose.

This part:

(a) Establishes policy and implements section 1034 of title 10 of the United

States Code to provide protection against reprisal to members of the Coast Guard for making a lawful communication to a Member of Congress or an Inspector General.

(b) Assigns responsibilities and delegates authority for such protection and prescribes operating procedures.

§ 53.3 Applicability.

This part applies to members of the United States Coast Guard, the Board for Correction of Military Records of the Coast Guard, and the Department of Transportation Office of the Inspector General.

§ 53.5 Definitions.

As used in this part, the following terms set forth in italics shall have the meaning stated in the paragraph that follows the italicized term, except as otherwise provided:

(a) *Board for Correction of Military Records of the Coast Guard (Board).* The Board empowered under 10 U.S.C. 1552 to make corrections of Coast Guard military records. In the Department, the Board is part of the Office of the General Counsel in the Office of the Secretary.

(b) *Corrective action.* Any action deemed necessary to make the complainant whole, changes in agency regulations or practices, and/or administrative or disciplinary action against offending personnel, or referral to the U.S. Attorney General or court-martial convening authority of any evidence of criminal violation.

(c) *Inspector General.* The Inspector General in the Office of Inspector General of the Department of Transportation, as appointed under the Inspector General Act of 1978.

(d) *Law Specialist.* A commissioned officer of the Coast Guard designated for special duty (law).

(e) *Lawful communications.* Any communication to a Member of Congress or an Inspector General, in which a member of the Coast Guard makes a complaint or discloses information that the member reasonably believes constitutes evidence of a violation of law or regulation, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(f) *Member of the Coast Guard.* Any past or present Coast Guard uniformed personnel, officer or enlisted, regular or reserve. This definition includes cadets of the Coast Guard Academy.

(g) *Member of Congress.* In addition to a Representative or a Senator, the term includes any Delegate or Resident Commissioner to Congress.

(h) *Adverse Personnel Action.* Any action taken regarding a member of the Coast Guard that affects or has the potential to affect the member's position or his or her career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision concerning pay, benefits, awards, or training; and any other significant change in duties or responsibilities inconsistent with the member's assigned rank.

(i) *Reprisal.* Taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action against a member of the Coast Guard for making or preparing to make a communication to a Member of Congress or an Inspector General.

(j) *Secretary.* The Secretary of Transportation or his or her delegate.

§ 53.7 Requirements.

(a) No person within the Department of Transportation may restrict a member of the Coast Guard from lawfully communicating with a Member of Congress or an Inspector General.

(b) Members of the Coast Guard shall be free from reprisal for making or preparing to make lawful communications to Members of Congress or an Inspector General.

(c) Any employee or member of the Coast Guard who has the authority to take, direct others to take, or recommend or approve any personnel action shall not, under such authority, take, withhold, threaten to take, or threaten to withhold a personnel action regarding any member of the Coast Guard in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General.

§ 53.9 Responsibilities.

(a) The Inspector General, Department of Transportation, shall:

(1) Expeditiously investigate any allegation submitted to the Inspector General under this part by a member of the Coast Guard, that a personnel action has been taken (or threatened) in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General. No investigation is required when such allegation is submitted more than 60 days after the Coast Guard member became aware of the personnel action that is the subject of the allegation.

(2) Initiate a separate investigation of the information the Coast Guard member believes evidences wrongdoing if such investigation has not already been initiated. The inspector General is not required to make such an investigation if the information that the Coast Guard member believes evidences wrongdoing relates to actions that took place during combat.

(3) Complete the investigation of the allegation of reprisal and issue a report within 90 days of receipt of the allegation, which shall include a thorough review of the facts and circumstances relevant to the allegation, the relevant documents acquired during the investigation, and summaries of interviews conducted. The Inspector General may forward a recommendation as to the disposition of the complaint.

(4) Submit a copy of the investigation report to the Secretary of Transportation and to the Coast Guard member making the allegation not later than 30 days after the completion of the investigation. The copy of the report issued to the Coast Guard member may exclude any information not otherwise available to the Coast Guard member under the Freedom of Information Act (5 U.S.C. 552).

(5) If a determination is made that the report cannot be issued within 90 days of receipt of the allegation, notify the Secretary and the Coast Guard member making the allegation of the reasons why the report will not be submitted within that time, and state when the report will be submitted.

(6) At the request of the Board, submit a copy of the investigative report to the Board.

(7) After the final action in any allegation filed under this part, whenever possible, interview the person who made the allegation to determine the views of that person concerning the disposition of the matter.

(b) The Board for Correction of Military Records of the Coast Guard (Board) shall, in accordance with its regulations:

(1) Consider an application for the correction of records made by a Coast Guard member who has filed a timely complaint with the Inspector General, alleging that a personnel action was taken in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General in accordance with 10 U.S.C. 1552. This may include the receipt of oral argument, examining and cross-examining witnesses, taking depositions, and conducting an evidentiary hearing at the Board's discretion.

(2) Review the report of any investigation by the Inspector General into the Coast Guard member's allegation of reprisal.

(3) As deemed necessary, request the Inspector General to gather further evidence and issue a further report to the Board.

(4) Issue a final decision concerning the application for the correction of military records under this part no later than 180 days after receipt of a complete application.

(c) If the Board elects to hold an administrative hearing, the Coast Guard member may be represented by a Coast Guard law specialist if:

(1) The Inspector General, in the report of the investigation, finds there is probable cause to believe that a personnel action was taken, withheld, or threatened in reprisal for the Coast Guard member making or preparing to make a lawful communication to a Member of Congress or an Inspector General;

(2) The Chief Counsel of the Coast Guard determines that the case is unusually complex or otherwise requires the assistance of a law specialist to ensure proper presentation of the legal issues in the case; and

(3) The Coast Guard member is not represented by outside counsel chosen by the member.

(d) If the Board elects to hold an administrative hearing, the Board must ensure that the Coast Guard member may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence in the Inspector General investigatory record but not included in the report released to the member.

(e) If the Board determines that a personnel action was taken in reprisal for a Coast Guard member making or preparing to make a lawful communication to a Member of Congress or an Inspector General, the Board may forward its recommendation to the Secretary for the institution of appropriate administrative or disciplinary action against the individual or individuals found to have taken reprisal, and direct any appropriate correction of the member's records.

(f) The Board shall notify the Inspector General of the Board's decision concerning an application for the correction of military records of a Coast Guard member who alleged reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General, and of any recommendation to the Secretary for appropriate administrative or disciplinary action against the individual or individuals found to have taken reprisal.

(g) When reprisal is found, the Secretary shall ensure that appropriate corrective action is taken.

§ 53.11 Procedures.

(a) Any member of the Coast Guard, who reasonably believes a personnel action (including the withholding of an action) was taken or threatened in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General, may file a complaint with the DOT Inspector General Hotline under this part. Such a complaint may be filed by telephone, or by letter addressed to the Department of Transportation, Office of Inspector General, Hotline Center, P.O. Box 23178, Washington, DC 20026-0178. Telephone Numbers: 1-800-424-9071, FTS 8-366-1461. The commercial number is (202) 366-1461.

(b) The complaint should include the name, address, and telephone number of the complainant; the name and location of the activity where the alleged violation occurred; the personnel action taken, or threatened, that is alleged to be motivated by reprisal; the individual(s) believed to be responsible for the personnel action; the date when the alleged reprisal occurred; and any information that suggests or evidences a connection between the communication and reprisal. The complaint should also include a description of the communication to a Member of Congress or an Inspector General including a copy of any written communication and a brief summary of any oral communication showing date of communication, subject matter, and the name of the person or officer to whom the communication was made.

(c) A member of the Coast Guard who is alleging reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General, may submit an application for the correction of military records to the Board for Correction of Military Records of the Coast Guard, in accordance with regulations governing the Board. See 33 CFR Part 52.

(d) An application submitted under paragraph (c) of this section shall be considered in accordance with regulations governing the Board. See 33 CFR part 52.

Issued in Washington, DC on May 31, 1990.

Samuel K. Skinner,

Secretary.

[FR Doc. 90-14662 Filed 6-25-90; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 900656-0156]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce issues a preliminary notice of change in the total allowable catch (TAC), allocations, quotas, and bag limits for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). Except as specifically noted below, changes would be effective for the Atlantic migratory groups of king and Spanish mackerel for the fishing year that commenced on April 1, 1990, and for the Gulf migratory groups of king and Spanish mackerel for the fishing year that commences on July 1, 1990. This notice proposes (1) For Atlantic migratory groups of king and Spanish mackerel, decreases in TAC and allocations; (2) for the Gulf migratory group of Spanish mackerel, a decrease in the bag limit in the exclusive economic zone (EEZ) off Texas; and (3) effective January 1, 1991, for Gulf and Atlantic migratory groups of Spanish mackerel, increases in bag limits in the EEZ off Florida. The intended effects are to protect the mackerels from overfishing and continue stock rebuilding programs while still allowing catches by important recreational and commercial fisheries dependent on these species.

DATES: Written comments must be received on or before July 6, 1990.

ADDRESSES:. Comments may be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, as amended, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its

implementing regulations at 50 CFR part 642.

In accordance with § 642.27, the Councils appointed an assessment group (Group) to assess on an annual basis the condition of each stock of king and Spanish mackerel in the management unit, to report its findings, and to make recommendations to the Councils. Based on the Group's 1990 report and recommendations, advice from the Mackerel Advisory Panels and the Scientific and Statistical Committees, and public input, the Councils recommended to the Director, Southeast Region, NMFS (Regional Director), changes to TACs, allocations, and bag limits.

Specifically, the Councils recommended that, effective with the fishing year beginning July 1, 1990, annual TACs remain at the 1989/90 levels of 4.25 million pounds (m. lbs.) for the Gulf migratory group of king mackerel and 5.25 m. lbs. for the Gulf migratory group of Spanish mackerel. The Councils further recommended that, effective for the fishing year which began April 1, 1990, annual TACs be lowered to 8.30 m. lbs. for the Atlantic migratory group of king mackerel and 5.00 m. lbs. for the Atlantic migratory group of Spanish mackerel. All TACs are within the range of the acceptable biological catch (ABC) and equal to, or closely approximating, the modal ABC values determined by the Group.

Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of each TAC, except for the Atlantic group Spanish mackerel which is apportioned by a method established under Amendment 4 to the FMP to attain a 50 percent recreational and 50 percent commercial allocation of TAC by the 1994/95 fishing year. Also, the Gulf king mackerel commercial allocation is divided by fixed percentages into quotas for eastern and western zones. Under these percentages and the proposed TACs, 1990/91 allocations and quotas would be as follows:

Species	Million pounds
Gulf King Mackerel—TAC	4.25
Recreational allocation (68%)	2.89
Commercial allocation (32%)	1.36
Eastern zone (69%)	(0.94)
Western zone (31%)	(0.42)
Gulf Spanish Mackerel—TAC	5.25
Recreational allocation (43%)	2.26
Commercial allocation (57%)	2.99
Atlantic King Mackerel—TAC	8.30
Recreational allocation (62.9%)	5.22
Commercial allocation (37.1%)	3.08
Atlantic Spanish Mackerel—TAC	5.00
Recreational allocation (37.2%)	1.86
Commercial allocation (62.8%)	3.14

The recreational fishery is regulated by both allocations and bag limits. The Councils recommended increasing the bag limits from 4 to 5 fish per person per trip applicable to the Gulf and Atlantic groups of Spanish mackerel in the EEZ off Florida. The increase would not become effective until January 1991, when Florida is expected to implement a five fish bag limit in state waters. For Gulf group Spanish mackerel, the Councils recommended that the bag limit in the EEZ off Texas be reduced from 10 to 3 fish per person per trip, which is the existing bag limit in the waters of Texas. By recommending these bag limit changes, the Councils intend to ensure that the bag limits for Spanish mackerel in the EEZ off Florida and Texas would be compatible with the bag limits in state waters. The establishment of a separate bag limit in the EEZ off Texas requires the creation of a third area in the Gulf of Mexico. The areas are appropriately named western, central, and eastern.

The Regional Director initially concurs that the Councils' recommendations are necessary to protect the stocks and prevent overfishing and that they are consistent with the goals and objectives of the FMP. Accordingly, the Councils' recommended changes are published for comment.

Other Matters

This action is authorized by 50 CFR 642.27, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 20, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

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

2. In § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Removed	Added
(a)(2), first sentence	3.34	3.08
(b)(2)	5.66	5.22
(c)(2)	3.24	3.14
(d)(2)	2.76	1.86

3. In § 642.28, paragraphs (a)(3)(ii) and (a)(5)(ii) are revised and a new paragraph (a)(3)(iii) is added to read as follows:

§ 642.28 Bag and possession limits.

(a) * * *

(3) * * *

(ii) Possessing ten Spanish mackerel per person per trip from the central area.

(iii) Possessing three Spanish mackerel per person per trip from the western area.

* * * * *

(5) * * *

(ii) For the purposes of paragraph (a)(3) of this section:

(A) The boundary between the eastern and central areas is a line extending directly south from the Alabama/Florida boundary (87°31'06"W. longitude) to the outer limit of the EEZ (identical to the boundary between the eastern and western zones in the commercial fishery); and

(B) The boundary between the central and western areas is an extension of the boundary between Louisiana and Texas, namely, a line from point A (on the seaward limit of Texas waters) at 29°32.1'N. latitude, 93°47.7'W. longitude to point B (on the outer limit of the EEZ) at 26°11.4'N. latitude, 92°53'W. longitude.

* * * * *

4. Effective January 1, 1991, in § 642.28, paragraphs (a)(3)(i) and (a)(4)(i) are revised to read as follows:

§ 642.28 Bag and possession limits.

(a) * * *

(3) * * * (i) Possessing five Spanish mackerel per person per trip from the eastern area.

* * * * *

(4) * * * (i) Possessing five Spanish mackerel per person per trip from the southern area.

* * * * *

[FR Doc. 90-14717 Filed 6-21-90; 12:24 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 123
Tuesday, June 26, 1990

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

Animal and Plant Health Inspection Service

[Docket 90-094]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the University of Kentucky to allow the field testing in Fayette County, Kentucky, of tobacco plants genetically engineered to express one of three genes derived from the tobacco vein mottling virus: the coat protein gene; the cytoplasmic inclusion protein gene; and the helper component protein gene. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants will not present a risk of introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Catherine Joyce, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90-065-06.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The University of Kentucky, of Lexington, Kentucky, has submitted an application for a permit for release into the environment, to field test tobacco plants genetically engineered to express one of three genes derived from the tobacco vein mottling virus: The coat protein gene, the cytoplasmic inclusion protein gene, and the helper component protein gene. The field trial will take place in Fayette County, Kentucky.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tobacco plants under the conditions described in the University of Kentucky application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the University of Kentucky, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Three different viral genes, derived from tobacco vein mottling virus (TVMV), have been modified and inserted into the tobacco genome. In this field trial none of the introduced genes can spread to another plant, because the test plants will not be allowed to flower. In nature, genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination and fertilization.

2. The TVMV genes do not provide the transformed tobacco plants with any measurable selective advantage over nontransformed tobacco plants in their ability to be disseminated or to become established in the environment.

3. The vector system used to transfer the TVMV genes to tobacco has been evaluated for its use in this specific experiment and does not pose a plant pest risk. Although the vectors were derived from DNA sequence with known plant pathogenic potential, the vectors have been disarmed by the removal of the genes that are necessary for pathogenicity.

4. The vector agent, the phytopathogenic bacterium that was used to deliver vector DNA carrying the TVMV genes into tobacco plant cells, was eliminated and is no longer associated with the transformed tobacco plants.

5. Horizontal movement of genetic material after insertion into the plant genome (i.e., into chromosomal DNA) has not been demonstrated. After delivering and inserting the DNA to be transferred into the tobacco genome, the vector does not survive in or on the transformed plant. No mechanism is known to exist in nature to move an inserted gene horizontally from a chromosome of a transformed plant to any other organism.

6. The field test plot will be small, approximately 7500 square feet.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1)

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 21st day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–14790 Filed 6–25–90; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 90–104]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Progarm Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment), in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
90–135–01	University of Wisconsin	05–15–90	*Pseudomonas syringae pv. syringae* genetically engineered to be avirulent through the use of Tn5.	Wisconsin.
90–135–02	Amoco Technology Co.	05–15–90	Tobacco plants genetically engineered to contain a eukaryotic gene important for primary metabolism, and to contain an antibiotic resistant marker gene.	Kentucky.

Done in Washington, DC, this 21st day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–14791 Filed 6–25–90; 8:45 am]

BILLING CODE 3410–34–M

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463, 86 Stat. 770–776) the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: August 6–8, 1990.

Time: 8 a.m.–5 p.m., August 6, 1990; 8 a.m.–5 p.m., August 7, 1990; 8 a.m.–12 noon, August 8, 1990.

Place: Southwest State University, Marshall, Minnesota 56258.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review Minnesota research and outreach programs for rural development.

Contact person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 447–3684.

Done in Washington, DC, this 14th day of June 1990.

John Patrick Jordan,

Administrator.

[FR Doc. 90–14655 Filed 6–25–90; 8:45 am]

BILLING CODE 3410–22–M

Economic Research Service

National Agricultural Cost of Production Standards Review Board: Meeting

The National Agricultural Cost of Production Standards Review Board will meet at the Economic Research Service, U.S. Department of Agriculture, Washington, DC on July 12–13, 1990.

The purpose of this meeting is to discuss general issues related to USDA's estimation of enterprise costs of production. All meetings will be held in room 332, 1301 New York Avenue, NW. The morning sessions on July 12–13 will convene at 9 a.m. and the afternoon sessions will convene at 1:30 p.m. Meetings will end at approximately 4 p.m. both days.

All sessions will be open to members of the public who wish to observe. Written comments may be submitted before or after the meeting to Kenneth Deavers, Director, ARED–ERS–USDA, room 314, 1301 New York Avenue, NW., Washington, DC 20005.

For further information, contact Robert Dismukes at (202) 786–1801.

John E. Lee, Jr.,

Adminstrator.

[FR Doc. 90–14799 Filed 6–25–90; 8:45 am]

BILLING CODE 3410–18–M

Forest Service

Solid Waste Disposal Policy

RIN 0596–AA92

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Chief of the Forest Service is proposing a revision of the policy governing solid waste disposal on National Forest System lands. The proposal would prohibit the authorization of new solid waste disposal sites (sanitary landfills), except at isolated locations in Alaska, would phase out existing sites by December 31, 1999, and would establish criteria for determining termination dates for existing authorizations. To protect the Government from potential liability in event of hazardous substance releases on National Forest System lands, the policy would prohibit sale or exchange of existing solid waste disposal sites. The proposal would allow sufficient time for operators of solid waste disposal facilities to acquire or develop alternative sites and also would provide direction for the safe operation of existing sites to ensure compliance with Federal and State law and regulations and the terms of the special use authorization. The intended effect of the proposed policy is to eliminate the potential sources and risk of pollution associated with operation of solid waste disposal sites on National Forest System lands.

DATES: Comments must be received in writing by August 27, 1990.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2720), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. The public may inspect comments received on this proposed policy in the Office of the Director, Lands Staff, Room 4 South, Auditors Building, 201 14th Street, SW., Washington, DC between the hours of 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Scheibel, Lands Staff, (202) 453–9358.

SUPPLEMENTARY INFORMATION: .

Background

In the past, many open-pit garbage dumps and solid waste disposal sites were permitted on National Forest System lands. For example, 538 sites were under special use permit in 1965. As a result of increased awareness and concern over environmental pollution and the risks of hazardous waste, the Forest Service, working in coordination with local governments over the past two decades, has eliminated open pit dumps and significantly reduced the number of solid waste disposal sites. Currently, most communities located within or near National Forests and National Grasslands operate sanitary landfills on private lands.

However, there remain 110 solid waste disposal sites authorized on National Forest System lands. All of the sites are operated by county and municipal governments and are used for the disposal of residential and non-hazardous commercial waste. Terms of the authorizations prohibit the dumping of hazardous wastes and require measures to protect Forest resources.

A recent review of the agency's current solid waste management policy indicated that the policy and practices currently authorized are inconsistent with the principles of multiple-use and sustained-yield management of National Forest System lands which are mandated by statute. The concerns which surfaced during this review included: The inability of most permit holders to meet the terms and conditions of the authorization, including the Environmental Protection Agency regulations for solid waste disposal; the high potential for contamination of soil, ground water, and other resources; and the possibility that the Forest Service would have to provide the funding for site cleanup.

As a result of the review, the Forest Service has concluded that it cannot effectively administer authorizations for solid waste disposal sites and meet the statutory resource management goals for the National Forest System. Accordingly, the agency is proposing that no new solid waste disposal sites be authorized, that no expansion of existing sites be authorized, and that existing sites be eliminated by December 31, 1999. The proposed policy will not result in the immediate closure of any site except for breach of the terms and conditions of a permit that cannot be corrected. The proposal would give affected communities up to December 31, 1999, to find alternative sites and specifically provides for reissuance of permits during the phase out period to allow communities reasonable opportunity to find alternative sites or disposal methods.

The result of this policy will be the eventual closure of all solid waste disposal sites on National Forest System lands. The agency anticipates that most sites will remain in operation, reach capcity, and be reclaimed prior to the required closure date of December 31, 1999. Upon closure of these sites, communities which have historically used sites on the National Forests for community landfills will be required, for community landfill purposes, to obtain sites on private lands or find alternative methods of disposal. This may change the current methods of collection and disposal or could be more expensive than their current method of disposal.

In addition to phasing out all solid waste disposal sites, the Forest Service has discovered an administrative error in many existing solid waste disposal authorizations that needs to be corrected in the interim. Special use authorizations should be issued for these sites pursuant to regulations at 36 CFR part 251, subpart B, under the authority of the Act of September 3, 1954 (43 U.S.C. 931c and 931d).

However, through administrative error, many local Forest Service officers have authorized solid waste disposal sites under the Act of June 4, 1897, an authority that is limited to short term, temporary facilities which are removed upon expiration of the special use permit. The Forest Service intends to correct this problem by replacing those authorizations issued under the Act of June 4, 1897 with term special use permits issued under the Act of September 3, 1954.

Solid waste transfer stations (containers used for temporary storage) which comply with the Forest Plan and applicable regulations may continue to be authorized on National Forest System lands. Transfer stations are limited to the temporary storage of nonhazardous waste. The transfer station facilities must be constructed and operated to avoid the contamination of soil, ground water, and other resources.

An Environmental Assessment (EA) has been prepared on the proposed policy. Copies of the EA may be obtained by writing or calling the office or person listed under **ADDRESS** and **FOR FURTHER INFORMATION CONTACT** located at the beginning of this document.

The proposed policy for solid waste disposal would be issued as direction to Forest Service personnel by amendment to section 2723.41 of the Forest Service Manual. The text of the proposal, as it would appear in the manual, is set out at the end of this notice. Public comment is invited and will be considered in development of the final notice of policy which will be published in the Federal Register.

Dated: June 19, 1990.

George M. Leonard,

Associate Chief.

Forest Service Manual

Chapter 2720—Special Uses Management

2723.41—Solid Waste Disposal Sites. This category of special use includes disposal sites for garbage, trash, and other nonhazardous solid waste. See FSM 2725.2 for guidance concerning storage of scrap, junk, and other reusable materials.

2723.41a—Administration. Authorized officers shall issue and administer special use authorizations for solid waste disposal sites on all National Forest System land in accordance with the requirements of this section, except for Alaska, where this section applies to community solid waste disposal sites only. See § 2723.41d of this chapter for direction on issuing and administering solid waste disposal sites for remote and isolated facilities in Alaska.

1. Do not authorize new solid waste disposal sites or expansion of existing sites.

2. Terminate the use of existing disposal sites when the site is filled, when the special use authorization expires, when the holder fails to correct a breach of the special use authorization, or upon mutual agreement with the holder. Do not allow any use of existing sites beyond December 31, 1999.

3. For the interim period, revise or reissue existing special use authorizations as needed. Authorizations shall require the holder to meet current Federal and State standards and requirements for solid waste disposal sites, shall contain an expiration clause, and, if needed, shall include provisions for monitoring, maintenance, and restoration of the site after closure of the site (In many cases, a separate authorization may be necessary for post-closure activities).

4. Reissue authorizations of existing sites only as necessary to provide holders the opportunity to locate alternative solid waste disposal sites or to develop alternative methods of disposal.

a. Use the Act of September 3, 1954 (U.S.C. 931c and 931d) as the authority for authorizing all solid waste disposal site reissuances or amendments to such authorizations. The term of the authorization should not exceed the anticipated life of the existing facility or December 31, 1999, whichever occurs first.

b. Amend or reissue those special use authorizations for solid waste disposal sites that were improperly authorized under the Act of June 4, 1897.

c. Establish a rental fee for authorization holders which reflects fair market value of the rights and privileges authorized (36 CFR 251.57). Fair market value may be determined through appraisal or other sound business management principles. Fees cannot be waived or reduced for term permits issued under the Act of September 3, 1954.

d. As a condition of reissuance of an authorization for a solid waste disposal site, require a bond, insurance, or some other reliable means, if necessary, to assure indemnification of the Forest Service from costs associated with environmental damage and restoration of the site.

e. Development or modification of operating plans, closure plans, or site monitoring plans requires site specific analysis in accordance with NEPA.

f. Consult the Office of the General Counsel in unusual or potentially controversial situations.

5. When a solid waste disposal site is in noncompliance with terms and conditions of the authorization, determine the magnitude or extent of noncompliance, the feasibility of continued operation, and the presence of any hazardous material on the site. In a noncompliance situation, it is the holder's responsibility to complete a plan of action and take corrective measures which brings the site into compliance. Sites which cannot be brought into compliance shall be closed and cleaned up by the holder.

2723.41b Termination. The authorization officer shall determine the timing of termination of existing authorizations. Base termination dates on the following factors:

1. The remaining useful life of the site.

2. The holder's current and past compliance with the terms and conditions of the authorization.

3. The impacts of use of the site for solid waste disposal on other forest resources.

4. Availability of alternative sites off National Forest System lands.

5. Management guidelines and prescriptions for the area as established in the Forest Plan.

6. Expiration date of current authorization.

If the authorized officer determines that an authorization should be terminated prior to its expiration date, that officer shall give timely notice to the affected holder that the termination date must be adjusted, shall openly consult with the holder, and shall seek to reach an agreement on the termination date.

2723.41c—Exchange or Sale of Existing Solid Waste Disposal Sites. Where solid waste disposal has occurred on National Forest System land, the United States may be liable after a conveyance of the land for releases of hazardous substances disposed of at the time the United States owned the land. Therefore, the exchange or sale of National Forest System lands with solid waste disposal sites is prohibited.

2723.41d—Special Situations—Alaska Region. Issue and administer authorizations for community solid waste disposal sites on National Forests in Alaska in accordance with the requirements of section 2723.41 a and b.

The Alaska Region shall work with and encourage the State of Alaska to select suitable areas for solid waste disposal near existing and proposed communities under the authority of the Statehood Act, Section 6(a), PL 85–508, July 7, 1958.

If no non-Federal land is available, non-community solid waste disposal sites may be authorized for the following types of uses of National Forest System lands in Alaska:

1. Remote lodges permitted under special use authorizations.

2. Mining activities in remote forest locations.

4. Remote Forest Service administrative sites.

5. Forest Service contractors working in remote locations.

6. Aquaculture sites in remote locations.

7. Use by other Federal Agencies located in remote National Forest locations.

8. Remote area is defined as an island and/or mainland location with access only by aircraft or boat.

The Alaska Region shall develop a supplemental policy which minimizes the environmental risk and and possibility that the Forest Service would have to provide the funding for site cleanup for any of these sites.

* * * * *

2723.45—Solid Waste Transfer Stations. Solid waste transfer stations are small areas where the holder places covered or closed containers used for the temporary storage of nonhazardous solid waste. Solid waste transfer stations may be authorized on National Forest System land when other suitable sites are not available and the use is not in conflict with the approved Forest Plan. Issue special use permits for transfer stations under the Act of September 3, 1954 (U.S.C. 931c and 931d) and, as part of the permit, require measures which will ensure resource protection and protect visual quality of the area. Do not allow waste to be stored at the site for more than seven days. Management and design of solid waste transfer stations shall comply with FSM 7462, and current State and local regulations.

[FR Doc. 90–14660 Filed 6–25–90; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Oklahoma Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Oklahoma Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on Tuesday, July 17, 1990, at the Hilton Inn West, 401 S. Meridian, Oklahoma City, Oklahoma 73108. The Committee will discuss civil rights issues and plan future projects in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Dr. Earl Mitchell or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 20, 1990.
Wilfredo J. Gonzalez,
Staff Director.
[FR Doc. 90-14750 Filed 6-25-90; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Request for Comments on Publication of Legal Texts of Central and Eastern European Countries

AGENCY: Office of the General Counsel, Commerce.

ACTION: Notice and request for comments.

SUMMARY: Pursuant to the Support for Eastern European Democracy Act, the Eastern Europe Business Information Center (EEBIC) has been established within the Department of Commerce to serve as the central clearinghouse for information relating to business and commercial opportunities in central and eastern European countries. EEBIC makes available to the public through the National Technical Information Service (NTIS) a variety of information related to commercial and investment opportunities in these countries. EEBIC has received numerous requests for information regarding new laws and regulations being adopted by these governments to support the ongoing economic and political reform.

The purpose of this notice is to inform the public of the Department's plans to announce, archive, and make available to the public legal text from central and eastern Europe on a subscription basis through NTIS. Further, we seek comment on the value of such materials, on alternative sources, on useful types of related information and means of dissemination, and on ways for the private sector to inform the Department of its needs.

DATES: Comments from the public should be received no later than July 26, 1990.

ADDRESS: Written comments should be addressed to: Lynn S. West, Office of the General Counsel, Room 5877, Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lynn S. West, telephone (202) 377-0490.

SUPPLEMENTARY INFORMATION: In order to support the substantial political and economic reform occurring in central and eastern European countries, legal reforms are being undertaken at an unusually accelerated pace. As much of the reform affects commerical and business opportunities in these countries, the American business and legal communities have expressed considerable interest in obtaining copies of official legal texts transmitted to the United States government by the governments of these countries.

For the past several months, EEBIC has distributed information regarding commercial opportunities in central and eastern Europe to the public on request through NTIS, a branch agency of the Department of Commerce. A list of the EEBIC publications available through NTIS may be obtained by writing to: Eastern Europe Business Information Center, Room 6043, Department of Commerce, Washington, DC 20230, or by calling (202) 377-2645.

While some of the EEBIC information packages distributed by NTIS include legal texts, the primary content is economic and commercial in nature. In order to respond to the increasing number of private sector requests for official legal texts, both in the original language and in English, the Department proposes to offer such texts on a systematic basis through NTIS.

Form and Content

The basic subscription package to be offered by NTIS would include typewritten English versions of official texts of current and newly issued commercial laws and regulations of general interest to the American business community as such texts are transmitted to the U.S. government by central and eastern European governments. The package would include laws and regulations of Poland, Hungary, German Democratic Republic, Czechoslovakia, Yugoslavia, Romania, and Bulgaria. Where available, NTIS may offer the original language version of such texts for an additional charge upon request. Separate subscriptions may be available on a country-specific basis where justified by the volume of relevant material and public interest.

Along with the subscription package, a single page bulletin would be forwarded providing information about significant new legislation or regulations introduced or adopted in these countries for which official texts are not yet available. As there is often a consideration lag between the introduction or passage of new legislation and its release in official form and availability in English, the purpose of the bulletin is to alert the subscriber to new developments in commercial law known to the Department. Other than the bulletin, the material included in the package would consist solely of texts as provided by the foreign governments and would not contain any analysis or commentary.

The subscriptions and any new information products will be announced in the NTIS bibliographic database searchable online through several contracted vendors. NTIS will permanently archive these products for future retrieval by the private sector.

Frequency and Price of Service

Upon receipt of a subscription order, NTIS would forward an initial package of commercial laws current as of the date of the order. Monthly supplements consisting of newly passed or translated laws would then be provided. The price of the service would reflect the cost of printing and dissemination, based on a per page expense of distribution.

Resources, Collection and Dissemination

In its collection effort, the Department will utilize the collective resources of the interagency task force on legal reform in central and eastern Europe, which Commerce co-chairs along with the Department of State. The task force includes representatives from government agencies that have a substantial interest in developments in central and eastern Europe, all of which contribute to the collection effort. Because the U.S. government receives copies of official legal texts in the course of its dealings with the governments of such countries and can make formal requests for texts not received, the Department believes the U.S. government is uniquely positioned to provide such texts to the public.

The service contemplated is not intended to preclude any efforts by the private sector to provide legal materials regarding central and eastern Europe in whatever form or content.

Request for Comments

The Department invites the public to comment on the proposed preliminary implementation plan within 30 days of this notice. In particular, the Department solicits views by the public on:

1. The desirability, usefulness and level of general interest in dissemination of the described legal texts, both in English and in the original language.

2. The availability of alternative sources of such materials and the relative reliability and comprehensiveness of such alternative sources.

3. Other forms or types of related material that would be useful to interested parties, as well as other means of enhancing the dissemination process.

4. Suggestions as to how the private sector might make known to the

Department its priorities and needs for materials of the type described.

Recommendations received may be incorporated into planning for the content and organization of the relevant materials. Additional Federal Register notices may be issued as plans for the proposed service develop and change.

Dated: June 20, 1990.

Wendell L. Willkie, II,

General Counsel.

[FR Doc. 90-14708 Filed 6-25-90; 8:45 am]

BILLING CODE 3510-BW-M

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held July 19, 1990, 9:30 a.m., in the Herbert C. Hoover Building, Room 1617F, 14th & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of revised telecommunication controls.
4. Preliminary discussion of telecommunication controls for the Core List.
5. New business.
6. Future meeting dates.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 1600, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C., 552b(a)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated: June 20, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 90-14710 Filed 6-25-90; 8:45 am]

BILLING CODE 3510-DT-M

Electronic Instrumentation Technical Advisory Committee; Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held July 17 & 18, 1990, 9 a.m., in the Herbert C. Hoover Building, Room 1617F, 14th Street & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to electronics and related equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377-2583.

Dated: June 20, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Unit.

[FR Doc. 90-14709 Filed 6-25-90; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Determination

By the authority vested in the Assistant Secretary of Defense (Production and Logistics) by section 3(c)(4) of the Strategic and Critical Materials Stock Piling Act [50 U.S.C. 98b(c)(4), as delegated by Executive Order 12626 of February 25, 1988, and subsequently redelegated by the Secretary of Defense and the Under Secretary of Defense (Acquisition), the Assistant Secretary of Defense (Production and Logistics), Colin McMillan, has determined that, pursuant to section 3301 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189, November 29, 1989), the following new strategic and critical materials requirements are established for the National Defense Stockpile:

Materials	Requirements
Aluminum Oxide, abrasive grain group.	347,000 short tons.
Antimony	88,500 short tons.
Asbestos, amosite	0 short tons.
Bauxite, refractory	1,240,000 long calcined tons.
Bismuth	1,060,000 pounds.
Chromite, refractory grade ore.	695,000 short dry tons.
Columbium group	12,520,000 pounds (contained).
Diamond, industrial group.	7,730,000 carats
Fluorspar, acid grade	900,000 short dry tons
Fluorspar, metallurgical grade.	310,000 short dry tons
Graphite, natural, malagasy, crystalline.	14,200 short tons
Graphite, natural, other than Ceylon and Malagasy.	1,930 short tons
Manganese, battery grade group.	50,000 short dry tons
Mica, muscovite block, stained and better.	2,500,000 pounds

Materials	Requirements
Natural insulation fibers	0 pounds
Platinum group metals, iridium.	86,000 troy ounces
Platinum group metals, palladium.	2,150,000 troy ounces
Quartz crystals	240,000 pounds
Talc, steatite block and lump.	0 short tons
Tungsten group	70,900,000 pounds (contained).

Dated: June 20, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90–14780 Filed 6–25–90; 8:45 am]

BILLING CODE 3810–01–M

Environmental: Chlorofluorocarbons (CFCs) Advisory Committee.

ACTION: Notice of Meeting.

SUMMARY: This is the first in a series of meetings to be held by the CFC Advisory Committee to study the feasibility and cost within DoD of substituting chemicals or technologies to replace ozone depleting chemicals whose production is restricted in the Montreal Protocol.

DATES: July 13, 1990.

ADDRESSES: Two Crystal Park, Advanced Technology Conference Room, 2121 Crystal Drive, Suite 200, Arlington, VA 22207.

FOR FURTHER INFORMATION CONTACT: Mr. William D. Goins, (703) 325–2215.

SUMMARY INFORMATION: Due to limited space and security considerations please contact Charles W. Purcell (703) 934–3017 for attendance information and admission number.

Dated: June 19, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90–14781 Filed 6–25–90; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Acquisition Streamlining; Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Change in location of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Acquisition Streamlining scheduled for June 27 and 28, 1990, at SAIC, McLean, Virginia, as published in the **Federal Register** (Vol. 55, No. 111, page 23467, Friday, June 8, 1990, FR Doc. 90–13292) will be held at SAIC, McLean, Virginia, on June 27, and at Andrews Air Force Base, Maryland, on June 28.

Dated: June 20, 1990.

Linda M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90–14782 Filed 6–25–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 20–21 August 1990.

Time: 0900–1700.

Place: Walter Reed Army Institute of Research, 6825–15th Street NW., Washington, DC 20307–5100.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on the Review of the Walter Reed Army Institute of Research (WRAIR) will meet for presentations on the technical programs conducted in stress, performance and other aspects of neurosciences. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–14725 Filed 6–25–90; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board, Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board.

Date of Meeting: 19 July 1990.

Time: 0800–1700.

Place: University of Texas.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Electromagnetic and Electrothermal Technologies will meet at the University of Texas. Kaman Science and University of Texas proprietary information will be shown and work performed by both under ARDEC contracts. The recently established FFRDC at the University of Texas will also be presented. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–14726 Filed 6–25–90; 8:45 am]

BILLING CODE 3710–08–M

Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 13–14 August 1990.

Time: 0900–1700.

Place: Walter Reed Army Institute of Research, 6825–15th Street NW., Washington, DC 20307–5100.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on the Review of the Walter Reed Army Institute of Research (WRAIR) will meet for presentations on the technical programs conducted in combat casualty care. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–14727 Filed 6–25–90; 8:45 am]

BILLING CODE 3710–08–M

Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 11–12 July 1990.

Time: 0800–1630.

Place: US Coast Guard C3I Center East, Tyndall AFB, Florida, Miami, Florida 33177.

Agenda: The Army Science Board (ASB) 1990 Summer Study on The Use of Army Systems and Technologies in the National War on Drugs will meet for discussions focused on Command and

Control, Communications, and Intelligence data fusion and distribution in CN operations. The briefings will be classified and therefore will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically paragraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–14728 Filed 6–25–90; 8:45 am]

BILLING CODE 3710–08–M

Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 7–8 August 1990.

Time: 0900–1500.

Place: Walter Reed Army Institute of Research, 6825–15th Street NW., Washington, DC 20307–5100.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on the Review of the Walter Reed Army Institute of Research (WRAIR) will meet for presentations on technical programs conducted in infectious diseases at WRAIR. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–14729 Filed 6–25–90; 8:45 am]

BILLING CODE 3710–08–M

Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 11–12 July 1990.

Time: 0900–1700.

Place: Walter Reed Army Institute of Research, 6825–15th Street NW., Washington, DC 20307–5100.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on the Review of the Walter Reed Army Institute of Research (WRAIR) will meet for presentations on technical programs conducted in stress, performance and other aspects of neurosciences. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–14730 Filed 6–25–90; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA), Performance Review Board (PRB)

AGENCY: DLA, Defense.

ACTION: Notice of membership of the DLA PRBs.

SUMMARY: This notices announces the appointment of the members of the PRBs of DLA. The publication of the PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, DLA.

EFFECTIVE DATE: June 20, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert W. Johnson, Employee Development Specialist, Workforce Effectiveness and Development Division, DLA, Department of Defense, Cameron Station, Alexandria, VA. (202) 274–6049 or 274–6039.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the PRBs. They will serve a 1-year renewable term, effective upon publication of this notice.

Initial PRB

Mr. William V. Gordon, Executive Director, Contract Management; Mr. Gary P. Quigley, Deputy General Counsel, Office of General Counsel; Mr. Thomas J. Knapp, Assistant Director, Office of Information Systems and Technology.

2nd Level Review

Mr. James J. Grady, Jr., Deputy Executive Director, Supply Operations; Mr. Raymond F. Chiesa, Executive Director, Contracting; RADM James P. Davidson, SC, USN, Executive Director, Supply Operations.

Dated: June 20, 1990.

Anthony W. Hudson,

Staff Director, Civilian Personnel.

[FR Doc. 90–14652 Filed 6–25–90; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: Department of Education.

ACTION: Amendment to notice of partially closed meeting.

SUMMARY: This amended the notice of a partially closed meeting of the Executive Committee of the National Assessment Governing Board published on June 11, 1990, in Vol. 55, No. 112, page 23584. Notice of this meeting was required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: June 22, 1990.

TIME: 11 (E.D.T.) to 11:30 a.m., open, 11:30 a.m. until adjournment, closed.

LOCATION: U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC 20005–4013.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, 1100 L Street, NW., suite 7322, Washington, DC 20005–4013. Telephone: (202) 357–6938.

In addition to the published agenda the closed portion of the National Assessment Governing Board's Executive Committee meeting, the members discussed the qualifications of specific individuals nominated for Board membership. Discussion touched upon matters that disclosed information of a personal nature where disclosure constituted a clearly unwarranted invasion of personal privacy if conducted in open session and related solely to the internal personnel rules and practices of the agency. Such matters are protected under exemptions (2) and (6) of U.S.C. 552b(c). A summary of the activities at the closed session and related matters, which are informative to the public consistent with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting. Records are kept

of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 1100 L Street, NW., suite 7322, Washington, DC from 8:30 a.m. to 5 p.m.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-14811 Filed 6-25-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Contract Award; Booz, Allen & Hamilton, Inc.

AGENCY: Department of Energy.

ACTION: Notice of potential organizational conflict of interest after contract award.

SUMMARY: In accordance with Department of Energy (DOE) Acquisition Regulations relating to organizational conflicts of interest, 48 CFR 909.570, DOE gives public notice that a contract had been awarded and subsequent information by the contractor to DOE has revealed the existence of a potential organizational conflict of interest. Upon careful analysis of the subsequent information, DOE will continue to retain the contractor for performance of the full statement of work because this is determined to be in the best interest of the United States.

FOR FURTHER INFORMATION CONTACT: Mr. Larry S. James, Office of Energy Research, Room F-330, 19901 Germantown Road, Germantown, Maryland 20874, (301) 353-5848.

Findings, Mitigation and Determination

Under section 19 of the Federal Nonnuclear Energy Research and Development Act, Public Law 93-577, and section 33 of the Federal Energy Act of 1974, Public Law 93-275, the Department of Energy is subject to strict requirements intended to avoid organizational conflicts of interest in the award and performance of contracts for technical and management support services. An organizational conflict of interest (OCI) is considered to exist when a contractor "has past, present, or currently planned interests, that, either directly or indirectly, through a client relationship, relate to the work to be performed under a Department contract and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage." DOE Acquisition Regulations, 48 CFR 909.570-3. Pursuant to these statutory provisions, a contract may not be awarded unless the Secretary or his designee has made a determination that it is unlikely that an OCI would exist, or that a conflict has been avoided after inclusion of appropriate conditions in the contract. If an OCI is determined to exist and cannot be avoided, the contract may be awarded only if the Secretary or his designee determines that award would be in the best interest of the United States and includes appropriate provisions in the contract to mitigate the OCI. If, after award, a possible OCI is subsequently identified, the Secretary or his designee must determine whether or not it would be in the best interests of the Government to terminate the contract.

Based on the following findings and determination, the existing contract described below will continue to remain in full force, after taking into account the existence of an OCI, because the contract is determined to be in the best interests of the United States, pursuant to the authority of DOE Acquisition Regulation 48 CFR 909.570. Any comments should be provided within 5 days after publication of this notice.

Findings

1. The Office of Energy Research is established as a component of the Department of Energy (DOE) by section 209 of Public Law 95-91 (Department of Energy Organization Act). The statutory functions stated in that Act which define the role of the Office, and of the Director of Energy Research, include, among other responsibilities, the following items:

(1) Monitoring the Deparmtent's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs; and

(2) Carrying out such additional duties assigned to the Office by the Secretary relating to basic and applied research activities including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 202 of this Act, as the Secretary considers.

The Director, Office of Energy Research, functions in essence as a science and technology advisor to the Office of the Secretary with additional responsibilities consistent with the intent of the statute and is the principal advisor to the Secretary on matters relating to physical research programs of the Department, utilization of multipurpose laboratories, cross-discipline research and development projects, and is assigned management responsibilities for major outlay programs in Basic Energy Sciences, High Energy and Nuclear Physics, Fusion Energy, and Health and Environmental Research.

2. Therefore, a competitive procurement (DE-AC01-89ER30148, Research Needs Assessment of Heavy Duty Transport Technology) was initiated in March 1989 to solicit support services to accomplish a specific Statement of Work.

The Department's Heavy Duty Transport (HDT) Technology Program focuses on establishing an advanced heavy-duty diesel engine technology base to serve as a catalyst for the development of industry of more fuel-efficient, fuel-flexible, and cost-effective propulsion systems for production beginning in the 1990's. Although several research projects are underway that are expected to have positive impact on regulation emissions, their primary research objectives have been to improve fuel efficiency. Despite recent progress in advanced diesel engine technology, major questions regarding its suitability as the long-term heavy duty propulsion system of choice still exist.

An independent research needs assessment was therefore undertaken in the area of heavy duty transport propulsion systems. The assessment will include a review of current research by DOE and others and will provide recommendations regarding short-term research paths to meeting the stringent emissions regulations and a long-term path for meeting future fuel efficiency and clean air requirements. The assessment will include the major industrial concerns, research laboratories and academicians.

3. Based on a comprehensive evaluation of its technical and cost proposals, Booz, Allen & Hamilton, Inc., had been recognized as possessing the required staffing and background experience for performing the Statement of Work.

4. Booz, Allen & Hamilton, Inc., submitted the necessary OCI information as part of the required proposal package. The Booz, Allen & Hamilton, Inc., statement certified that no OCI existed regarding the proposed work.

5. Based on the technical, cost evaluations and the disclosure statement, the Department of Energy awarded a cost-plus fixed-fee contract, DE-AC01-89ER30148, dated September 28, 1989 to Booz, Allen & Hamilton, Inc., to perform a Research Needs

Assessment of Heavy Duty Transport Technology.

6. To adequately and competently address the full scope of the assessment's subject area of heavy duty transport technology, at sufficient technical depth in all major topical areas, the contractor will need to convene a group of experts on the subject of heavy duty transport technology. Booz, Allen & Hamilton, Inc., proposed to use a number of expert panelists in its efforts to perform the needs assessment and engaged in individual consulting agreements with each of them. Each of these consultants submitted OCI information as required.

7. Based on an evaluation of the facts contained in the OCI information submitted by some of these consulting experts, the Department of Energy believes that there is a minor conflict of interest under 48 CFR 909.570. As most of the consultants are experts in their respective fields of the technology being researched, each would potentially stand to benefit if their particular field were ultimately recommended by the prime contractor as an appropriate area for continued research. The potential benefit would manifest in such a situation in terms of future opportunities for the consultant to be awarded research contracts because he or she is a leading expert in that area. Therefore, the recommendations of such experts have the potential to be biased in favor of their own particular area of expertise.

Mitigation

The Department of Energy believes that the actual potential for conflict of interest is minor. Booz, Allen & Hamilton, Inc., as the prime contractor, has selected a panel of experts to include representatives from each of the relevant areas of research in the field of heavy duty transport technology. This balance in the panel should effectively level out potential bias toward any particular area. Further, the contract has been drafted to include numerous precautions that will detect bias and further mitigate the likelihood of bias and its potential impact. The contract requires:

(a) Attendance by the DOE Contracting Officer's Technical Representative at all meetings of the contractor and his experts;

(b) Cross review of all findings both within the group of experts and by a final group of peer reviewers;

(c) Submission of monthly progress reports which all include notification by the contractor of any efforts he has made to mitigate conflict or potential conflict of interest; and

(d) Inclusion in the contract of the organizational conflict of interest special clause entitled "Organizational Conflicts of Interest."

Determination

In light of the above Findings and Mitigations and in accordance with 48 CFR 909.570, continuation of the existing contract award is considered to be in the best interest of the United States.

Dated: June 14, 1990.

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 90-14772 Filed 6-25-90; 8:45 am]

BILLING CODE 6450-01-M

Conduct of Employees; Waiver

Section 602(a) of the Department of Energy Organization Act (Pub. L. No. 95-91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. Silas B. Fisher has been appointed to the position of Director of Procurement and Assistance Management in the Department of Energy. Mr. Fisher has a vested pension interest in the Martin Marietta Pension Plan as a result of his previous employment with the Martin Marietta Corporation. The Martin Marietta Corporation is an "energy concern" within the meaning of section 601(b) of the Act. Therefore, Mr. Fisher's pension interest is subject to the divestiture requirement of section 602(a) of the Act.

It has been established to my satisfaction that requiring Mr. Fisher to divest his interest in the Martin Marietta Pension Plan would impose an exceptional hardship on him and that such interest is a vested pension interest, within the meaning of section 602(c) of the Act. Accordingly, I have granted Mr. Fisher a waiver of the divestiture requirement of section 602(a) of the Act for the duration of his employment with the Department, with respect to his interest in the Martin Marietta Pension Plan.

In accordance with section 208, title 18, United States Code, Mr. Fisher will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon Martin Marietta Energy Systems, Inc., or its parent, Martin Marietta Corporation, unless his supervisor and the Counselor agree that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

Dated: June 14, 1990.

Admiral James D. Watkins,

U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 90-14685 Filed 6-25-90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent To Award a Grant to Dr. William Buckman

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01-90CE15482 to Dr. William G. Buckman for an improved fluid pumping device and liquid sensor which will have a total estimated cost of $80,000 to be provided by DOE.

SCOPE: The grant will provide funding for Dr. William G. Buckman to produce, demonstrate, and test a fieldworthy system consisting of an improved fluid pumping device and liquid sensor for oil wells. A number of large oil companies have expressed an interest and are willing to test the system in their wells. A financial group has indicated interest in supporting the marketing aspect of the pumping system.

The purpose of the project is to develop an advanced prototype of the improved devices which will allow cost effective oil production from shallow stripper wells and have low installation and maintenance cost. A market for the technology appears assured by virtue of the arrangement with oil companies for demonstrating the device under actual field conditions.

ELIGIBILITY: Based on the receipt of an unsolicited proposal eligibility for this award is being limited to Dr. William G. Buckman, an individual with high qualifications in this specialized field of technology. The inventor will be the licensor of this invention. When the invention is available for demonstration he will lease or sell the pump to well

producers. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the the Nation's energy consumption.

The term of the grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rose Mason, PR–542, 1000 Independence Ave., SW., Washington, DC. 20585

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90–14684 Filed 6–25–90; 8:45 am]

BILLING CODE 01–M

Energy Information Administration

[Form EIA–858]

Uranium Industry Annual Survey

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed revision of the Form EIA–858, "Uranium Industry Annual Survey," and solicitation of comments.

SUMMARY: Under its continuing effort to reduce paperwork and survey burden for respondents (as required by the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. 3501 et seq.), the Energy Information Administration (EIA) conducts a consultation program to provide the general public and other Federal agencies an opportunity to comment on proposed and continuing reporting forms for its surveys. This program helps to ensure that data requested can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and that the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning proposed revisions to the Form EIA–858, "Uranium Industry Annual Survey."

DATES: Written comments must be submitted by July 26, 1990. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Luther Smith; U.S. Department of Energy; EI–531, Washington, DC 20585. Phone (202) 254–5565.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Luther Smith at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy (DOE) Organization Act (Pub. L. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information related to the adequacy of energy resources to meet the near- and longer-term future for the Nation's economic and social needs.

The Form EIA–858 collects data on uranium raw materials activities, uranium marketing, and the financial status of the domestic uranium industry. These data provide a comprehensive statistical characterization of the industry's annual activities and limited information about industry plans and commitments for the near term. The published data are used by the Congress, Federal and State agencies, the uranium and electric-utility industries, and the general public. Published data appear in the EIA publications, Uranium Industry Annual, Domestic Uranium Mining and Milling Industry—Viability Assessment, and the Annual Energy Review.

II. Current Actions

Schedules A (Uranium Raw Materials Activities) and B (Uranium Marketing Activities) of the Form EIA–858 are revised: (1) To simplify the data collections; (2) to request data representative of current industry operations and practices; (3) to support the EIA's effort, through internal-EIA reserves estimations, in assuring reliability of industry-reported reserves data; and (4) to collect data that are needed in analyses of the industry as performed by the EIA. Schedule C (Industry Financial Status) is not being revised at this time.

Modifications made to Schedule A data collection are:

a. Solution-mining development drilling is no longer requested;

b. Fewer property identification and location data are requested;

c. The level of property exploration and development is requested through a simplified check-off list which contains several new elements for work status and studies completed;

d. Reserves by property are requested at specified, forward-operating cost levels of $15, $30, $50, and $100 per pound U308, if available, and also at cost levels chosen by the reporting company;

e. The categories of economic and subeconomic reserves are dropped;

f. Operating cost data are requested on a simplified table; capital-cost data are requested by chosen mining method for a mine or *in situ* leach field and a mill or plant;

g. Average ore grade (percent U308) and average cost per pound U308 recoverable are requested under reserve estimation parameters;

h. Data of mine production from a conventional and/or a nonconventional mine are combined on a single table for each uranium property;

i. Data required on mine name and status are requested in a simplified table format;

j. Data on milling and processing are requested together so that separate sections need not be completed for conventional and nonconventional concentrate production;

k. Data on employment in milling and processing are requested under the combined category "Processing" to simplify the reporting of these data.

Modifications made to Schedule B data collection are:

a. Type of material sent or received under a contract is standardized to prompt uniform reporting;

b. Country of origin (mining and component services) and country of destination of material covered under a contract are grouped into a new table format to simplify reporting and to better define data desired;

c. Importation and exportation of uranium are grouped under a single question to clarify the data desired;

d. The question on contract options is expanded to request, in addition to information on optional quantities, information on additional quantities, cancellation of deliveries, and substitution of material other than that produced by the seller;

e. Item 4 is renamed "Utility Uranium Inventory Policy."

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed Form EIA–858 revisions.

The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response period specified in the instructions?

D. Public reporting burden for the collection is estimated to average 32.0 hours per form per year. Including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, how much time do you estimate it will require for you to complete and submit this revised Form EIA–858?

E. What is the estimated cost of completing the revised form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing the requested information.

F. How can the revised Form EIA–858 be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Please be specific.

C. How could the form be improved to better meet your specific needs.

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA also is interested in receiving comments from persons regarding their views on the need for the information contained in the Uranium Industry Annual Survey.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Authority: Sections 5(a), 5(b), 13(b), and 52 of Public Law 93–275, Federal Energy Administraiton Act of 1974, 15 U.S.C. §§ 764(a), 764(b), 722(b), 790a, and Section 205, Public Law 95–91, Department of Energy Organization Act, 42 U.S.C. 7135.

Issued in Washington, DC, June 21, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90–14774 Filed 6–25–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER90–444–000, et al.]

Duke Power Co., et al., Electric Rate Small Power Production, and Interlocking Directorate Filings

June 19, 1990.

Take notice that the following filings have been made with the Commission:

1. Duke Power Co.

[Docket No. ER90–444–000]

Take notice that on June 5, 1990, Duke Power Company (Duke) tendered for filing with the Commission a revised Supplement No. 3 to Supplement No. 24 to the Interchange Agreement between Duke and Carolina Power & Light Company (CP&L) dated June 1, 1961, as amended (Interchange Agreement). The revised Supplement No. 3 reduces Duke's monthly transmission capacity rate under the Interchange Agreement from $1.1537 per KW per month to $1.1154 per KW per month. Duke has proposed an effective date of July 1, 1990 for the revised charge.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Public Service Co.

[Docket No. ER84–604–014]

Take notice that on June 4, 1990, Southwestern Public Service Company tendered for filing its compliance report in this docket pursuant to the Commission's order issued May 3, 1990.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

[Docket No. ER90–449–000]

Take notiace that PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light (PacifiCorp), on June 7, 1990, tendered for filing, in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Revision No. 16 to Exhibits A and B, to the Contract for Interconnections and Transmission Service, Contract No. 14–06–400–2437 (Transmission Agreement), dated May 16, 1962 (PacifiCorp/Pacific Power & Light Company's Rate Schedule FPC No. 45) between PacifiCorp and Western Area Power Administration (WAPA).

Exhibit A specifies the projected maximum integrated demand in kilowatts which PacifiCorp desires to have transmitted to its respective points of delivery. Exhibit B specifies the projected maximum demand in kilowatts which WAPA desires to have transmitted to its respective points of delivery.

PacifiCorp respectfully requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of January 1, 1990 be assigned, this date being consistent with the effective date of Exhibits A and B.

Copies of this filing were supplied to WAPA and the Wyoming Public Service Commission.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Iowa Public Service Co.

[Docket No. ER90–452–000]

Take notice that on June 11, 1990, Iowa Public Service Company tendered for filing an executed Fir Power Interchange Service Peaking Capacity Sales Agreement dated April 6, 1990, whereby Iowa Public Service Company (IPS) will sell to United Power Association (UPA) 20 megawatts (MW) electric capacity and associated energy for a period commencing May 1, 1990 and ending October 31, 1990 and ending October 31, 1990. IPS requests that the negotiated Agreement be made effective as of May 1, 1990.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power Co.

[Docket No. ER90–445–000]

Take notice that on June 5, 1990, Pennsylvania Power Company (Penn Power) tendered for filing a petition pursuant to section 207 of the Commission's Rules of Practice and Procedure for permission to charge its five municipal resale customers a decrease in electric rates pending Commission action on a contemporaneous rate filing for approval of such rates under Section 205 of the Federal Power Act. PP&L states that the rate changes relate to Penn Power Tariff Nos. 30, 31, 32, 33 and 34.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Co.

[Docket No. ER90-373-000]

Take notice that on June 4, 1990, Northeast Utilities Service Company (NU) tendered for filing page 13 of the Non-Firm Transmission Service Agreement that was inadvertently omitted from its May 17, 1990 filing in this docket.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Co. of New Mexico

[Docket No. ER90-454-000]

Take notice that on June 15, 1990, Public Service Company of New Mexico (PNM) tendered for filing Amendment No. 5 (Amendment No. 5) to an agreement for Electric Service between PNM and Plains Electric Ceneration and Transmission Cooperative, Inc. (Plains). Plains had previously provided notice to PNM of a reduction of the minimum billing demand under the Agreement for Electric Service from 35,000 kW to 10,000 kW effective August 1, 1991. Amendment No. 5 recognizes a change in the minimum billing demand from 10,000 kW to 13,000 kW beginning August 1, 1991, and provides for additional firm transmission service to Plains in the amount of 7,000 kW beginning August 1, 1991. Amendment No. 5 also waives the notice requirements for termination under the Agreement for Electric Service and establishes a new termination date as the later of October 31, 1992, or the in-service date of the Static Var Compensator facilities at El Paso Electric Company's Newman Generating Station, but not later than May 31, 1993.

PNM has requested that the applicable notice requirements be waived, and that the Commission accept for filing Amendment No. 5 to be effective November 1, 1989.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Central Hudson Gas & Electric Corp.

[Docket No. ER90-442-000]

Take notice that on June 4, 1990, Central Hudson Gas & Electric Company (CG&E) tendered for filing a Notice of Cancellation of CG&E's Rate Schedule in Docket No. ER90-124-000.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Co.

[Docket Nos. ER89-582-002 and ER89-596-002]

Take notice that on June 7, 1990, New England Power Company (NEP) filed a Compliance Refund Report and supporting documentation that effectuates the terms of an uncontested settlement agreement in the W-11(a) proceeding in the referenced dockets.

NEP states that appropriate refunds, including interest, were made on May 25, 1990.

Comment date: July 5, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Co.

[Docket No. ER90-334-000]

Take notice that on June 18, 1990, Kansas City Power & Light Company (KCPL) tendered an amendment to its earlier filing in this Docket.

KCPL states that the purpose of the Amendment is to provide, at the request of Commission Staff, clarification of the costs referenced in the filing.

Comment date: July 5, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14681 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-98-014, RP89-133-008, RP89-178-004, TM90-4-32-001, TM90-5-32-001 and TM90-6-32-002]

Colorado Interstate Gas Co.; Compliance Filing

June 19, 1990.

Take notice that Colorado Interstate Gas Company ("CIG"), on June 15, 1990, tendered for filing the following tariff sheets to revise its FERC Gas Tariff, Original Volume No. 1:

Fifth Revised Sheet No. 61G11
Second Revised Sheet No. 61G11.1
Sixth Revised Sheet No. 61G12-B
First Revised Sheet No. 61G12-C
First Revised Sheet No. 61G12-D
First Revised Sheet No. 61G12-E

CIG states that the above-referenced tariff sheets are being filed in compliance with the Commission's Orders issued in these dockets and that the filing constitutes a semiannual adjustment filing as defined by CIG's FERC Gas Tariff. Specifically, the filing reflects adjustments to the take-or-pay Buyout-Buydown Surcharges, interest on unamortized costs, and work papers detailing refunds by CIG as well as the current payment status of CIG's affected customers.

CIG states that copies of the filing were served upon all of the parties to these proceedings and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before June 26, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14673 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-9-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

June 19, 1990.

Take notice that Equitrans, Inc. (Equitrans) on June 14, 1990 tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective June 1, 1990:

1 Revised Sub. 5 Revised Sub. 14 Revised Sheet No. 10
1 Revised Sub. 6 Revised 6 Revised Sheet No. 34

Equitrans is exercising its option to file an Out-of-Cycle Purchased Gas Cost Adjustment (PGA) to recover standby cost under Texas Eastern Transmission Corporation's (TETCO) Rate Schedule CD-1. Equitrans received authorization to track these costs from the Commission's Order in *Equitrans, Inc.*, 48 FERC ¶ 61,278 (1989).

This filing reflects a decrease of $0.6057 per dekatherm (dth) in Equitrans' PLS commodity rate and $0.0120 per dth in its Demand 1 rate. The Demand 2 rate for Rate Schedule PLS remains the same as filed in Equitrans' quarterly PGA in Docket No. TQ90-8-24-002.

The reasons for the decrease in gas cost are the inclusion of spot market purchases for the period of June through August 1990 and the election of standby service.

Pursuant to § 154.51 of the Commission's regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on June 1, 1990.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14669 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-11-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

June 19, 1990.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on June 15, 1990, tendered for filing Twenty-Eighth Revised Sheet Nos. 57(i) and 57(ii) and Fourteenth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

The above tariff sheets reflected revised current PGA rates for the months of June and July, 1990. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective June 1, 1990, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14670 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA90-1-26-000 and TA90-1-26-001]

Natural Gas Pipeline Co. of America; Motion to Cancel or Indefinitely Defer Technical Conference

June 19, 1990.

Take notice that on June 7, 1990, Natural Gas Pipeline Company of America (Natural) filed a motion to cancel or indefinitely defer the technical conference originally scheduled to be held April 10, 1990, pursuant to the Commission's order issued February 28, 1990 (50 FERC 61,253). The conference was previously postponed by notice issued April 9, 1990, as a result of a motion by Natural. On June 4, 1990, Natural filed a stipulation and agreement on gas inventory demand charge in Docket Nos. CP89-1281 and TA90-1-26-000.

Any parties still desiring a technical conference should either respond to Natural's motion or file a request for a technical conference with the Commission within 15 days of issuance of this notice.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14680 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-130-000]

Northern Natural Gas Co.; Proposed Temporary and Limited Waiver of FERC Gas Tariff

June 19, 1990.

Take notice that Northern Natural Gas Company, a Division of Enron Corp. ("Northern") tendered for filing on June 14, 1990, a request for a temporary waiver of section 15 of Rate Schedule IT-1, Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1, for the sole purpose of allowing interruptible shippers on Northern's system to pool supplies in Northern's Field Area and transfer title to another shipper at the boundary line between its Field Area and Market Area, referred to as the Field/Market Demarcation Point. Such point will be a new delivery point on Northern's system and shall be made available to all parties desiring transportation service in the Field Area. Northern proposes to begin accepting requests on July 15 through August 15, 1990, from shippers desiring to add the Field/market Demarcation Point as a new delivery point to their existing interruptible agreements. The waiver would allow Northern to amend such agreements without requiring a new service agreement or change in priority queue. The proposed effective date for initial deliveries through the Field/Market Demarcation Point is August 1, 1990.

Northern states that a copy of this filing has been mailed to all of Northern's existing and potential shippers under Third Revised Volume No. 1, F.E.R.C. Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before

June 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14677 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-131-000]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in F.E.R.C. Gas Tariff

June 19, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on June 15, 1990, tendered for filing proposed changes to its F.E.R.C. Gas Tariff. Northern has requested a waiver of the Commission's regulations so that the proposed filing becomes effective July 1, 1990.

Northern states that this filing is being submitted to recover 100% of take-or-pay buyout and buydown costs and contract reformation (Transition Costs) that Northern has paid, or incurred an obligation for pay as of June 1, 1990 plus interest on a five year levelized basis. The TCR volumetric surcharge is based on total annual Market Area and Argus System throughput.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before June 26, 1990. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14674 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9423-001]

Summit Energy Storage, Inc.; Intent To Hold Public Hearing for the Summit Pumped Storage Hydroelectric Project

June 19, 1990.

In May 1990, the Federal Energy Regulatory (Commission) prepared and distributed to interested parties a draft environmental impact statement (DEIS) for the proposed Summit Pumped Storage Hydroelectric Prject in Summit County, Ohio. A public hearing for the Summit Project will be held 7 p.m. to approximately 10 p.m. on Wednesday, July 11, 1990, at the Norton High School, 4128 Cleveland-Massillon Road, in the City of Norton, Ohio. The purpose of the public hearing is to gather information to aid the Commission in evaluating the environmental, social, and economic impacts of the proposed project pursuant to the National Environmental Policy Act of 1969 (NEPA). The commission is particularly interested in determining if any pertinent issues have been inadvertently omitted from the Summit Project DEIS. Interested persons and agencies are invited to provide oral or written comments on the DEIS.

The hearing will be recorded by a stenographer, and all statements (oral and written) will become part of the Commission's public record for Project No. 9423-001. Interested persons who are unable to attend the hearing may still provide written comments and recommendations for the public record. All correspondence regarding the subject DEIS should be filled with the Commission on or before July 16, 1990, and should be addressed to Lois D Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. All correspondence should clearly show the following caption on the first page: Summit Pumped Storage Hydroelectric Project, Ohio, Docket No. 9423-001.

For further information, please contact the Commission EIS Coordinator, Lee Emery at (202) 357-0779.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14679 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-102-002]

Tarpon Transmission Co.; Compliance Filing

June 19, 1990.

Take notice that on June 15, 1990, Tarpon Transmission Company ("Tarpon") tendered for filing with the Commission as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 2D, proposed to be effective on June 15, 1990. Tarpon states that this tariff sheet, which sets forth the amount of money due from each of Tarpon's shippers pursuant to Tarpon's proposed recoupment plan for the period April 1, 1990, through April 18, 1990, is submitted in accordance with Ordering ¶(A) of the Commission's "Order Accepting Tariff Sheet," issued May 31, 1990, in the above-referenced docket.

Tarpon has requested that the Commission waive all applicable regulations to permit Original Sheet No. 2D to become effective on June 15, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211 (1989)). All such protests should be filed on or before June 26, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14678 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-112-001]

Texas Gas Pipe Line Corp.; Tariff Filing

June 19, 1990.

Take notice that on June 15, 1990, Texas Gas Pipe Line Corporation (TGPL) filed tariff sheets to comply with the Commission's May 31, 1990 order in this docket, to make other conforming changes necessitated by the referenced order and to correct nonsubstantive typographical errors.

Specifically, TGPL tendered the following pages to Third Revised Volume No. 1 of its FERC Gas Tariff to be effective June 1, 1990:

Original Title Page
Original Sheet Nos. 1 and 4
Substitute Original Sheet Nos. 3, 5, 7, 9-20, 25, 29 and 32

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the

Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before June 26, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14671 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-104-001]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 19, 1990.

Take notice that on June 15, 1990 Texas Gas Transmission Corporation (Texas Gas) tendered for filing those tariff sheets listed in Appendix A and contained as a part of its FERC Gas Tariff, Original Volume Nos. 1 and 2-A, and FPC Gas Tariff, Original Volume No. 2. This filing is being made to comply with Ordering Paragraphs B and G of the "Order Accepting and Suspending Tariff Sheets Subject to Refund, and Establishing Hearing Procedures" (Suspension Order) issued May 31, 1990, at 51 FERC Para. 61,251 in the subject proceeding.

The revised tariff sheets are being issued to implement revised Seasonal D-2 nominations for Indiana Gas Company pursuant to ordering paragraph G of the Suspension Order. Ordering Paragraph B of the Suspension Order directed Texas Gas to either file a fully developed lead-lag study to support its inclusion of the FERC ACA Charge in its Working Capital or to file a statement that it would not pursue this cost item in this rate case. Texas Gas stated in its letter of transmittal that it will not pursue this item in this rate case.

Texas Gas requests an effective date of November 1, 1990, for the proposed tariff sheets. Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214, 385.211 (1989). All such protests should be filed on or before June 26, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14675 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-132-000]

United Gas Pipe Line Co., Tariff Filing

June 19, 1990

Take notice that on June 15, 1990, United Gas Pipe Line Company (United) tendered for filing the following Tariff Sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1:

Original Sheet No. 4-S
Original Sheet No. 4-T
Original Sheet No. 4-U
Original Sheet No. 4-V
Original Sheet No. 4-W
Original Sheet No. 4-W1
Original Sheet No. 4-X

United states that this filing is made consistent with the Commission's Order No. 500 *et. seq.*

United states that the purpose of this filing is to establish the procedures pursuant to which United will recover the take-or-pay charges to be billed by Sea Robin Pipeline Company (Sea Robin) and paid by United under Sea Robin's Docket No. RP90-129. The tariff sheets tendered set forth the principal amount plus interest that each jurisdictional sales customer of United will be required to pay in order to recover Sea Robin's take-or-pay charges billed to United by Sea Robin.

If at any time Sea Robin is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, United will adopt the same change in its take-or-pay procedures and/or amounts to be recovered pursuant thereto.

United is requesting an effective date of July 1, 1990, for the above referenced tariff sheets.

United states that copies of this filing are being served upon United's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Regulations. All such protests should be filed on or before June 26, 1990.

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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14676 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-43-002]

Williams Natural Gas Co.; Compliance Filing

June 19, 1990.

Take notice that Williams Natural Gas Company (WNG) on June 14, 1990, made a filing in compliance with the Commission letter order issued April 30, 1990 in Docket No. TA90-1-43.

WNG states that the April 30, 1990 order directed WNG to file within 45 days of the date of the order a revised annual PGA filing to correct errors in its electronically filed format, as indicated in the attachment to the order, and to make certain revisions to its Account No. 191 format. In compliance with the order, WNG is filing revised Schedules A1, C1, C2, and G1.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before June 26, 1990. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14672 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Solicitation Number DE-PS01-90CE26598]

Announcement of Competitive Grant Program: Existing Building Efficiency Research

Purpose: The United States Department of Energy, (DOE) Office of Conservation and Renewable Energy, Office of Buildings and Community Systems announces the availability of funds for competitive financial assistance awards for the District Cooling Engineering and Design Program.

Background: DOE is interested in promoting the use of technically advanced and innovative district cooling systems where they could substantially increase the efficiency of building air conditioning supply, substitute renewable energy resources for the use of premium fuels, or both. Locations in which such opportunities exist will generally be characterized by high levels of demand, high costs for building air conditioning due to climate and building density, or both. District cooling system development is a multi-step process requiring feasibility assessment, system engineering and design, detailed development, and construction. For the purpose of the forthcoming solicitation, the DOE's primary focus will be directed at the engineering and design stage of the process. Realizing the energy conservation and fuel substitution benefits inherent in district cooling, the DOE is currently supporting ten communities under cost-shared arrangements in their efforts to assess the technical and economic feasibility of applying district cooling concepts to specific needs and energy resource availability.

The purpose of this solicitation will be to solicit applications for the following research efforts: (1) Engineering and design stage of the district cooling systems process; (2) promoting the use of technically advanced and innovative district cooling systems where they could substantially increase the efficiency of buildings and air conditioning supply; (3) assessing the potential for using district cooling systems in communities where they could substantially increase the efficiency of energy delivery or substitute abundant and renewable energy resources for scarce premium fuel; and (4) providing follow-on support to communities where technical and economic feasibility for district cooling has been established, and a commitment to proceed with detailed engineering and design, leading to construction is evidenced.

Up to 10 cooperative agreement awards are expected to be made in late 1990 pursuant to this solicitation in a balanced program that meet DOE's identified interests. Up to $800,000 will be allotted for this program by DOE. DOE will also provide technical support of the existing buildings researchers at the DOE National Laboratories. It is anticipated that a form solicitation will be issued on or about July 1, 1990. It is important that all proposed projects be for site-specific locations with high space cooling demands and costs, and have identified potential customers to interconnect with the proposed district cooling systems when implemented. Proposed projects should provide, or have established a basis for assessing the technical and economic feasibility of the specific site application. The DOE share of costs for each agreement shall not exceed 25% of the total estimated cost of the project. Funding may be utilized over a period of up to 12 months from the date of award, by which time the proposed work must be completed.

Eligibility: Any public or private entity may respond to this solicitation. Applications for Phase I feasibility studies will not be considered under this solicitation. Also, applications addressing generic engineering and design tool development for district heating and/or cooling systems, or engineering and design for district heating systems, will not be considered. Written requests for copies of this solicitation should be sent to: U.S. Department of Energy, Office of Procurement Operations, Forrestal Building, Room 1J-005, 1000 Independence Avenue, SW., Washington, DC 20585, Attn: Document Control Specialist, PR-521.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-14773 Filed 6-25-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed

During the Week of May 25 through June 1, 1990, the applications for relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 20, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 25 through June 1, 1990]

Date	Name and Location of Aplicant	Case No.	Type of Submission
May 3, 1990	Texaco/Dick Valley Texaco, Hardin, Kentucky	RR321-6	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The May 4, 1990 Decision and Order (Case Nos. RF321-1610 & RF321-2794) issued to Dick Valley Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Texaco/LaRose Texaco, Hardin, Kentucky	RR321-7	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The May 4, 1990 Decision and Order (Case Nos. RF321-1659 and RF321-2528) issued to LaRose Texaco would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 25 through June 1, 1990]

Date	Name and Location of Aplicant	Case No.	Type of Submission
Do	Engineered Operating Co./J.W. Akin, Washington, DC	LRX-0004	Supplemental. If granted: The February 23, 1990 Remedial Order issued to Engineered Operating Company and J.W. Akin (Case No. HRO-0068) would be modified to reflect corrected calculations of the overcharges.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
5/25/90	Farmers Cooperative Assn..	RF272-78632
5/29/90	Glenn's Arco	RF304-11844
5/29/90	Bay Street	RF272-78633
5/29/90	Bermil Industries	RF272-78634
5/29/90	John H. Pigman, Inc..	RF265-2885
5/29/90	West Buncombe Gulf.	RF300-11140
5/29/90	Mercedes Public School.	RF300-11141
5/29/90	Winnabow Grocery.	RF300-11142
5/29/90	Eastover Oil Co., Inc..	RF307-10125
5/29/90	John Rotondi, Inc..	RF300-11139
4/07/90	Matchett & Sons	RF307-10126
5/29/90	Phillips Oil Co., Inc..	RF310-350
5/30/90	H. Goldman Inc.	RF300-11143
5/30/90	Humboldt Storage & Moving.	RF272-78635
5/30/90	Mercedes Public School.	RF272-78636
5/31/90	Riverbank Gulf	RF300-11144
5/31/90	Escalon Gulf	RF300-11145
6/01/90	McKeon Exxon	RF307-10127
5/25/90 thru 6/1/90	Texaco Oil Refund. Applications Received.	RF321-5742 thru RF321-6181
5/25/90 thru 6/1/90	Shell Oil Refund Applications Received.	RF315-9976 thru RF315-9986

[FR Doc. 90-14775 Filed 6-25-90; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $35,410.56 in principal, plus accrued interest, in alleged crude oil violation amounts obtained by the DOE under a Proof of Claim made to the U.S. Bankruptcy Court for the Northern District of Oklahoma on the basis of a detailed audit of Petrol Products, Inc. (Case No. LEAF-0004). The OHA has determined that the funds will be distributed in accordance with the the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for refund must be filed by March 31, 1991, and should be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8018.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from Petrol Products, Inc. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by March 31, 1991, and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows. Any claimant that has already filed a crude oil refund application need not file again.

Dated: June 20, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

Implementation of Special Refund Procedure

Name of Firm: Petrol Products, Inc.
Date of Filing: November 9, 1989.
Case Number: LEF-0004.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Petrol Products, Inc. (Petrol). On October 27, 1989, the ERA received a total of $35,410.56 as the result of the approval of its unsecured Proof of Claim by the United States Bankruptcy Court for the Northern District of Oklahoma. *In re: Petrol Prods., Inc.*, Bankruptcy #81-01048-W (Bankr. N.D. Okla. Oct. 13, 1989) (order for payment of dividends). The ERA's claim was based on allegations that Petrol violated the Mandatory Petroleum Price and Allocation Regulations in connection with its resales of crude oil during the period January 1976 through June 1979. This Decision and Order establishes procedures for distributing these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used

in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from Petrol and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (hereinafter the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (hereinafter the August 1986 Order). That Order provided a period of thirty days for the filing of any objections to the application of the MSRP and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (hereinafter the April 10 Notice). The April 10 Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the subpart V regulations. In that Notice, the OHA stated that all applicants for crude oil refunds would be required to document their purchase volumes of petroleum products during the period of price controls and prove that they were injured by the alleged overcharges. The April 10 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures, which the OHA has applied in numerous cases since the April 10 Notice, *see, e.g., New York Petroleum, Inc.* 18 DOE ¶ 85,435 (1988); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988), have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states had filed a Motion with the Kansas District Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987). The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The states appealed the latter ruling, and the Temporary Emergency Court of Appeals affirmed Judge Theis' decision. *In re: The Department of Energy Stripper Well Exemption Litigation*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988).

II. The Proposed Decision and Order

On May 3, 1990, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the alleged crude oil violation amounts obtained from Petrol. The OHA tentatively concluded that the funds in that case should be distributed in accordance with the MSRP and the April 10 Notice. Pursuant to the MSRP, the OHA proposed to reserve initially twenty percent of the alleged crude oil violation amounts for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the states and the federal government for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided between the states and the federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PD&O, the OHA proposed to require applicants for refunds to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by crude oil overcharges. The PD&O stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 10 Notice. Comments were solicited regarding the tentative distribution process set forth in the PD&O. The OHA has received no comments concerning the PD&O.

III. The Refund Procedures

A. Refund Claims

We have concluded that the alleged crude oil violation amount of $35,410.56 in principal, plus accrued interest, covered by this Decision should be distributed in accordance with the crude oil refund procedures previously discussed. As noted above, we will reserve initially the full twenty percent of the alleged crude oil violation amounts or $7,082.11 in principal, plus accrued interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See MAPCO.*

Inc., 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶ 85,028, at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of price controls. *See A. Tarricone Inc.*, 15 DOE ¶ 85,495, at 88,893–96 (1987). The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶ 85,405, at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on whether the specific end-user in question was injured, the applicant will be required to produce further evidence of injury. *See New York Petroleum*, 18 DOE ¶ 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the *Report by the Office of Hearings and Appeals to the United States District Court of the District of Columbia, In re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507 (1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214, at 88,411, *reconsideration denied*, 16 DOE ¶ 85,494, *aff'd sub nom. In re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($35,410.56) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.0000000175 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. A deadline of June 30, 1988, was established for all refund applications for the first pool of crude oil funds. The first pool was funded by the crude oil refund proceedings, implemented pursuant to the MSRP, up to and including *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988). A deadline of October 31, 1989, was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil refund proceedings beginning with *World Oil Co.*, 17 DOE ¶ 85,568, *corrected*, 17 DOE ¶ 85,669 (1988), and ending with *Texaco Inc.*, 19 DOE ¶ 85,200, *corrected*, 19 DOE ¶ 85,236 (1989). A March 31, 1991 deadline for filing an application for refund from the third pool of funds was set in *Cibro Sales Corp., Inc.*, 20 DOE ¶ 85,306 (1990). The volumetric refund amount from the third pool of crude oil funds will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register**.

To apply for a crude oil refund, a claimant should submit an application for refund. That application should contain all of the following information:

(1) Identifying information including the applicant's name, address, and social security number or employer identification number; an indication whether the applicant is a corporation; the name and telephone number of a person to contact for any additional information; and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973, through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons for all products purchased on which the applicant bases its claim;

(5) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns has waived any right it may have to receive a refund in these cases (i.e. by having executed and submitted a valid waiver pursuant to any one of the escrow accounts established pursuant to the Stripper Well Agreement);

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e. that the applicant did not pass through the overcharges to its own customers); and

(8) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refunds received, and that it will pass on the entirety of its refunds to its customers.

All applications should be typed or printed and clearly labeled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application, which should be mailed to the following address: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Although an applicant need not use any special application form to apply for a crude oil refund, a suggsted form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision or $28,328.45 in principal, plus accrued interest, should be disbursed in equal shares to the states

and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount or $14,164.22 in principal, plus accrued interest, into an interest-bearing subaccount for the states and one-half into an interest-bearing subaccount for the federal government. In accordance with previous practice, when the amount available for distribution to the states reaches $10 million, we will direct the DOE's Office of the Controller to make the appropriate disbursements to the individual states. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is therefore ordered that:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Petrol Products, Inc., may now be filed.

(2) All applications submitted pursuant to paragraph (1) must be filed no later than March 31, 1991.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, pursue to Paragraphs (4), (5), and (6) below, all of the funds from the subaccount denominated "Petrol Products, Inc.," Account Number 6C0X00255Z.

(4) The Director of Special Accounts and Payroll shall transfer $14,164.22 in principal, plus accrued interest, of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking–States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer the same amount of funds as that indicated in paragraph (4) above, into the subaccount denominated "Crude Tracking–Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $7,082.11 in principal, plus accrued interest, of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking–Claimants 3," Number 999DOE009Z.

Dated: June 20, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90–14776 Filed 6–25–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3791–7]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between October 1, 1989 and March 31, 1990, the United States Environmental Protection Agency (EPA), Region II Office, issued two final determinations, the New York State Department of Environmental Conservation (NYSDEC) issued four final determinations, and the New Jersey Department of Environmental Protection (NJDEP) issued one final determination pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Riva, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency Region II Office, 26 Federal Plaza, room 505, New York, New York 10278, (212) 264–4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II, the NYSDEC, and the NJDEP have made final determinations relative to the sources listed below:

Name	Location	Project	Agency	Final action	date
Yabucoa Sun Oil	Yabucoa, Puerto Rico	Revisions to conditions of the January 27, 1989 PSD non-applicability determination.	EPA	Non-Applicability	Jan. 4, 1990.
Fulton Cogeneration Associates.	Fulton, New York	Construction of one General Electric LM5000 gas turbine followed by a supplementary fired heat recovery generator and two 90 MM BTU/hr auxiliary steam boilers on standby.	NYSDEC	PSD Permit	Jan. 6, 1990.
Roseton Generating Station (RGS).	Newburg, New York	Converting RGS from the exclusive use of #6 fuel oil to a combination of oil and natural gas.	NYSDEC	Non-Applicability	Jan. 10, 1990.
Alcan Rolled Products Company.	Oswego, New York	Replacing two existing aluminum melting and holding furnaces with one new aluminum melting and holding furnace and replacing the emissions control equipment on two aluminum cold rolling mills.	NYSDEC	Non-Applicability	Jan. 10, 1990.
IBM	Endicott, New York	Permit amendment deleting Tucson, Arizona site from a January 3, 1983, PSD Permit.	EPA	PSD Permit Amendment.	Jan. 24, 1990.
Pedricktown Cogneration Limited Partnership.	Pedricktown, New Jersey.	Construction of a 230 MW gas/oil turbine cogeneration facility.	NJDEP	PSD Permit	Feb. 23, 1990.
Lyonsdale Energy Limited Partnership Cogeneration Project.	Lyonsdale, New York	Construction of a 19MW cogeneration plant adjacent to the Burrows Paper Company.	NYSDEC	Non-Applicability	Mar. 14, 1990.

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

United States Environmental Protection Agency, Region II Office Permits

Administration Branch—room 505, 26 Federal Plaza, New York, New York 10278.

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources Source Review and Regional Support Section, 50 Wolf Road Albany, New York 12233–0001.

NJDEP Actions

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Engineering and Technology, 401 East State Street, Trenton, New Jersey 08625.

If available pursuant to the Consolidated Permit Regulations (40 CFR 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the Federal Register under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 90–14793 Filed 6–25–90; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–53129; FRL 3771–3]

Premanufacture Notices, Monthly Status Report for March 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the Federal Register each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for March 1990.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE–G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "[OPTS–53129]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L–100, Washington, DC 20460 (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street, SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the Federal Register as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during March; (b) PMNs received previous and still under review at the end of March; (c) PMNs for which the notice review period has ended during March; (d) chemical substances for which EPA has received a notice of commencement to manufacture during March; and (e) PMNs for which the review period has been suspended. Therefore, the March 1990 PMN Status Report is being published.

Date: June 20, 1990.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report for March 1990

I. 367 Premanufacture notices and exemption requests received during the month:

PMN No.

P 90–0521 P 90–0522 P 90–0523 P 90–0524
P 90–0525 P 90–0526 P 90–0527 P 90–0528
P 90–0529 P 90–0530 P 90–0531 P 90–0532
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P 90–0545 P 90–0546 P 90–0547 P 90–0548
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P 90–0553 P 90–0554 P 90–0555 P 90–0556
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P 90–0561 P 90–0562 P 90–0563 P 90–0564
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P 90–0569 P 90–0570 P 90–0571 P 90–0572
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P 90–0577 P 90–0578 P 90–0579 P 90–0580
P 90–0581 P 90–0582 P 90–0583 P 90–0584
P 90–0585 P 90–0586 P 90–0587 P 90–0588
P 90–0589 P 90–0590 P 90–0591 P 90–0592
P 90–0593 P 90–0594 P 90–0595 P 90–0596
P 90–0597 P 90–0598 P 90–0599 P 90–0600
P 90–0601 P 90–0602 P 90–0603 P 90–0604
P 90–0605 P 90–0606 P 90–0607 P 90–0608
P 90–0609 P 90–0610 P 90–0611 P 90–0612
P 90–0613 P 90–0615 P 90–0616 P 90–0617
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P 90–0622 P 90–0623 P 90–0626 P 90–0718
P 90–0719 P 90–0720 P 90–0721 P 90–0722
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P 90–0751 P 90–0752 P 90–0753 P 90–0754
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P 90–0759 P 90–0760 P 90–0761 P 90–0762
P 90–0763 P 90–0764 P 90–0765 P 90–0766
P 90–0767 P 90–0768 P 90–0769 P 90–0770
P 90–0771 P 90–0772 P 90–0773 P 90–0774
P 90–0775 P 90–0776 P 90–0777 P 90–0778
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P 90–0792 P 90–0793 P 90–0794 P 90–0795
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P 90–0801 P 90–0802 P 90–0805 P 90–0806
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P 90–0827 P 90–0828 P 90–0829 P 90–0830
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P 90–0835 P 90–0836 P 90–0837 P 90–0838
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P 90–0843 P 90–0844 P 90–0845 P 90–0846
P 90–0847 P 90–0849 P 90–0850 P 90–0851
P 90–0852 P 90–0853 P 90–0854 P 90–0855
P 90–0856 P 90–0857 P 90–0858 P 90–0860
P 90–0862 P 90–0863 P 90–0864 P 90–0865
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P 90–0871 P 90–0872 P 90–0873 P 90–0874
P 90–0875 P 90–0876 P 90–0877 P 90–0878
P 90–0879 P 90–0880 P 90–0881 P 90–0882
P 90–0883 P 90–0884 P 90–0885 P 90–0886
P 90–0887 P 90–0889 P 90–0890 P 90–0891
P 90–0892 P 90–0893 P 90–0894 P 90–0895
P 90–0896 P 90–0897 P 90–0898 P 90–0899
P 90–0900 P 90–0901 P 90–0902 P 90–0903
P 90–0904 P 90–0905 P 90–0906 P 90–0907
P 90–0908 P 90–0909 P 90–0910 P 90–0911
P 90–0912 P 90–0913 P 90–0915 P 90–0917
P 90–0919 P 90–0920 P 90–0921 P 90–0922
P 90–0923 P 90–0924 P 90–0925 P 90–0926
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P 90–0935 P 90–0936 P 90–0937 P 90–0938
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P 90–0943 P 90–0944 P 90–0945 P 90–0946
P 90–0947 P 90–0956 P 90–0957 Y 90–0136
Y 90–0137 Y 90–0138 Y 90–0139 Y 90–0140
Y 90–0141 Y 90–0142 Y 90–0143 Y 90–0144
Y 90–0145 Y 90–0146 Y 90–0147 Y 90–0148
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Y 90–0165 Y 90–0166 Y 90–0167 Y 90–0168
Y 90–0169 Y 90–0170 Y 90–0171 Y 90–0172
Y 90–0173 Y 90–0174 Y 90–0175 Y 90–0176
Y 90–0177 Y 90–0178 Y 90–0179 Y 90–0180
Y 90–0181 Y 90–0182 Y 90–0183

II. 227 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 85–0216 P 85–0433 P 85–0535 P 85–0536
P 85–0619 P 85–0718 P 85–0730 P 86–1602
P 86–1603 P 86–1604 P 86–1607 P 87–0105
P 87–0197 P 87–0198 P 87–0199 P 87–0200
P 87–0201 P 87–0323 P 87–0502 P 87–0723
P 87–1192 P 87–1555 P 87–1760 P 87–1872
P 87–1881 P 87–1882 P 88–0083 P 88–0217
P 88–0319 P 88–0320 P 88–0353 P 88–0466
P 88–0515 P 88–0522 P 88–0576 P 88–0671

P 88-0831 P 88-0836 P 88-0837 P 88-0894
P 88-0918 P 88-1020 P 88-1021 P 88-1035
P 88-1211 P 88-1212 P 88-1271 P 88-1272
P 88-1273 P 88-1274 P 88-1303 P 88-1460
P 88-1473 P 88-1540 P 88-1567 P 88-1568
P 88-1618 P 88-1619 P 88-1620 P 88-1621
P 88-1622 P 88-1630 P 88-1631 P 88-1632
P 88-1690 P 88-1691 P 88-1761 P 88-1763
P 88-1783 P 88-1807 P 88-1809 P 88-1811
P 88-1844 P 88-1856 P 88-1937 P 88-1938
P 88-1980 P 88-1982 P 88-1984 P 88-1985
P 88-1995 P 88-1999 P 88-2000 P 88-2001
P 88-2100 P 88-2169 P 88-2177 P 88-2179
P 88-2180 P 88-2181 P 88-2188 P 88-2196
P 88-2210 P 88-2212 P 88-2213 P 88-2228
P 88-2229 P 88-2230 P 88-2231 P 88-2236
P 88-2237 P 88-2271 P 88-2275 P 88-2389
P 88-2469 P 88-2473 P 88-2484 P 88-2518
P 88-2529 P 88-2530 P 88-2568 P 89-0030
P 89-0031 P 89-0073 P 89-0089 P 89-0090
P 89-0091 P 89-0225 P 89-0254 P 89-0321
P 89-0326 P 89-0336 P 89-0385 P 89-0386
P 89-0387 P 89-0388 P 89-0448 P 89-0538
P 89-0539 P 89-0589 P 89-0701 P 89-0711
P 89-0721 P 89-0750 P 89-0760 P 89-0764
P 89-0775 P 89-0776 P 89-0810 P 89-0867
P 89-0870 P 89-0906 P 89-0918 P 89-0924
P 89-0942 P 89-0957 P 89-0958 P 89-0959
P 89-0963 P 89-0977 P 89-0978 P 89-0979
P 89-0980 P 89-0998 P 89-1010 P 89-1038
P 89-1058 P 89-1072 P 89-1082 P 89-1093
P 89-1104 P 89-1125 P 89-1148 P 90-0002
P 90-0009 P 90-0013 P 90-0113 P 90-0142
P 90-0145 P 90-0158 P 90-0159 P 90-0169
P 90-0187 P 90-0211 P 90-0212 P 90-0220
P 90-0226 P 90-0231 P 90-0237 P 90-0244
P 90-0245 P 90-0248 P 90-0249 P 90-0260
P 90-0261 P 90-0262 P 90-0263 P 90-0274
P 90-0299 P 90-0313 P 90-0314 P 90-0315
P 90-0316 P 90-0317 P 90-0318 P 90-0319
P 90-0321 P 90-0331 P 90-0333 P 90-0335
P 90-0347 P 90-0349 P 90-0350 P 90-0359
P 90-0360 P 90-0361 P 90-0364 P 90-0372
P 90-0383 P 90-0385 P 90-0404 P 90-0405
P 90-0406 P 90-0440 P 90-0441 P 90-0456
P 90-0473 P 90-0474 P 90-0475 P 90-0476
P 90-0477 P 90-0480 P 90-0481 P 90-0489
P 90-0496 P 90-0498 P 90-0512

III. 140 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration or the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

P 88-0701 P 88-0864 P 88-0884 P 88-1898
P 88-2380 P 89-0073 P 89-0077 P 89-0184
P 89-0423 P 89-0424 P 89-0651 P 89-0657
P 89-0658 P 89-0659 P 89-0660 P 89-0844
P 89-0991 P 89-1041 P 89-1140 P 90-0015
P 90-0072 P 90-0103 P 90-0105 P 90-0184
P 90-0229 P 90-0230 P 90-0232 P 90-0233
P 90-0234 P 90-0235 P 90-0238 P 90-0239
P 90-0240 P 90-0241 P 90-0242 P 90-0243
P 90-0246 P 90-0247 P 90-0250 P 90-0251
P 90-0252 P 90-0253 P 90-0254 P 90-0255
P 90-0256 P 90-0257 P 90-0258 P 90-0259
P 90-0264 P 90-0265 P 90-0266 P 90-0267
P 90-0268 P 90-0269 P 90-0270 P 90-0271
P 90-0272 P 90-0273 P 90-0275 P 90-0276
P 90-0277 P 90-0278 P 90-0279 P 90-0280
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P 90-0286 P 90-0287 P 90-0288 P 90-0289
P 90-0290 P 90-0291 P 90-0292 P 90-0293
P 90-0294 P 90-0295 P 90-0296 P 90-0297
P 90-0298 P 90-0300 P 90-0301 P 90-0302
P 90-0303 P 90-0305 P 90-0306 P 90-0307
P 90-0308 P 90-0309 P 90-0310 P 90-0311
P 90-0312 P 90-0320 P 90-0322 P 90-0323
P 90-0324 P 90-0325 P 90-0326 P 90-0327
P 90-0328 P 90-0329 P 90-0330 Y 90-0115
Y 90-0116 Y 90-0117 Y 90-0118 Y 90-0119
Y 90-0120 Y 90-0121 Y 90-0122 Y 90-0123
Y 90-0124 Y 90-0125 Y 90-0126 Y 90-0127
Y 90-0128 Y 90-0129 Y 90-0130 Y 90-0131
Y 90-0132 Y 90-0133 Y 90-0134 Y 90-0135
Y 90-0136 Y 90-0138 Y 90-0139 Y 90-0140
Y 90-0141 Y 90-0142 Y 90-0143 Y 90-0144
Y 90-0145 Y 90-0146 Y 90-0147 Y 90-0148
Y 90-0149 Y 90-0150 Y 90-0151 Y 90-0152

IV. 122 Chemical substances for which EPA has received notices of commencement to manufacture.

PMN No.	Identity/Generic Name	Date of Commencement
P80-0077	G Alkyd resin X4-779; alkyl polymer x4-779; polyester resin	September 8, 1980.
P83-0422	G Aromatic polyamic acid	January 18, 1990.
P83-1157	G Substituted oxirane	January 31, 1990.
P83-1222	G Substituted alkyl halide	January 17, 1990.
P83-1227	G Perhalo alkoxy ether	February 5, 1990.
P84-0365	G Vinyl ether monomer	February 26, 1990.
P85-0107	G Polyurethane resin	March 1, 1990.
P85-0433	1-Propanol,3-mercapto-	April 20, 1987.
P85-1200	1,3-Bis-(dimethyl stearyl ammonium chloride)-2-propanol	November 9, 1983.
P85-1220	G Chlorinated fatty acids, polyoxy alkylene esters	August 20, 1987.
P85-1518	G Isocyanate terminated polyester urethane	March 8, 1989.
P86-0173	G Azo-substituted aminonaphthol salt	October 15, 1990.
P86-0255	G Phenolic modified rosin ester	February 13, 1990.
P86-1029	G Aromatic terpene phenol resin	October 19, 1989.
P86-1161	G Substituted sulfophenyl azo-substituted naphthalene sulfonic acid salt	February 13, 1990.
P86-1271	G Epoxy resin	October 19, 1989.
P87-0243	G Substituted polyacrylates	April 23, 1987.
P87-0244	G Substituted polyacrylate	January 15, 1988.
P87-0943	G Polyurethane prepolymer	May 6, 1987.
P87-1256	G glycol bis (cycloaliphatic acid ester)	September 6, 1987.
P87-1296	G Melamine-cured acrylated resin	December 21, 1987.
P87-1299	G Alkoxysilane	December 4, 1987.
P87-1331	G Polymer from reactants including tert-butylphenol and isophorone diamine	September 30, 1987.
P87-1349	G Poly(methyl)acrylate	February 8, 1990.
P87-1391	G Styrene acrylate copolymer	February 8, 1990.
P87-1412	G Octamethyl cyciotetrasiloxane	November 14, 1987.
P87-1431	G Acrylate methacrylic acid polymer	October 21, 1987.
P87-1456	Polyamine urea-formalde-hyde condensate	August 12, 1987.
P87-1592	G Substituted thiadazole	January 29, 1990.
P87-1669	G Substituted terpene resin	November 11, 1987.
P88-0073	Polyethylene terphthalate; diethylene glycol; tetrabutyl titanate	January 8, 1988.
P88-0076	G Isocyanate terminated urethane prepolymer	January 18, 1988.
P88-0096	G Modified acrylate terpolymer	February 6, 1990.
P88-0202	G Epoxidized polybutadiene	February 20, 1990.
P88-0235	G Organic/inorganic copolymer	August 23, 1999

IV. 122 Chemical substances for which EPA has received notices of commencement to manufacture.—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P88-0238	G Modified polyether carbodamide	April 18, 1989.
P88-0250	P-menthadiene mixture plus camphene	March 7, 1988.
P88-025	4N-butyldimethylchloro-silane	February 20, 1990
P88-0280	G Aromatic, acrylic ester polymers with mono-carboxylic acids	November 3, 1989.
P88-0467	Substituted-p-phenylenediamine	February 15, 1990.
P88-0831	Phenol, 4,4'-(9H-fluoren-9-yildene)bis-	August 27, 1989.
P88-0837	G Epoxy resin	September 23, 1989.
P88-1375	Dimethyl octenes mixture and 2-methyl-6-methyleneoctane	November 11, 1988.
P88-1703	G Modified polyester amino alkyl silane, hydrohalide salt	February 4, 1990.
P88-1705	G Polyester amino alkyl silane	February 4, 1990.
P88-1706	G Polyester amino alkyl silane	February 4, 1990.
P88-1716	G Ammonium salt of carboxy functional acrylic polymer	October 20, 1989.
P88-1753	G Bis(substituted)carbo monocyclic (azo)-carbo-monocyclic	February 14, 1990.
P88-1882	G Amine salt of sulfonated heterocyclic compound	March 27, 1989.
P88-2021	G Substituted-substituted-substituted-benzene aminomethylated, dimethylated, partially chloromethane quarternized, partial chloride salt.	June 24, 1989.
P88-2050	G Fluorinated acrylic ester copolymer	February 19, 1990.
P88-2104	G Fluorinated acrylic ester copolymer	February 19, 1990.
P88-2335	G Aliphatic alicyclic polyester	February 14, 1990.
P88-2358	G Methoxy polyethylene oxide diol	February 13, 1990.
P88-2461	G Fatty acid, rare earth salt	February 26, 1990.
P88-2470	G Azo compound	February 15, 1990.
P88-2540	G Nitrate esters	February 21, 1990.
P89-0069	G Acrylourethane	January 26, 1990.
P89-0121	G Acrylic modified alkyd	January 29, 1990.
P89-0135	G Urethane resin	February 20, 1990.
P89-0192	Aluminum Chloride Hydroxide Sulfate	March 20, 1989.
P89-0268	G Alkyl amine	August 21, 1989.
P89-0461	G Brominated alkylated aniline	January 31, 1990.
P89-0499	G Acrylic polyelectrolyte	February 15, 1990.
P89-0501	G Alkylaryl cellulose ether	February 10, 1990.
P89-0517	G Alkoxy alkyl titanate	February 8, 1990.
P89-0584	G Styrene-acrylic-copolymer	February 2, 1990.
P89-0770	G Oils, glycerides, palm kernel (or coconut oil), reaction products with tetra-hydroxy branched alkane esters of tri-substituted benzene-propanoic acid.	February 1, 1990.
P89-0808	G Substituted nitrogenheterocyclic halide	February 27, 1990.
P89-0815	G Trimethylammonium salt	November 11, 1989.
P89-0837	G Phosphorylated polyester	March 5, 1990.
P89-0852	G ETFE copolymer	September 25, 1989.
P89-0862	G Acrylic terpolymer	February 11, 1990.
P89-0871	G Polyurethane	February 15, 1990.
P89-0891	G Polyurethane dispersion	February 8, 1990.
P89-0898	Polymeric alpha, omega dicarboxylic acid	February 12, 1990.
P89-0913	G Carboxylic acid, quaternary ammonium salt	February 6, 1990.
P89-0937	G Substituted naphthalene disulfonic acid	March 1, 1990.
P89-0956	G Ester with copolymer of methacrylic acid and acrylonitrile	January 17, 1990.
P89-0987	G Polysiloxane	January 26, 1990.
P89-0990	G 9,10-Anthracenedione, disubstituted amino derivative	February 27, 1990.
P89-0996	G Urethane modified polyester	February 14, 1990.
P89-1014	G Siloxanyl alkanoic acid, alkoxy silyl alkyl ester	March 9, 1990.
P89-1037	G Alkylated phenolic resin	February 25, 1990.
P89-1042	G Macrocyclic cobalt compound	February 19, 1990.
P89-1060	G Monocarboxylic acids, reation products with a polyethylenepolyamine	February 5, 1990.
P89-1097	Pentaerythritol, partial esters with lauric/myristic acid blend, oligopolymerized	February 28, 1990.
P89-1098	G Modified cresol/formaldehyde resin	February 28, 1990.
P89-1106	G Partially crosslinked polymer of styrene-butadiene rubber and a block polymer of poly-butadiene and substituted acrylates	February 26, 1990.
P89-1131	G Modified styrene/divinylbenzene copolymer	February 28, 1990.
P89-1138	G Polymeric-alpha, omega-bis-oxirane	February 9, 1990.
P90-0040	G Mixed sodium/potassium salt of substituted naphthalene disulphonic acid	February 13, 1990.
P90-0041	G Polyoxypropylene-polyoxyethylene block copolymer ester acyl caprolactum	February 5, 1990.
P90-0070	G Modified alkyl acrylate polymer	February 9, 1990.
P90-0073	G Aromatic isocyanate-based urethane prepolymer	February 11, 1990.
P90-0075	G Cyanoacetic acid ester	March 2, 1990.
P90-0076	G Substituted polyoxyethylene aniline diacetyl ester	March 2, 1990.
P90-0079	Cyclohexanemethanol, 2-methyl-4-(1-methyl)-1-(4-isopropylcyclohexyl)ethane	February 28, 1990.
P90-0087	G Modified olefin/carboxylic acid copolymer	February 5, 1990.
P90-0109	G Heterocyclic dispersive dyestuff	February 19, 1990.
P90-0120	Thixotropically modified tall oil fatty acid alkyd resin	February 9, 1990.
P90-0143	G Cresol-aldehyde-aromatic reaction mixture	February 13, 1990.
P90-0147	G Alkenyl phosphate ester	March 9, 1990.
P90-0155	G Polyether MDI prepolymer	February 19, 1990.
P90-0175	G Polyestercarbonate resin	February 26, 1990.
P90-0219	Dimer fatty acids; lauris acid; ethylenediamine; hexamethylenediamine; isocyanate	March 8, 1990.
P90-0240	G Poly (oxyethanediyl);- substituted naphthaleneyl-hydroxy	March 8, 1990.

IV. 122 Chemical substances for which EPA has received notices of commencement to manufacture.—Continued

PMN No.	Identity/Generic Name	Date of Commencement
Y87-0246	G Alkyd resin.	October 5, 1987.
Y87-0247	G Alkyd resin.	October 1, 1987.
Y88-0079	G Water-dispersible polymeric emulsion.	February 5, 1988.
Y88-0098	G Acid-terminated long oil alkyd resin.	February 2, 1988.
Y88-0267	G Castor oil alkyd resin.	February 20, 1990.
Y89-0076	G Medium oil alkyd.	February 9, 1990.
Y89-0149	1-Methyl-2-pyrrolidone.	February 10, 1990.
Y89-0216	G Polyester polyol.	February 8, 1990.
Y90-0007	G Acrylic polymer.	December 15, 1989.
Y90-0022	G Modified acrylic polymer.	January 20, 1990.
Y90-0035	G Polyester.	February 2, 1990.
Y90-0053	G Copolymer of styrene, ethylene oxide, and an acrylate ester.	February 5, 1990.
Y90-0088	G Maleic anhydride styrene copolymer, half ester, morpholine salt.	February 1, 1990.
Y90-0098	G Polyalkylamine of chloromethylated, cross-linked polystyrene.	February 13, 1990.
Y90-0104	Rosin; maleic anhydride; pentaerythritol; nonyl phenol; p-tert-butylphenol; paraformaldehyde; bisphenol A.	February 21, 1990.

V. 21 Premanufacture notices for which the period has been suspended.

PMN No.

P 89-0711 P 89-1148 P 90-0212 P 90-0237
P 90-0244 P 90-0245 P 90-0248 P 90-0249
P 90-0255 P 90-0274 P 90-0284 P 90-0299
P 90-0313 P 90-0314 P 90-0315 P 90-0316
P 90-0317 P 90-0318 P 90-0319 P 90-0321
P 90-0339

[FR Doc. 90-14797 Filed 6-25-90; 8:45]

BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 20, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: None.

Title: Section 22.1101, Air-To-Ground Telephone Service (Report and Order, Docket No. 88-96).

Action: New collection.

Respondents: Businesses or other for profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 10 Responses; 3,000 Hours.

Needs and Uses: The Commission has determined that an air-to-ground telephone service is technically feasible, attractive to consumers, and a highly-valued use of the available 849-851/894-896 MHz bands. Therefore, we are allocating these bands for an air-to-ground service, and are requiring applicants who wish to operate in the service to demonstrate that they will offer the service in a timely fashing and that they are technically and financially qualified. Information submitted by applicants will be used by the Commission to select licensees for the air-to-ground service. The Commission will require that applicants contain complete information on the following areas that will be used for qualifying criteria: 1) Financial qualifications, i.e., resources necessary to construct and operate the system; and 2) technical qualification, in particular spectrum efficiency. The availability of resources is directly related to the ability of the applicant to establish the service promptly and to maintain it. Use of spectrum-efficient techniques will enhance the availability of this service so that long-term demand, especially during peak periods, can be accomodated within the four megahertz of spectrum that is available.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-14696 Filed 6-25-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Maryland Port Administration Clark Maryland Terminals, Inco et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200078-006

Title: Maryland Port Administration/ Clark Maryland Terminals, Inc. Terminal Agreement.

Parties:

Maryland Port Administration (MPA)
Clark Maryland Terminals, Inc. (CMTI).

Synopsis: The Agreement amends the basic agreement (Agreement No. 224-200078) to reflect that 3.45 areas of the area leased by the MPA to CMTI, in Lot 400 at Dundalk Marine Terminal, shall be eliminated.

Agreement No.: 224-200373

Title: The City of San Francisco/ Splosna Plovba Terminal Agreement.

Parties:

The City of San Francisco (City)

Splosna Plovba (SP).

Synopsis: The Agreement provides for SP to make San Francisco its published regularly scheduled Northern California port of call and have a non-exclusive right to use the City's South Container Terminal (Terminal). In consideration to SP for making the Terminal its regularly scheduled Northern California port of call, SP will pay to the City 60% of the applicable tariff on dockage and pay less than 100% of the wharfage rates based on a designated annual throughput volume of twenty-foot equivalent units. The term of the agreement is for five years.

Agreement No.: 224–200375

Title: San Francisco Port Commission/Naviera Interamericana Navicana S.A. Marine Terminal Agreement.

Parties:

San Francisco Port Commission (Port)
Naviera Interamericana Navicana S.A. (Navicana).

Synopsis: The Agreement provides for Navicana to have a non-exclusive right to use the Port's North Container Terminal Facilities as its regularly scheduled Northern California port of call for its liner vessel service. As consideration for the use of the facilities Navicana shall pay dockage and wharfage rates at less than 100% of those named in the Port's tariff No. 3–C. The term of the Agreement is five years.

Agreement No.: 224–200376

Title: Maryland Port Administration/ Jugolinija Terminal Agreement.

Parties:

Maryland Port Administration (MPA)
Jugolinija.

Synopsis: The Agreement provides for MPA to grant Jugolinija a cargo incentive at the Port of Baltimore. MPA will pay to Jugolinija $3.00 per loaded container and $0.40 per ton for Ro/Ro cargo, restricted to cargo coming into and going out of MPA's terminals by direct vessel call.

Agreement No: 224–200377

Title: Maryland Port Administration/ Ivaran Lines Marine Terminal Agreement.

Parties:

Maryland Port Administration (MPA)
Ivaran Lines.

Synopsis: The Agreement provides for MPA to pay Ivaran Lines an incentive of $3.00 per container and $0.40 per ton for Ro/Ro Cargo. This incentive is restricted to containers and Ro/Ro cargo coming into or going out of the MPA marine terminals by a waterborne movement. The Agreement's term expires December 31, 1990.

Agreement No: 224–200378

Title: Maryland Port Administration/ Wallenius Transroll Terminal Agreement.

Parties:

Maryland Port Administration (MPA)
Wallenius Transroll (Wallenius).

Synopsis: The Agreement provides for MPA to grant Wallenius a cargo incentive at the Port of Baltimore. MPA will pay to Wallenius $3.00 per loaded container and $0.40 per ton for Ro/Ro cargo, restricted to cargo coming into and going out of MPA's terminals by direct vessel call.

Agreement No: 224–200374

Title: The City of San Francisco/ Evergreen Marine Corp. (Taiwan) Ltd. Terminal Agreement.

Parties:

The San Francisco Port Commission (Port)
Evergreen Marine Corp. (Taiwan) Ltd. (Evergreen).

Synopsis: The Agreement provides for Evergreen to guarantee the Port a minimum of 49 vessel calls at the Port's South Container Terminal and a minimum thruput of 23,000 loaded twenty-foot equivalent units (TEU) per contract year, loaded to or discharged from its vessels. In consideration for the foregoing minimum calls and thruput guarantees, Evergreen will pay to the Port dockage and wharfage rates at less than 100% of those named in The Port's Tariff No. 3–C. In the event the total contract guaranteed volume (115,000 TEUs) is not handled during the five-year term of this Agreement, Evergreen will pay the difference between the 115,000 TEUs and the amount of TEUs actually handled at the prevailing rate in effect at the end of the contract term for TEUs 1 through 30,000.

By Order of the Federal Marine Commission.

Dated: June 20, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–14666 Filed 6–25–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; United States/ Dominican Republic Freight Association

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011287

Title: United States/Dominican Republic Freight Association.

Parties:

Kirk Line Ltd.
Seaboard Marine, Ltd.

Synopsis: The proposed Agreement would authorize the parties to discuss, establish and maintain rates, charges, rules and regulations and to discuss other conditions and related matters in the trade between United States Atlantic and Gulf ports and all inland continental points via such ports, and ports and points in the Dominican Republic. The parties have requested a shortened review.

By Order of the Federal Maritime Commission.

Dated: June 20, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–14667 Filed 6–25–90; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended.

Salen Lindblad Cruising Inc., and Frontier Cruises Limited, 133 E. 55th Street, New York, NY 10022.

Vessel: Frontier Spirit.

Dated: June 21, 1990.
Joseph C. Polking,
Secretary.
[FR Doc. 90-14777 Filed 6-25-90; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First of America Bank Corporation; Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register Notice (FR Doc. 90-6905) pubished at page 14472 of the issue for Wednesday, April 18, 1990.

Under the Federal Reserve Bank of Chicago, the entry for First of America Bank Corporation is amended to read as follows:

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation,* Kalamazoo, Michigan; to acquire Shelby Federal Savings Bank, Indianapolis, Indiana, and also to indirectly acquire its wholly-owned subsidiary, Shelby Service Corporation, Indianapolis, Indiana, and thereby engage in owning and operating a savings association pursuant to § 225.25(b)(9) and the sale of credit related life, accident, and health insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Comments on this application must be received by July 13, 1990.

Board of Governors of the Federal Reserve System, June 20, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-14695 Filed 6-25-90; 8:45 am]
BILLING CODE 6210-01-M

Lewis Katz; Change in Bank Control Notice; Acquisition of Shares of Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or a bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 10, 1990.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Lewis Katz,* Cherry Hill, New Jersey; to acquire 4.72 percent of the voting shares of First Peoples Financial Corporation, Westmont, Haddon Township, New Jersey, for a total of 13.68 percent, and thereby indirectly acquire First Peoples Bank of New Jersey, Westmont, Haddon Township, New Jersey.

Board of Governors of the Federal Reserve System, June 20, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-14693 Filed 6-25-90; 8:45 am]
BILLING CODE 6210-01-M

NCNB Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 16, 1990.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation,* Charlotte, North Carolina; to acquire 100 percent of the voting shares of NCNB America Bank, Newark, Delaware.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bank Corporation of Georgia,* Macon, Georgia; to acquire 43 percent of the voting shares of AmeriCorp, Inc., Savannah, Georgia, and thereby indirectly acquire AmeriBank, N.A., Savannah, Georgia.

2. *CNB Financial Corporation,* Clewiston, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Clewiston National Bank, Clewiston, Florida.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Blackhawk Bancorporation,* Milan, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Blackhawk State Bank, Milan, Illinois.

2. *Carwin Bancorporation,* Carwin, Iowa; to become a bank holding company by acquiring 96.50 percent of the voting shares of Farmers Savings Bank, Carwin, Iowa.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Alpine Banks of Colorado,* Glenwood Springs, Colorado; to acquire 100 percent of the voting shares of Alpine Bank, Clifton, Colorado, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 20, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-14694 Filed 6-25-90; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of

Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the Federal Register.

The Secretary of the Treasury has certified a rate of 15⅜% for the quarter ended June 30, 1990. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: June 20, 1990.

Larry J. Eisenhart,

Acting Deputy Assistant Secretary, Finance.

[FR Doc. 90-14659 Filed 6-25-90; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in July

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of July 1990.

The initial review committees will be performing review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d).

Notice of these meetings is required under the Federal Advisory Committee Act, Public Law 92-463

Committee Name: Biobehavioral/Clinical Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDAS

Date and Time: July 17-18: 9 a.m.

Place: Holiday Inn Crowne Plaza, Twinbrook Room, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open—July 17: 9-9:30 a.m. Closed—Otherwise

Contact: Iris W. O'Brien, room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Sociobehavioral Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA

Date and Time: July 17-19: 9 a.m.

Place: Holiday Inn Crowne Plaza, Montrose Room, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open—July 17: 9-9:30 a.m. Closed—Otherwise

Contact: H. Noble Jones, room 10-22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-9042

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Camilla Holland, NIDA Committee Management Officer, room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2755.

Dated: June 15, 1990.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-14653 Filed 6-25-90; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Old Monroe Elevator & Supply Co., Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug applications (NADA's) held by Old Monroe Elevator & Supply Co., Inc. One NADA provides for the use of a tylosin Type A article for making a Type C swine, beef cattle, and chicken feed; the second for the use of a tylosin-sulfamethazine Type A article for making a type C swine feed; and the third for the use of a hygromycin B Type A article for making a Type C swine and chicken feed. The firm requested withdrawal of approval of the NADA's.

EFFECTIVE DATE: July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Old Monroe Elevator & Supply Co., Inc., Old Monroe, MO 63369, is the sponsor of the following NADA's:

NADA 119-261, originally approved June 3, 1980 (45 FR 37424), for the use of a tylosin Type A medicated article to make a Type C medicated swine feed. Later, the NADA was supplemented to provide for the manufacture of a Type A medicated article to make Type C medicated beef cattle and chicken feeds, in addiiton to swine feed and approved November 13, 1981 (46 FR 55956).

NADA 128-834, originally approved May 21, 1982 (47 FR 22092), for the use of a hygromycin B Type A medicated article to make a Type C medicated swine and chicken feed.

NADA 128-835, originally approved May 25, 1982 (47 FR 22517), for the use of a tylosin-sulfamethazine Type A medicated article to make a Type C medicated swine feed.

Elanco Products Co., on behalf of the sponsor, requested withdrawal of approval of the NADA's by letters of November 15, 1989, for NADA 119-261 and NADA 128-835, and March 1, 1990, for NADA 128-834, because the firm no longer manufactures the products.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA's 119-261, 128-834, 128-835 and all supplements and amendments thereto is hereby withdrawn, effective July 6, 1990.

In a final rule published elsewhere in this issue of the Federal Register, FDA is amending 21 CFR 510.600 (c)(1) and (c)(2), 558.274 (a)(4) and (c)(1), 558.625(b)(69), and 558.630(b)(10) to reflect withdrawal of approval of these NADA's.

Dated: June 19, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-14699 Filed 6-25-90; 8:45 am]

BILLING CODE 4160-01-M

Wyeth Laboratories; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Wyeth Laboratories. The NADA provides for the use of a benzathine penicillin G injection in horses and dogs for the treatment of bacterial infections. The firm requested withdrawal of the

approval. In a final rule published elsewhere in this issue of the Federal Register FDA is amending the animal drug regulations by removing the regulation reflecting the approval.

EFFECTIVE DATE: July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Wyeth Laboratories, Division American Home Products Corp., P.O. Box 8299, Philadelphia, PA 19101, is the sponsor of NADA 55-009, which provides for the intramuscular use in horses and dogs of Bicillin LA (benzathine penicillin G), Injection, Veterinary for the treatment of bacterial infections. The NADA was approved on July 16, 1952. By letter of September 8, 1989, the sponsor requested withdrawal of the approval because the product is no longer manufactured or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA 55-009 and all supplements thereto is hereby withdrawn, effective July 6, 1990.

In a final rule published elsewhere in this issue of the Federal Register, FDA is removing 21 CFR 540.255a to reflect the withdrawal of approval.

Dated: June 18, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-14698 Filed 6-25-90; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of d-Limonene

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of d-limonene, a naturally occurring monoterpene found in many volatile oils, especially citrus oils which are used as a flavor and fragrance additive for food and household cleaning products, and as an industrial solvent.

Two-year toxicology and carcinogenesis studies of d-limonene were conducted by administering 0, 75, or 150 mg/kg in corn oil by gavage to groups of 50 F344/N male rats, 5 days per week for 103 weeks; groups of 50 female F344/N rats were administered 0, 300, or 600 mg/kg. Groups of 50 male B6C3F1 mice were administered, 0, 250, or 500 mg/kg according to the same schedule; groups of 50 female B6C3F1 mice were administered 0, 500, or 1,000 mg/kg.

Under the conditions of these 2-year gavage studies, there was clear evidence of carcinogenic activity * of d-limonene for male F344/N rats, as shown by increased incidences of tubular cell hyperplasia, adenomas, and adenocarcinomas of the kidney. There was no evidence of carcinogenic activity of d-limonene for female F344/N rats that received 300 or 600 mg/kg. There was no evidence of carcinogenic activity of d-limonene for male B6C3F1 mice that received 250 or 500 mg/kg. There was no evidence of carcinogenic activity of d-limonene for female B6C3F1 mice that received 500 or 1,000 mg/kg.

The study scientist for these studies is Dr. C.W. Jameson. Questions or comments about this Technical Report should be directed to Dr. Jameson at P.O. Box 12233, Research Triangle Park, NC 27709 or telepone (919) 541-4096.

Copies of Toxicology and Carcinogensis Studies of d-Limonene in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 347) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: June 20, 1990.

David P. Rall,

Director.

[FR Doc. 90-14711 Filed 6-25-90; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of N,N-Dimethylaniline

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of N,N-dimethylaniline, a chemical intermediate in the synthesis of dyestuffs. It is also used as a solvent and an aid in methylation.

Toxicology and carcinogenesis studies of N,N-dimethylaniline were conducted by administering to groups of 50 rats of each sex doses of 0, 3, or 30 mg/kg N,N/dimethylaniline in corn oil by gavage, 5 days per week for 103 weeks. Groups of 50 mice of each sex were administered 0, 15, or 30 mg/kg on the same schedule.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity * of N,N-dimethylaniline for male F344/N rats, as indicated by the increased incidences of sarcomas or osteosarcomas (combined) of the spleen. There was no evidence of carcinogenic activity of N,N-dimethylaniline for female F344/N rats given 3 or 30 mg/kg body weight by gavage for 2 years. There was no evidence of carcinogenic activity of N,N-dimethylaniline for male B6C3F1 mice given 15 or 30 mg/kg by gavage for 2 years. There was equivocal evidence of carcinogenic activity of N,N-dimethylaniline for female B6C3F1 mice, as indicated by an increased incidence of squamous cell papillomas of the forestomach. Both rats and mice could have tolerated doses higher than those used in these studies.

The study scientist for these studies is Dr. K. Abdo. Questions or comments about this Technical Report should be directed to Dr. Abdo at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-7819.

Copies of Toxicology and Carcinogenesis Studies of N,N-Dimethylaniline in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 360) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: June 20, 1990.

David P. Rall,

Director.

[FR Doc. 90-14712 Filed 6-25-90; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Succinic Anhydride

The HHS' National Toxicology

* The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

* The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

Program announces the availability of the NTP Technical Report on Toxicology and carcinogenesis studies of succinic anhydride. Succinic anhydride is a food additive which is also used in the manufacture of polymeric materials, pharmaceuticals, agricultural chemicals, and as a chemical intermediate in the manufacture of dye stuffs, photographic chemicals, surface-active agents, lubricant additives, and fire retardants for paper.

Toxicology and carcinogenesis studies of succinic anhydride were conducted by administering 0, 50, or 100 mg/kg succinic anhydride in corn oil by gavage to groups of 60 rats of each sex, 5 days per week for 103 weeks. Groups of 50 male mice were administered 0, 38, or 75 mg/kg and groups of 50 female mice were administered 0, 75, or 150 mg/kg on the same schedule.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity* of succinic anhydride for male or female F344/N rats given 50 or 100 mg/kg succinic anhydride. There was no evidence of carcinogenic activity for male B6C3F1 mice given 38 or 75 mg/kg succinic anhydride or for female B6C3F1 mice given 75 or 150 mg/kg.

The study scientist for these studies is Dr. Ronald Melnick. Questions or comments about this Technical Report should be directed to Dr. Melnick at P.O. Box 12233, Research Triangle Park, NC or telephone (919) 541–4142.

Copies of Toxicology and Carcinogenesis Studies of Succinic Anhydride in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 373) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: June 20, 1990.

David P. Rall,

Director.

[FR Doc. 90–14713 Filed 6–25–90; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No. N–90–3109]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is also requested that OMB complete its review within seven days.

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the discription of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new an extension, or reinstatement, and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44, U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 13, 1990.

C. Austin Fitts,

Assistant Secretary for Housing-Federal Housing Commissioner, H.

[FR Doc. 90–14719 Filed 6–25–90; 8:45 am]

BILLING CODE 4210–27–M

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Mortgage Insurance Termination and the Application for Premium Refund or Distributive Share Payment

Office: Housing.

Description of the Need for the Information and its Proposed Use: The revised forms HUD–27050–A, Single Family Mortgage Insurance Termination, is used by servicing mortgagees to comply with HUD requirements for reporting terminations of the FHA mortgage insurance contract, 24 CFR 203.318 and form HUD–27050–B, Application for Premium Refund or Distributive Share Payment, used by former FHA mortgagors who HUD has determined are potentially eligible for subsequent payment of a distributive share or refund of the unused mortgage insurance premium, 24 CFR 203.283 and 203.423.

Form Number: HUD–27050–A/B.

Respondents: Lenders and homeowners participating in the Section 203 Mutual Mortgage Insurance Program.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–27050–A	8,550		45		5 minutes		32,063
HUD–27050–B	250,088		One time		15 minutes		62,522

* The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

Total Estimated Burden: 94,585 hours.
Status: Revision.
Contact: Steven Hans, HUD, (202) 426–7113; Scott Jacob, OMB, (202) 395–6988.

Supporting Statement Technical Adjustment to Lenders Request for Termination of Home Mortgage Insurance Combined Form HUD–27050

Section A—Justification

1. This form is used by servicing mortgagees to comply with HUD requirements for reporting termination of Federal Housing Administration (FHA) mortgage insurance on single family mortgages, 24 CFR 203.318 and former FHA mortgagors to apply for refunds of the unused mortgage insurance premium or payment of distributive shares, 24 CFR 203.283 and 24 CFR 203.423.

The "combined form" HUD–27050 was approved April 11, 1989, under OMB Number 2535–0055. As approved, this form would have required the servicing mortgagee to submit to HUD the form HUD–27050–A, Single Family Mortgage Insurance Termination (which replaces form HUD–2344), and at the same time to submit to the former FHA mortgagor the form HUD–27050–B, Application for Premium Refund or Distributive Share Payment (which replaces form HUD–2042). This has historically been a two step process which relied on two separate forms for completion. Reverting to our previous process of HUD initiating the HUD–27050–B, Application for Premium Refund or Distributive Share Payment, neither affects the amount and type of information approved for collection in the original approval, nor increases the public reporting burden.

During the late 1980's, the Department of Housing and Urban Development (HUD) was charged with improving the rate of locating and paying the former FHA mortgagors due distributive shares or premium refunds. During that time, the concept of using a combined form to ensure that servicing mortgagees notified mortgagors of their entitlement was considered to be the most expeditious way of accomplishing this; thus, the orginally approved for HUD–27050, Termination of Home Mortgage Insurance, was created.

Since the original initiative of the "combined" form was proposed, the operating environment has changed and both locating and processing efforts by HUD have measurably improved. Any timeliness issuance of HUD–27050–B's will now be more than offset by the inefficiencies and delays created by inability to restrict issuance of HUD–27050–B's to only eligible cases. Changes to system processes related to these forms have necessitated some technical changes only.

There is a one-time requirement for lenders now using magnetic tape for input of these data to modify their existing program. However, by virtue of the fact that more data will automatically be passed from the lender to HUD under the new form requirements, there will be a countering of staff savings in lender research and clarification time from that point on. The net effect is that the public burden hours and other estimates upon which the current OMB approval is based will remain unchanged.

This revision accomplishes the following: (1) It separates the previously approved "combined" form into two free-standing forms; (2) it permits mortgagees to be responsible only for the timely and accurate submission to HUD of the form HUD–27050–A, Single Family Mortgage Insurance Termination, instead of having to also issue to mortgagors the form HUD–27050–B, Appliation for Premium Refund or Districtive Share Payment, as originally proposed for the "combined form; and (3) It limits distribution of form HUD–27050–B, Application for Premium Refund or Distributive Share Payment, to only those former FHA mortgagors who HUD has determined are potentially eligible to receive a payment, instead of requiring all former Mutual Mortgage Insurance mortgagors, irrespective of eligibility, to send in a form HUD–27050–B and related documents for a determination to be made.

2. The information required is used to update HUD's single family insurance-in-force and terminated data. The billing of mortgage insurance premiums is discontinued as a result of the transaction. Without this information, the premium collection/monitoring function would be severely impeded and program data would be unreliable.

Title II of the National Housing Act of 1934 established the Mutual Mortgage Insurance (MMI) Fund. Collection requirements concerning the payment of the mortgage insurance premiums for case insured under the MMI Fund changed September 1983. All of the mortgage insurance premiums that would become due over the life of the mortgage is now collected at closing. The termination generates a payable transaction for all unearned portions of the prepaid mortgage insurance premium.

The mutual aspect of the MMI Fund requires HUD to pay a dividend to eligible mortgagors when their mortgages are paid-in-full or voluntarily terminated. The dividends, referred to as distributive shares, represent program income not needed to pay operating costs or insurance losses. This termination information is used to establish the payable information in the distributive share database.

The mortgagor's current mailing address and social security number is furnished by the mortgagee on this form. This information is necessary to locate the mortgagors that are due a divided or refund.

3. A magnetic tape interface exists for high volume mortgagees. The reduction in burden hours for the participating mortgagees has been estimated at 33%

4. No other duplicate data exists.

5. The data is not available from other sources.

6. Small businesses or entities are not respondents.

7. Delays in providing the data at the time of termination would erode the reliability and effectiveness of the program functions which depend on timely reporting of the termination of the mortgage insurance contract. Less frequent responses would delay HUD's ability to refund to the mortgagor all excess mortgage insurance premiums.

8. The collection is consistent with the guidelines in 5 CFR 1320.6.

9. No consultation on the data collection has been completed for this period. As indicated in item 3, industry is participating in endeavors to use new technology and, if nationwide implementation is feasible, the Mortgage Bankers Association will participate.

10. Confidentiality is not an issue for the data involved.

11. The social security number of the mortgagor is required on the form to aid HUD in locating refund recipients. The major problem is that HUD approved lenders do not always provide a current

address by which HUD can contact the mortgagor. Frequently the address provided is either the address of the property that has been sold or a temporary address, and the postal service returns our correspondence as undeliverable.

GAO recommended, in GAO Report No. CED–81–44 dated 2/9/81 and titled "HUD's Payment of Distributive Shares from the Mutual Mortgage Insuarnce Fund," that HUD request mortgagors social security numbers on termination requests so that we may use the IRS Mail Forwarding Service as an alternate means of locating mortgagors when HUD's routine procedures fail. The Internal Revenue Services will not forward any letters without the mortgagor's social security number.

12. Annual Cost to the Federal Government:

HUD Printing	$19,200.00
Processing of data (9 staff-years)	189,000.00
Total (Contact Costs)	$208,200.00

Annual Cost to the Respondents:

HUD–27050–A:	
Overhead	$14,723.00
Support Staff (hourly rate of 6.25)	200,393.00
Postage (first class @$.25)	62,522.00
Total	$277,638.00
HUD–27050–B:	
Completion of form (hourly rate of $5.00)	$312,610.00
Postage (first class @$.25)	62,522.00
Total	375,132.00
HUD–27050–A and HUD–27050–B:	
Total	$652,770.00

13. Estimate of Burden.

HUD–27050–A:	
Number of respondents	8,550
Frequency of responses	As required.
HUD–27050–B:	
Number of respondents	250,088
Frequency of responses	One time.
Volume of Responses Per Respondent:	
HUD–27050–A:	1–37,000
HUD–27050–B:	1
Total annual burden hours.	94,585

HUD–27050–A:	
384,750 responses @5 minutes.	32,063 hours.
HUD–27050–B:	
250,088 responses @15 minutes.	62,522 hours.
Burden hours in current OMB inventory.	235,495

14. The decrease of 140,910 in burden hours (over the 1986 figure of 235,495) is a combination of the stability in mortgage interest rates resulting in the return to normal program activity. The number of responses decreases by 477,120 responses.

15. The information is not published specifically for statistical use. The data is routinely used in HUD mortgagee/mortgage activity analysis and compilation of related data.

Section B—Collection of Information Employing Statistical Methods.

The data collection does not employ statistical methods.

[FR Doc. 90–14719 Filed 6–25–90; 8:45 am]

BILLING CODE 4210–27–M

Mortgage Insurance Termination

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2535-0055 (exp. 01/31/92)

Servicing Mortgagee:

Use this form whenever FHA mortgage insurance is terminated and no claim for insurance benefits will be filed. Within 15 calendar days of the date of termination, the servicing mortgagee must send the form to HUD, Insurance Termination, HPMOI,,Washington, DC 20410-8000. Do not use this form if the termination is due to a borrower default and an "Application for Single Family Insurance Benefits," form HUD-27011, is being submitted to HUD. Your insurance claim application will terminate the insurance.

1. Type of Termination (select the proper condition and enter the corresponding number in the box):

☐
- 11 **Prepayment:** a loan paid in full prior to the mortgage note maturity date.
- 13 **Non-Conveyance:** property was acquired by lender or by a third party at a foreclosure sale, or was redeemed after foreclosure and no insurance claim will be made to HUD.
- 18 **Maturity:** a loan paid in full on or after the mortgage note maturity date.
- 21 **Voluntary Termination:** both lender and borrower have agreed to voluntarily terminate FHA insurance.
- 23 **FHA Refinance**

2. FHA Case No. (2 or 3 digit state code, a hyphen, & 7 digit serial no.):	3. Servicing Mortgagee's ID (10 digits):	4. (Optional) Institution Loan Reference No. (15 digits):

5. Original Mortgage Amount:	6. Interest Rate (include the decimal point):	7. Date of Mortgage Note Maturity (mm/01/yy):	8. Date of 1st Mortgage Payment (mm/01/yy):	9. Date of Foreclosure or Deed in Lieu (mm/dd/yy):	10. Date Paid-in-Full, Refinance or Voluntary Termination (mm/dd/yy):

Property Address of terminated FHA insured mortgage:

11a. Street Address (30 characters, max.):

11b. City (20 letters, max.):	11c. State (2 letters)	11d. Zip Code (all 9 digits, if known):

12. Names & social security numbers of all who hold title to the above property on the date of non-claim termination. If the mortgage was paid off by sale of the property, enter the seller's name here.

Property Owner No. 1

12a. Last Name (22 letters, max.)	12b. First Name (15 letters, max.):	12c. M.I.:

12d. Social Security Number or EIN (include hyphens):

Property Owner No. 2

12e. Last Name (22 letters, max.)	12f. First Name (15 letters, max.):	12g. M.I.:

12h. Social Security Number or EIN (include hyphens):

Current mailing address of Property Owner No. 1 (item 12a)

13a. "Attention of . . ." or "Care of (c/o) . . ." name (optional) (30 letters, max.):
C/O

13b. Street (30 characters, max.):

13c. City (20 letters, max.):	4d. State (2 letters):

13e. Zip Code (give all 9 digits if known):	13f. If owner No.1 resides in a foreign country, give name of country (15 letters, max.):

☐ Mark this box if there are more than two mortgagors.

14. Name & Address of Servicing Mortgagee:

14a. Contact Person (name & phone, including area code):

HUD construes submission of the data on this form as the servicing mortgagee's certification that the information provided above is true and accurate.

Warning! Section 1001 of Title 18 to the U.S. Code states a person is guilty of a felony for knowingly and willing making a false or fraudulent statement to any Department or Agency of the United States. Penalties upon conviction can include a fine of not more than $10,000 or imprisonment for not more than five years, or both.

form **HUD-27050-A** (5/17/90)

Application for Premium Refund or Distributive Share Payment

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2535-0055 (exp. 01/31/92)

Please print all information

Before completing this application, please read the guidelines for payment on the reverse side. If you decide you are not entitled to the premium refund or distributive share payment, please forward the application to the proper homeowner, if known, or return it to HUD.

1a. FHA Case Number

1b. Address of the FHA Insured Property

1c. Your Mailing Address

1d. Notice Number .
1e. Termination Date: ....
1f. One-Time Premium Refund: $
1g. Source .....
1h. Original Mortgage: ..$
1i. Distributive Share: .....$
1j. Address Key .....
1k. OTMIP Paid: .....$
1l. Total Refund: .....$

Please Print

2. Date You Purchased the Property (mm/dd/yy) :
Date Paid in Full (mm/dd/yy) :

Property Owner No. 1

3a. Last Name (22 letters, max.)
3b. First Name (15 letters, max.):
3c. M.I.:
3d. Percentage of the Property You Owned :
3e. Social Security Number or EIN (include hyphens) :
3f. Daytime Telephone (include area code) :

4. Current Mailing Address **Complete only** if your current mailing address is different from item 1c.
4a. (optional) "Attention of . . ." or "Care of (c/o) . . ." name (30 letters, max.):
C/O
4b. Street (30 characters, max.) :
4c. City (25 letters, max.) :
4d. State (2 letters):
4e. Zip Code (give all 9 digits if known) :
4f. If owner No.1 resides in a foreign country, give name of country (15 letters, max.) :

Property Owner No. 2

5a. Last Name (22 letters, max.) :
5b. First Name (15 letters, max.) :
5c. M.I.:
5d. Percentage of the Property You Owned :
5e. Social Security Number or EIN (include hyphens) :
5f. Daytime Telephone (include area code) :

6. Current Mailing Address **Complete only** if your current mailing address is different from items 1c & 4.
6a. (optional) "Attention of . . ." or "Care of (c/o) . . ." name (30 letters, max.):
C/O
6b. Street (30 characters, max.) :
6c. City (25 letters, max.) :
6d. State (2 letters):
6e. Zip Code (give all 9 digits if known) :
6f. If owner No. 2 resides in a foreign country, give name of country (15 letters, max.) :

7. ☐ Yes ☐ No The FHA mortgage was paid off by refinancing and I (we) requested that the refund be credited to the new FHA insurance premium.

Note: All owners must complete the certification, even if they were not named on this form. If all person(s) named on this form do not complete the certification, an explanation must be given in the Remarks section below. **One signature** must be notarized.

8. **Claim Certification:** I, the undersigned, certify that I was the legal owner of record at the time of mortgage insurance termination of the FHA insured property described in item 1b above and the information provided above is correct to the best of my knowledge and belief.

8a. Owner 1 Signature & Date:
X

8b. Owner 2 Signature & Date:
X

Warning! Section 1001 of Title 18 to the U.S. Code states that a person is guilty of a felony for knowingly and willingly making a false or fraudulent statement to any Department or Agency of the United States. Penalties upon conviction can include a fine of not more than $10,000 or imprisonment for not more than five years, or both.

9. Remarks: (attach a separate sheet if more space is required)

10. As to
(type in name) :_____
Signed and sworn to before me this _____ day of _____, 19___
Notary Public
(signature) :_____
My Commission expires _____, 19___.

11. Notary Seal :

Upon completion, send this form and attachment(s) to: HUD - Shares, PO Box 44372, Washington DC 20026-4372

form HUD-27050-B (4/9/90)

/3

U.S. Dept. of Housing & Urban Development
Attn: Distributive Shares Branch
Post Office Box 44372
Washington DC 20026-4372

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0055), Washington, D.C. 20503.

Privacy Act Notice: Section 203 of the National Housing Act and Section 7(d) of the Department of Housing and Urban Development (HUD) Act, Public Law 89-174, authorize collection of this information, which will be used by HUD to determine your eligibility for a refund. You must provide your Social Security Number. The Debt Collection Act of 1982, Public Law 97-365, requires any person participating in a Federally-insured loan program to provide his/her Social Security Number. You should provide all of the requested information; failure to do so may delay the processing, or result in the rejection, of your application. HUD uses the Social Security Number to identify the applicant. This information may be used in computer matching programs with other Federal agencies to obtain current addresses and for debt collection/offset purposes. This information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law.

Possible Income tax liability: Generally, premium refunds or distributive share payments are not taxable income as they represent a return of mortgage insurance premiums. Exceptions occur, however, if: (1) the premiums were previously deducted as a business expense, or (2) the refund exceeds the amount actually paid by the payee (usually due to an assumption of the mortgage involved). Further information may be obtained from your local IRS office and IRS rulings 56-302 and 58-380.

Dear Homeowner:

HUD May Owe You Money! As the owner of an FHA-insured property at the time of mortgage insurance termination, you may be entitled to a refund payment of a One-Time Mortgage Insurance Premium (OTMIP) and /or a Distributive Share. Please carefully read the following guidelines for payment and explanation of entitlement before completing the Application for Premium Refund/Distributive Share Payment on the back of this letter.

Guidelines For Payment. As a first step, verify that the property address (item 1b) is correct and applies to you. To obtain any money to which you may be entitled, complete the form on the back of this letter, attach proof of ownership or entitlement, have one signature notarized, and mail the documents to the address noted in the top left corner above. **If more than two people shared ownership** of the property, photocopy the form on the back to use as a continuation sheet. If you are the sole owner, enter 100% as the ownership percentage (item 3d); if you are a co-owner, enter 50%; or if there are multiple owners, enter your ownership percentage. Each individual who owned a share in the property must complete the application, include proof of ownership/entitlement and certify by signing (item 8) on the back of this letter. Only one signature must be notarized (items 10 and 11). If all persons identified on the form have not signed the certification, an explanation should be provided in the remarks section (item 9) or on a separate sheet of paper. Documentation supporting the exclusion must be provided. It will take about 6 weeks to process your form after HUD receives it.

If there is an error, or if you need additional information or help in completing this form, please call the Service Center Section at (202) 708-0616 between 9 a.m. and 4:45 p.m. (EST) Monday through Friday (except holidays). Please have your FHA case number (item 1a on the back of this letter) available.

Proof of Ownership/Entitlement. The following documents may be used to show proof of ownership/entitlement (send only photocopies of original documents):

Deeds: A copy of the recorded deed (General Warranty Deed, Special Warranty Deed, Reconveyance Deed, or Quit Claim Deed) showing ownership prior to termination.

Death Certificate / Will: In the event of the death of a co-homeowner who is a joint tenant or tenant by entireties, a copy of the death certificate establishes that the surviving co-homeowner(s) is/are entitled to payment. In the event more than one of the homeowners is deceased and the estate is closed, a copy of an executed will identifies the heirs entitled to the refund. If the estate is open, the refund is payable to the appointed official of the estate.

Divorce Decree: In the event of a divorce of co-homeowners, it is necessary to show the divorce decree or other document such as a recorded quit claim deed which gives title to the claimant. Otherwise, both will be treated as co-homeowners for payment purposes.

Name Change: In the event of a name change, a copy of the marriage certificate or name change document is required.

A Premium Refund is the balance remaining of a prepaid mortgage insurance premium when the mortgage is paid off prior to the end of the mortgage term. A premium refund applies only to homeowners whose mortgages were insured after September 1, 1983. When you refinance your existing FHA-insured mortgage and if a premium refund is due, your lender may offer to credit the amount of the refund against the OTMIP for the new FHA mortgage (item 7). However, if the amount of the premium refund is less than the OTMIP on the new FHA mortgage, you will not receive a cash refund.

A Distributive Share is a distribution of any excess earnings of the Mutual Mortgage Insurance (MMI) Fund which is funded by the mortgage insurance premiums you and other homeowners pay. Part of the MMI Fund is used to cover expenses associated with insuring the mortgages. The remainder is invested. When the earnings of the MMI Fund exceed the amount needed for expenses and insurance reserves, the excess is paid as "distributive shares" to homeowners when their mortgage insurance is terminated. The amount of a "distributive share" depends on the mortgage insurance premiums that were paid and other factors.

form HUD-27050-B

[FR Doc. 90-14719 Filed 6-25-90; 8:45 am]
BILLING CODE 4210-27-C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-620-00-4111-12-2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project Washington, DC 20503, telephone 202–395–7340.

Title: Oil and Gas Geophysical Exploration Operations 43 CFR 3151.
OMB Approval Number: Not yet assigned.
Abstract: Respondents supply information which will be used to determine procedures for conducting oil and gas geophysical exploration operations on public lands. The information supplied allows the Bureau of Land Management to determine that geophysical exploration operation activities are conducted in a manner consistent with the regulations, local use plans and environmental assessment in compliance with the provisions of the National Environmental Policy Act of 1969 as amended.
Form Numbers: 3150–4, 3150–5.
Frequency: On occasion.
Description of Respondents: Oil and gas exploration and drilling companies.
Estimated Completion Time: Form 3150–4—1 hour, Form 3150–5—⅓ hour.
Annual Responses: 1200.
Annual Burden Hours: 800.
Bureau Clearance Officer: (Alternate) Gerri Jenkins (202) 653–8853.

Dated: May 21, 1990.

Adam A. Sokoloski,

Assistant Director, Energy & Mineral Resources.

[FR Doc. 90–14689 Filed 6–25–90; 8:45 am]
BILLING CODE 4310-84-M

[AA-320-00-4212-02]

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and may be obtained by contacting the Bureau of Land Management's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to OMB, Paperwork Reduction Project (1004–0004), Washington, DC 20503, telephone 202–395–7340.

Title: Desert Land Entry, 43 CFR 2520.
OMB Approval Number: 1004–0004.
Abstract: Respondents supply identifying information to be used by the agency to determine eligibility for farming on bureau-administered desert land.
Bureau form number: 2520–1.
Frequency: Once.
Description of respondents: Individuals applying for entry on to Public Land under the Desert Land Act.
Estimated completion time: 90 minutes.
Annual responses: 20.
Annual burden hours: 30.
Bureau Clearance Officer: (Alternate) Gerri Jenkins 202–653–8853.

Dated: April 24, 1990.

Henry Noldan,

Assistant Director for Land and Renewable Resources.

[FR Doc. 90–14688 Filed 6–25–90; 8:45 am]
BILLING CODE 4310-84-M

[ID-942-00-4730-12]

Idaho; Filing of Plats of Survey; Idaho

The plats of survey of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., June 18, 1990.

The plat representing the dependent resurvey of portions of the south, east, west, and north boundaries, and subdivisional lines, and the subdivision of certain sections, T. 15 S., R. 25 E., Boise Meridian, Idaho, Group No. 746, was accepted June 12, 1990.

The supplemental plat representing the revised lottings in sections 29, 30, and 31, T. 11 N., R. 14 E., Boise Meridian, Idaho, was accepted June 11, 1990.

This survey was executed and the supplemental plat prepared to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: June 18, 1990.

Gary T. Oviatt,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 90–14690 Filed 6–25–90; 8:45 am]
BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 749712

Applicant: Walter O. Salmon, Cool, CA.

The applicant requests a permit to purchase in interstate commerce one pair of captive-hatched Hawaiian (=nene) geese [*Nesochen* (=*Branta*) *sandvicensis*] from Jean Van Holzen, Grants Pass, Oregon for the purpose of captive-propagation.

PRT 746055

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export and sell in foreign commerce one female Diana monkey (*Cercopithecus diana*) that was captive born at the San Diego Zoo, San Diego, California. The applicant proposes to export the animal to Parque Metropolitano de Santiago, Santiago, Chile, for breeding and educational display purposes.

PRT 746054

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export and sell in foreign commerce one pair of captive born ring-tailed lemurs (*Lemur catta*) to the Parque Metropolitano de Santiago, Santiago, Chile, for breeding and educational display purposes. The lemurs were born at the Oregon Regional Primate Research Center and sold to the applicant.

PRT 746051

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export and sell in foreign commerce one pair of captive born cheetahs (*Acinonyx jubatus*) to the Zoo Zacango, De Parques Natureles y de la Fauna, Paliqo de

Gobierno Zoo Pisa, Mexico, for breeding purposes. The cheetahs were born at the Columbus Zoo, Columbus, Ohio, and traded to the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 430, 4401 N. Fairfax Dr., Arlington, VA 22201, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 432, Arlington, VA 22201.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: June 21, 1990.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-14753 Filed 6-25-90; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 749316

Applicant: Denver Zoological Gardens, Denver, CO.

The applicant requests a permit to import one captive-bred male black lemur (**Lemur macaco**) from the Metro Toronto Zoo, Ontario, Canada, for purposes of captive breeding and zoological display.

PRT 749878.

Applicant: Cheyenne Mountain Zoological Park, Colorado Springs, CO.

The applicant requests a permit to import one captive-bred male Siberian tiger (*Panthera tigris altaica*) from the Metro Toronto Zoo, Ontario, Canada, for purposes of captive breeding and zoological display.

PRT 749872.

Applicant: David Germano Bakersfield, CA.

The applicant requests a permit to live-trap and release Tipton Kangaroo rates (*Dipodomys nitratoides nitratoides*) on land adjacent to Southern Pacific railroad right-of-way, northeast corner of Section 1, NE 1/4, NE 1/4 T3OS R25E, about 10 miles west of Bakersfield for biological survey purpose.

PRT 750336.

Applicant: ERC Environmental & Energy Service Company, San Diego, CA

The applicant requests a permit to collect seeds of slender-horned spine flower [*Dodecahema* (=*Centrostegia*) leptoceras] from Cleveland National Forest, Arroyo Seco Creek Drainage, Riverside County, CA, for germination and propagation studies to determine the feasibility of seed increase in a controlled setting as a potential mitigation and/or management technique for the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 430, 4401 N. Fairfax Dr., Arlington, VA 22201, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, VA 22201.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: June 21, 1990.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-14755 Filed 6-25-90; 8:45 am]

BILLING CODE 4310-55-M

Notice of Availability of a Draft Recovery Plan for James Spinymussel for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the James spinymussel. This species occurs in a few small rivers and creeks of the upper James River drainage in Albemarle, Amherst, Botetourt, and Craig Counties, Virginia, and Monroe County, West Virginia. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received on or before July 26, 1990 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Annapolis Field Office or the Gloucester Field Office. Written comments and materials regarding the plan should be addressed to G. Andrew Moser at the Annapolis Field Office. Copies of the recovery plan, comments, and materials received will be available for public inspection, by appointment, during normal business hours at the Annapolis Office or the Gloucester Field Office.

Annapolis Field Office: U.S. Fish and Wildlife Service, 1825, Virginia St., Annapolis, MD 21401, (301) 269-5448

Gloucester Field Office: U.S. Fish and Wildlife Service, Mid-County Center, U.S. Route 17, P.O. Box 480, White Marsh, VA 23183, (804) 693-6694

FOR FURTHER INFORMATION CONTACT: G. Andrew Moser, at the above Annapolis Field Office address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and provide initial estimates of times and costs for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved Recovery Plans.

The James spinymussel, which once occurred throughout much of the James River drainage, has declined dramatically in the last 20 years, disappearing from approximately 90% of its historic range. It is now known to survive in the following streams of the upper James River basin: Craig Creek drainage, Catawba Creek, Pedlar River, Mechums River, and Rocky Run

(Moormans River) in Virginia, and South Fork Potts Creek in West Virginia.

Major recovery plan takes include: (1) Conducting additional surveys for the species; (2) identifying and mitigating specific threats; (3) conducting life history studies and identifying ecological requirements; (4) preserving existing populations and occupied habitats through education, water quality regulations, easements, and acquisition; and (5) if feasible, restoring populations within the species' historic range.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 15, 1990.

James F. Gillett,

Acting Regional Director.

[FR Doc. 90-14691 Filed 6-25-90; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for renewal and amendment of a permit to conduct certain activities with marine mammals. This amends a previous notice that was published June 18, 1990, concerning the following application. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR parts 17 and 18).

Applicant Name: Mote Marine Laboratory

PRT-685009

Address: 1600 City Island Park, Sarasota, FL 33577.

Type of Permit: Scientific Research.

Name and Number of Animals: 200 Bottlenosed dolphins, (*Tursiops truncatus*), 10 harassments per animal, and up to 200 harassments of an undetermined number of West Indian manatees (*Trichechus manatus*).

Summary of Activity to be Authorized: The applicant proposes to take (harass) these animals during population surveys of wild dolphins and wild manatees using a color video display echo sounder, battery operated fathometers and scanning sonar. The applicant has previously received Endangered Species/Marine Mammal permits PRT-2-9757, PRT-685009 and PRT-690353 for authorizations to survey wild dolphins and manatees from 1983 to 1989. Annual reports have indicated that there was no taking (harassment) under these permits. The applicant also requests authorization to take (harass) captive manatees by sending sounds through water that they may hear and training them through positive reinforcement to respond, by pushing a paddle, when a sound is heard.

Period of Activity: Indefinite.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Drive, room 432, Arlington, VA 22203, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 a.m. to 4:15 p.m.) at 4401 N. Fairfax Drive, room 430, Arlington, VA 22203.

Dated: June 21, 1990.

Karen Willson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90-14754 Filed 6-25-90; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 16, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by July 11, 1990.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Denver County

Bancroft, Caroline, House, 1079-81 Downing St., Denver, 90001086

Weld County

Jurgens Site (Prehistoric Paleo-Indian Cultures of the Colorado Plains MPS), Address Restricted, Kersey vicinity, 90001084

DELAWARE

Kent County

Coursey, Thomas B., House, Co. Rd. 388 N. of Coursey Pond, Felton vicinity, 90001069

Saxton United Methodist Church, Jct. of Main and Church Sts., Bowers, 90001070

New Castle County

White Hall, 130 Michael Ln., Bear vicinity, 90001072

Sussex County

Bridgeville Public Library, 210 Market St., Bridgeville, 90001065

St. John's Methodist Church, Springfield Crossroads, jct. of SR 30 and Co. Rd. 47, Georgetown vicinity, 90001071

FLORIDA

Polk County

Chalet Suzanne, 3800 Chalet Suzanne Dr., Lake Wales vicinity, 90001085

KENTUCKY

Breathitt County

Jackson Post Office (Jackson MPS), Jct. of Hawk and Broadway, Jackson, 90001087

MASSACHUSETTS

Bristol County

Woodcock—Hatch—Macy House Historic District, 362 N. Washington St., North Attleborough, 90001081

Norfolk County

Kingsbury—Whitaker House, 53 Glendooh St., Medham, 90001080

MINNESOTA

Rice County

Allen, W. Roby, Oral Home School, 525 5th St. NE., Faribault, 90001091

Batchelder's Block, 120 Central Ave. N., Faribault, 90001089

Blind Department Building and Bow Hall, State School for the Blind, 400 6th Ave. SE., Faribault, 90001092

Dobbin, Reverend James, House, 1800 14th St. NE., Faribault, 90001090

Lieb, Vincent and Elizabeth, House, 201 4th Ave. SW., Faribault, 90001093

Weyer, Adam, Wagon Shop, 32 2nd St. NE., Faribault, 90001088

MISSISSIPPI

Jackson County

Cudabac—Gantt House, 4836 Main St., Moss Point, 90001082

Montgomery County

Purnell, James C., House, 504 Summit St., Winona, 90001077

Newton County

Alabama and Vicksburg Railroad Depot, S. Main St., Newton, 90001076

Oktibbeha County

Odd Fellows Cemetery, Jct. of US 82 and Henderson St., Starkville, 90001064

NEBRASKA

Dodge County

Barnard Park Historic District, Bounded by 4th, 8th, and Union Sts. and Platte Ave., Fremont, 90001053

NEW MEXICO

McKinley County

Ashcroft—Merrill Historic District, Jct. of Bloomfield and McNeil Sts., Ramah, 90001079

Mora County

Cassidy, Daniel, House (Upland Valleys of Western Mora County MPS), Address Restricted, Mora vicinity, 90001062

Garcia House (Upland Valleys of Western Mora County MPS), Address Restricted, Mora vicinity, 90001063

Gordon—Sanchez Mill (Upland Valleys of Western Mora County MPS), Address Restricted, Mora vicinity, 90001061

Ledoux Rural Historic District (Upland Valleys of Western Mora County MPS), Address Restricted, Ledoux, 90001057

Mora Historic District (Upland Valleys of Western Mora County MPS), Address Restricted, Mora, 90001056

North Carmen Historic District (Upland Valleys of Western Mora County MPS), Address Restricted, Ledoux vicinity, 90001058

Olquin, Jose, Barn/Corral Complex (Upland Valleys of Western Mora County MPS), Address Restricted, Mora vicinity, 90001060

Valdez, Desiderio, House (Upland Valleys of Western Mora County MPS), Address Restricted, Cleveland vicinity, 90001059

OHIO

Delaware County

Delaware County Jail and Sheriff's Residence, 20 W. Central Ave., Delaware, 90001083

TEXAS

Bexar County

Morrison, William J., Jr., House, 710 N. Olive St., San Antonio, 90001078

VERMONT

Chittenden County

Shelburne Village Historic District, Area M and S of jct. of US 7, Harbor Rd. and Falls Rd., including area S and E of La Platte R. and US 7, Shelburne, 90001055

WASHINGTON

Grays Harbor County

Lytle, Joseph, Home, 509 Chenault, Hoquian, 90001073

Thurston County

Delphi School (Rural Public School Buildings in Washington State MPS), 7601 SW. Delphi Rd., Olympia vicinity, 90001075

Yakima County

Rosedell, 1811 W. Yakima Ave., Yakima, 90001074

West Virginia

Hancock County

Murray, James F., House, 530 Louisiana Ave., Chester, 90001066

Kanawha County

Garnet High School, 422 Dickinson St., Charleston, 90001068

Monongalia County

South Park Historic District, Roughly bounded by Elgin St., Kingwood St., Cobun Ave., Prairie Ave., Jefferson St., Lincoln Ave., and Grand St., Morgantown, 90001054

Ohio County

Ogden, H. C., House, 12 Park Rd., Wheeling, 90001067

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1 (Sub-no. 231X)]

Chicago and North Western Transportation Co.—Abandonment Exemption—in Hennepin County, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Chicago and North Western Transportation Company (CNW) of 1.15 miles of rail line between milepost 19.85 and milepost 21.0, near Hopkins, in Hennepin County, MN, subject to: Standard labor protective conditions; the condition that CNW may discontinue service but may not abandon the line until after Soo Line Railroad Company (Soo) obtains approval or an exemption to discontinue its trackage rights; and the condition that CNW must inform any party that has requested a trails use or public use condition, in response to our action here, when Soo's trackage rights are discontinued.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 26, 1990. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by July 6, 1990, petitions to stay must be filed by July 11, 1990, and petitions for reconsideration must be filed by July 23, 1990. Requests for a public use condition must be filed by July 6, 1990.

ADDRESSES: Send pleadings, referring to Docket No. AB–1 (Sub-No. 231X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Robert T. Opal, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.)]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: June 19, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90–14740 Filed 6–25–90; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 290 (Sub No. 5) (90–3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved the third quarter 1990 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter RCAF (Unadjusted) is 1.098. The third quarter RCAF (Adjusted) is 1.043, a decrease of 1.0 percent from the second quarter RCAF (Adjusted) of 1.054. Maximum third quarter 1990 RCAF rate levels may not exceed 99.0 percent of maximum second quarter 1990 RCAF rate levels.

EFFECTIVE DATE: July 1, 1990.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

FOR FURTHER INFORMATION CONTACT:
William T. Bono, (202) 275–7354
Robert C. Hasek, (202) 275–0938
(TDD for hearing impaired, (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: June 20, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Commissioner Emmett dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 90–14744 Filed 6–25–90; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 290 (Sub-No.4)]

Railroad Cost Recovery Procedures; Productivity Adjustment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of adoption of productivity factor.

SUMMARY: The Commission has adopted a 1988 value for the measure of railroad productivity growth and has incorporated that value, along with previously calculated data, into a seven-year (1982-1988) averaging period. Productivity growth for 1988 is 1.050. The seven-year (1982-1988) average productivity growth is 1.044. The productivity adjustment was adopted in Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedures-Productivity Adjustment* (5 I.C.C. 2d 434) (1989). That decision stated that productivity data for additional years would be added as those data became available. The seven-year average will be used to adjust the quarterly Rail Cost Adjustment Factor for productivity improvements.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT:
William T. Bono, (202) 275–7354
Robert C. Hasek, (202) 275–0938
(TDD for hearing impaired, (202) 275–1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357 or 4359. Assistance for the hearing impaired is available through TDD services (202) 275-1721.

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

Decided: June 20, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Commissioner Emmett dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 90–14745 Filed 6–25–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31678]

Southeast Kansas Railroad Co.; Lease and Trackage Rights; Missouri Pacific Company Lines in Kansas and Oklahoma

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission accepts for consideration the application filed May 23, 1990, by the Southeast Kansas Railroad Company (Southeast Kansas) and Missouri Pacific Railroad Company (MP) for Southeast Kansas to lease 31.7 miles of MP line between South Coffeyville, OK, and Bartlesville, OK, and to acquire overhead trackage rights over a 3.4 mile MP line between Coffeyville, KS and South Coffeyville, OK. The Commission finds this a minor transaction under 49 CFR part 1180.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than July 23, 1990. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by August 13, 1990. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of the service list. Applicants' reply is due by September 3, 1990.

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31678, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and each of applicants' representatives:

Secretary of Transportation, 400 Seventh Street, SW, Washington, DC 20590

Attorney General of the United States, 555 4th Street, NW., Room 9104, Washington, DC 20530

A.J. Wachter (Southeast Kansas), Wilbert and Towner, P.A., 506 North Pine, P.O. Box V, Pittsburg, KS 66762, Joseph D. Anthofer (MP), Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired; (202) 275–1721.)

SUPPLEMENTARY INFORMATION: The Southeast Kansas Railroad Company (Southeast Kansas) and Missouri Pacific Railroad Company (MP), collectively "applicants," seek Commission approval under 49 U.S.C. 11343, *et seq.*, for Southeast Kansas to lease and acquire overhead trackage rights over certain properties of the MP. Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they submitted a conforming application in accordance with the railroad consolidation procedures in 49 CFR Part 1180.[1]

The properties subject to statutory prior approval requirements consist of 31.7 miles of MP line in noncontiguous segments: (1) From MP 166 to MP 168.7 in Coffeyville, KS; and (2) from MP 171 at South Coffeyville, OK, to MP 200 near Bartlesville, OK. The connecting line over which Southeast Kansas seeks to acquire overhead trackage rights extends from MP 423.35 in Coffeyville, KS, to MP 660.6 in South Coffeyville, OK, approximately 3.4 miles.

Southeast Kansas is a Class III rail carrier operating a 104-mile rail line between MP 423.35 in Coffeyville, KS, and MP 319.48 in Nassau Jct., MO. The proposed trackge rights will enable

[1] Applicants failed to provide the financial consideration involved in the transaction, as required by our regulations at 49 CFR 1180.6(a)(2)(ii); a description of the consideration at 49 CFR 1180.6(a)(2)(ii); a description of the consideration to be paid (49 CFR 1180.6(a)(7)(i) was also omitted. Applicants indicate that this was done, and some of the exhibits to the lease agreement were omitted, because some of the information is confidential and proprietary. Because this proposal will be evaluated under 49 U.S.C. 11344(d), the financial details of the transaction are less significant than they might otherwise be, and applicants' omission is not crucial and does not justify rejecting the applicantion. The parties are admonished, however, that in the future all requirements of the regulations should be met, or waiver should be sought in advance. 49 CFR 1180.4(f).

Southeast Kansas to connect its existing operations with those to be performed over the leased lines, as well as allowing Southeast Kansas to connect operations over the two line segments to be leased. Southeast Kansas is wholly owned by Charles R. Webb. MP, a Class I common carrier, operates in the states of Arkansas, Louisiana, Texas, Oklahoma, Missouri, Illinois, Tennessee, Kansas, Nebraska, Colorado and Iowa.

The lines to be leased have seven active patrons. Freight consists principally of petroleum coke, metal products and chemicals. In 1989, MP handled a total of 3,138 originating or terminating carloads on the lines to be leased, and provides no passenger service over the lines.

Applicants contend that the proposed transaction will not substantially reduce competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States. According to applicants, the shippers on the line enjoy substantial intermodal competition which will not be reduced by the transaction. The transaction, it is argued, will provide the shippers with more responsive rail service, provding more effective competition for the many motor carriers in the region. Nor, it is argued, will intramodal competiton be adversely affected, but may be enhanced. Some shippers on the lines are presently served only by MP, and others are served by MP and the Atchison, Topeka and Santa Fe Railway. MP and Southeastern Kansas do not compete for originating and terminating freight traffic on the lines, so competitive rail service will not be lost as a consequence of this transaction.

Applicants submit that Southeast Kansas' locally based operations will result in better, more efficient service to existing shippers. This service, it is argued, will allow them to capture motor carrier traffic, improving their financial viability.

Southeast Kansas plans to operate the line with its own employees under its own work rules, rates of pay and benefits. It is expected that the transaction will result in the abolition of nine MP positions, and MP intends to honor its obilgations to its adversely affected employees under 49 U.S.C. 11347 and existing collective bargaining agreements. It has not negotiated any employee protective arrangements. Southeast Kansas does not believe it is obligated to enter into an implementing agreement with its employees because they will not be adversely affected, and does not believe it will be responsible for MP employees.

Under our consolidation regulations, we must determine initially whether a proposed transaction is major, significant, or minor. The proposed transaction, involving a Class I and a Class II railroad, has no regional or national significance and will not result in a major market extension. Accordingly, we find the proposal to be a minor transaction under 49 CFR 1180.2(c). Because the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective on June 2, 1990.

Decided: June 19, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14746 Filed 6-25-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-83 (Sub-No. 10X)]

Maine Central Railroad Co. and Springfield Terminal Railway Co.—Abandonment and Discontinuance Exemption—Piscataquis and Penobscot Counties, ME

Maine Central Railroad Company (MC) and Springfield Terminal Railway Company (ST) have filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances* for MC to abandon and ST to discontinue service over MC's 29.32-mile line of railroad between milepost 139.66, at Dover-Foxcroft, and milepost 109.34, at Newport, in Piscataquis and Penobscot Counties, ME.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 26,

1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 6, 1990. Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 16, 1990, with Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representative: David H. Anderson, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment and discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 29, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 18, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14742 Filed 6-25-90; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision of environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, *4 I.C.C. 2d 164 (1987)*.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88-107]

Ekambaram Parameswaran, M.D. Revocation of Registration

On October 17, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Ekambaram Parameswaran, M.D. (Respondent) of Martin County Medical Clinic, Route 40, P.O. Box 784, Inez, Kentucky, proposing to revoke his DEA Certificates of Registration AP2551667 and AP136369, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Parameswaran's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Louisville, Kentucky on June 27 and 28, 1989.

On February 16, 1990, Judge Bittner entered her opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that the Administrator revoke Respondent's registration and that any pending applications for renewal of that registration be denied. On March 12, 1990, Respondent filed exceptions to the administrative law judge's opinion. On April 12, 1990, Judge Bittner transmitted the record of these proceedings, including the Respondent's exceptions, to the Administrator. The Acting Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter.

Respondent is a physician licensed to practice in West Virginia and Kentucky. In 1980, he opened the Martin County Medical Clinic in Inez, Kentucky. At some point, Respondent opened a second clinic in Warfield, Kentucky.

The administrative law judge found that in 1985, the West Virginia State Police conducted an investigation of Respondent's prescribing practices as a result of information they received while investigating allegations of illicit drug sales by members of a family in Kermit, West Virginia. Specifically, the police were advised that members of one family obtained Percodan, a Schedule II narcotic analgesic controlled substance, from welfare recipients who had been prescribed the drug by Respondent and another physician. As a result, a West Virginia State Trooper, while acting in an undercover capacity, went to Respondent's office on November 22, 1985. The office visit was recorded and a copy of the transcript was admitted as evidence at the hearing. The trooper told Respondent that he had headaches for about two years, off and on, and that he took Percodan a few times. The officer did not indicate that he suffered severe pain, nor did Respondent conduct any kind of physical examination. Respondent asked a few questions and then issued two prescriptions, one for thirty dosage units of Tylenol No. 4, a Schedule III controlled substance, and one for twenty dosage units of Percodan.

The administrative law judge further found that an Investigator with the Kentucky Cabinet for Human Resources, Drug Control Branch, conducted an investigation of Respondent in 1984. On November 29, 1984, an audit of selected controlled substances was conducted at Respondent's office located in Inez, Kentucky. The controlled substances selected were probably the most highly abused drugs in that area of the Commonwealth of Kentucky. The audit period extended from January 1, 1983 through November 29, 1984. The audit revealed unexplained shortages of 7,623 dosage units of Phentermine 30 mg.; 1,365 dosage units of Duradyne DHC; 55 ounces of Tussionex Suspension; and 20.5 times 20 ml. of meperidine injectable (generic form of Demerol injectable) 100 mg. per milliliter. The audit also showed overages of 977 dosage units of chloral hydrate 500 mg.; 6,010 dosage units of acetaminophen with codeine No. 3; 1,650 dosage units of Ativan 1 mg.; 3,171 dosage units of acetaminophen with codeine No. 4; 3,318 dosage units of Valium 5 mg.; 551 dosage units of Phendimetrazine 35 mg.; and 341 dosage units of Valium 10 mg. Since Respondent failed to take an opening inventory, as required by 21 CFR 1304.12, an initial inventory figure of zero was used. A "zero balance" initial inventory assumes that none of the audited substances were in stock at the beginning of the audit period. Therefore, the controlled substance shortages could actually have been greater and the overages could have been less. Another audit was conducted at Respondent's Inez office for the period between November 29, 1984 and May 6, 1986, which revealed minor shortages and overages.

A third audit was conducted at Respondent's Inez office for the period

between May 7, 1986 through September 16, 1987. The audit revealed the following unexplained shortages of controlled substances: 2,138 dosage units of Tylenol No. 4; 1,257 dosage units of Tylenol No. 3; 1,562 dosage units of Phentermine; and 251 dosage units of Talwin Nx. The audit also revealed unexplained overages of 910 dosage units of Didrex 50 mg.; 2,602 dosage units of Valium 5 mg.; and 1,749 dosage units of Valium 10 mg. Revised audit figures were prepared following verification with Respondent's suppliers which revealed additional purchases. The revised audit figures for the five products were as follows: Didrex, shortage of 4,064; Tylenol No. 4, shortage of 7,138; Valium 10 mg. shortage of 1,251; and phentermine, shortage of 2,562. Verification by Respondent's suppliers also disclosed overages of 149 Talwin Nx and 602 Valium 5 mg.

The Investigator also conducted an audit of controlled substances at Respondent's office located in Warfield, Kentucky. The audit period extended from May 8, 1986 through September 16, 1987. Using only Respondent's records, the audit results revealed unexplained shortages of controlled substances, including Didrex, Valium 5 mg. and 10 mg., and Phentermine. The audit also showed overages for Tylenol No. 3 and No. 4. However, revised audit figures were prepared following verification with Respondent's suppliers of controlled substances which revealed additional purchases. The revised audit figures revealed the following shortages: 9,072 dosage units of Didrex 50 mg.; 1,875 dosage units of Tylenol No. 3; 3,781 dosage units of Tylenol No. 4; 6,599 dosage units of Valium 5 mg.; 6,753 dosage units of Valium 10 mg.; 3,660 dosage units of Phentermine; and 338 dosage units of Talwin Nx. The unexplained shortages and overages from each audit show, at the very least, that Respondent failed to adequately maintain the records required by law to be kept completely and accurately.

The administrative law judge further noted that during the audits, the investigators found numerous drugs, both controlled and noncontrolled substances, which did not bear expiration dates or were not properly labelled. One bottle that had a manufacturer's label for one drug would contain another drug, with only the name of the drug, and no other information such as strength or expiration date, written on the bottle.

Additionally, at the request of the Kentucky Medical Board, a physician reviewed Respondent's medical charts for approximately 88 patients. The physician concluded that Respondent's prescribing practices were "excessive and inappropriate" in that Respondent prescribed inappropriate combinations of drugs, and prescribed controlled substances for an excessive period of time to certain patients. A review of Respondent's patient charts revealed that Respondent often prescribed Percodan, Tylenol No. 4, and Valium simultaneously. The physician testified that prescribing Percodan with Tylenol No. 4 is "inappropriate and excessive, and coupled with Valium certainly raise[s] the specter of abuse." Concerning specific patients, the physician noted that Respondent inappropriately prescribed Fastin, a brand name for Phentermine, which is used for weight control, for a patient diagnosed as suffering from both anxiety and angina, and for that same patient Respondent inappropriately prescribed combinations of Percodan with Tylenol No. 4 and Valium with Soma. In addition to the physician's testimony regarding specific patients and inappropriate treatment, he also provided a written analysis of the 88 charts that he reviewed. The charts revealed that almost 70 of the 88 patients reviewed were diagnosed as having "arthritis," and that for approximately 49 of these patients Respondent prescribed both Percodan and Tylenol No. 4. Most of these patients also received at least one other controlled substance from Respondent regularly. Further, at least 11 other patients also received Percodan and Tylenol No. 4 simultaneously. In his review of these patients' records, the physician characterized Respondent's prescribing practices as "excessive," and in some instances as "prolonged" and/or "inappropriate." The physician testified that he was aware of no medical condition which would justify the quantities of the controlled substances prescribed or the frequency with which Respondent issued the prescriptions.

As a result of the foregoing, the Kentucky Medical Board filed a complaint against Respondent on October 15, 1987, charging that while acting alone or in complicity with Dr. Chanmugram, Respondent inappropriately prescribed, dispensed or administered controlled substances to 85 patients; that he prescribed, dispensed, or administered controlled substances to another patient without a physical examination and with the knowledge that the drugs were likely to be used for other than a medical purpose; provided controlled substances to the undercover trooper for other than a medical purpose; and that controlled substances were maintained in improper containers, mislabelled, and outdated. On October 22, 1987, the Medical Board issued an Order of Temporary Restriction suspending Respondent's controlled substance handling authority. A hearing was scheduled for April 11, 1989. Prior to that date, Respondent and the Medical Board entered into a proposed agreement. However, the Medical Board on April 20, 1989, voted to defer action pending the hearing in the instant proceeding. On May 15, 1989, the Jefferson Circuit Court ordered that the Complaint and Order of Temporary Restriction be dismissed unless the Medical Board either accepted the proposed agreement or held an immediate evidentiary hearing. As a result, the Medical Board lifted the restriction.

On February 26, 1988, in Martin County, Kentucky, Respondent was indicted for trafficking in a controlled substance by dispensing and/or prescribing Percodan, Didrex, Tylenol No. 3 and No. 4, Valium and Phentermine without good medical reason. On November 9, 1988, Respondent entered into a plea agreement in which he pled guilty to one count of possession of Elexer Phenergan with Codeine, a prescribed drug not in its proper container, a misdemeanor. The Court sentenced Respondent to ninety days in the county jail, said sentence probated for the period of one year, subject to Respondent's complete performance of the conditions contained in the plea agreement. As part of the plea agreement, Respondent agreed that he will not practice medicine, nor reside, within a one hundred mile radius of Inez, Kentucky for a specified period.

At the DEA administrative hearing, Respondent testified on his own behalf and claimed that he never prescribed or dispensed any medication for other than legitimate medical purposes and that he did not think he had been negligent in his handling of controlled substances. Several patients also testified on Respondent's behalf. However, none of these witnesses were in a position to make an adequate assessment of Respondent's ability to properly handle controlled substances.

With respect to the shortages and overages of controlled substances, Respondent proffered no credible evidence to refute the audits results. He merely asserted that an employee was responsible for ordering and maintaining controlled substances and further that there was a burglary at the Warfield office on September 9, 1987. However,

for the reasons stated in the administrative law judge's opinion, the Acting Administrator finds Respondent's assertions to be without merit. The administrative law judge concluded that Respondent's experience in dispensing, prescribing and administering controlled substances and his failure to account for substantial shortages of controlled substances indicate that Respondent's registration is inconsistent with the public interest. The Judge recommended that Respondent's DEA registration be revoked. The Acting Administrator adopts the opinion and recommended ruling of the administrative law judge.

In determining whether a registration would be inconsistent with the public interest, the Administrator must consider the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(f).

The Acting Administrator is not required to make findings with respect to all of the factors enumerated above. The Acting Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances in each case. See *David E. Trawick, D.D.S.*, Docket No. 86–69, 53 FR 5326 (1988); *England Pharmacy*, 52 FR 1674 (1987); *Paul Stepak, M.D.*, 51 FR 17556 (1986); *Henry J. Schwartz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989).

In this case, the second, fourth and fifth factors are applicable in considering whether Respondent's registration is inconsistent with the public interest. With respect to these factors, the administative record is replete with examples of Respondent's violations relating to controlled substances. Respondent failed to take an opening inventory of controlled substances in violation of 21 CFR 1304.12. Respondent failed to maintain complete and accurate records of all controlled substances received, distributed or otherwise disposed of, as required by 21 U.S.C. 827(a)(3) and 21 CFR 1304.21(a). Further, the results of three separate audits show that Respondent could not account for significant quantities of controlled substances. The combined results from the two audits conducted in September 1987, revealed shortages of approximately 48,000 dosage units of various controlled substances, including Didrex, Tylenol No. 3, Tylenol No. 4, Valium and Phentermine. Additionally, the evidence shows that Respondent failed to prescribe controlled substances in a careful and prudent manner. At best, his prescribing practices could be characterized as excessive and inappropriate. At worst, he was responsible for diverting thousands of dosage units of controlled substances from legitimate medical use into the hands of scores of drug abusers. His terrible prescribing practices, coupled with the huge shortages and recordkeeping violations, demonstrate a total lack of regard both for the Federal controlled substance laws and regulations and for the health and welfare of Respondent's patients. The Acting Administrator finds that Respondent's continued registration would be contrary to the public interest and would pose a continuing threat to the health and safety of his community. Thus, his DEA registration must be revoked.

In his exceptions to the administrative law judge's opinion and recommended ruling, Respondent admits that he has had a serious accountability problem with controlled substances as reflected in the 1987 audit results, but argues that this should not serve as a basis for complete revocation of his DEA registration. Respondent also argues that a determination should be made that the medication he prescribed "was as a result of poor prescription practices not in keeping with good medical practices but nevertheless in accordance with good intentions." Therefore, his DEA registration should be restricted, not revoked. The Acting Administrator is not persuaded by any of Respondent's arguments. His exceptions are totally without merit and do not provide justification for the retention of Respondent's DEA registration in any schedule or under any conditions.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates and Registration AP7136369 and AP2551667, previously issued to Ekambaram Parameswaran, M.D. be, and hereby are, revoked. The Acting Administrator further orders that any pending applications for renewal of said registrations be, and they hereby are, denied.

This order is effective July 26, 1990.

Dated: June 19, 1990.

Terrence M. Burke,

Acting Administrator.

[FR Doc. 90–14737 Filed 6–25–90; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Material Safety Data Sheet Comprehension, Survey

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of expedited information collection clearance under the Paperwork Reduction Act.

SUMMARY: The Occupational Safety and Health Administration (OSHA), Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR 1320 (53 FR 16618, May 10, 1988)), is submitting a request for approval to the Office of Management and Budget for a survey to support the assessment of worker's comprehensibility of Material Safety Data Sheets (MSDSs), under a Senate request that OSHA evaluate its Hazard Communication rule. This will be a one time only survey.

DATE: OSHA has requested an expedited review of this submission under the Paperwork Reduction Act; this OMB review has been requested to be completed by July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the survey or reporting burden should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., room N–1301, Washington, DC 20210 ((202) 523–6331).

Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on the informaton collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Average Burden Hours/Minutes Per Response: 0.39 hours.

Frequency of Response: (one time only).

Number of Respondents: 327.

Annual Burden Hours: (one time only).

Affected Public: 327.

Respondents Obligation to Reply: Voluntary.

Signed at Washington, DC, this 21st day of June 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90-14783 Filed 6-25-90; 8:45 am]

BILLING CODE 4510-26-M

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics.

Consumer Expenditure Data Users Survey.

One-time survey.

Individuals or households.

2608 responses; 198 hours; 17 minutes per respondent.

Form No.	Affected public	Respondents	Frequency	Average time per response
BLS-8800	Individuals	700	One-time	11 minutes.
BLS-8801	Individuals	600	One-time	1 minute.
BLS-8802	Individuals	575	One-time	2 minutes.
BLS-8803	Individuals	350	One-time	7 minutes.

198 total hours.

The purpose of the Consumer Expenditure Data Users Survey is to evaluate the Consumer Expenditure Survey (CE) publications, public use tapes and diskettes. The survey results will provide systematic knowledge of analysts' needs and experiences with the CE data. This information is expected to help BLS meet the needs of CE users when preparing CE products.

Signed at Washington, DC, this 21st day of June 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90-14784 Filed 6-25-90; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

[TA-W-24,012]

Dismissal of Application for Reconsideration; Ampex Corp.; Colorado Springs, CO

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Ampex Corporation, Colorado Springs, Colorado. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-24,012; Ampex Corporation, Colorado Springs, Colorado (June 19, 1990).

Signed at Washington, DC, this 20th day of June 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-14785 Filed 6-25-90; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for

adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 6, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 6, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 18th day of June 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AT&T Clarksburg, WV (Workers)	Clarsburg, WV	6/18/90	5/03/90	24,517	Switching Systems.
AT&T Watertown Ser. Center (CWA)	Watertown,MA	6/18/90	6/07/90	24,518	Telecommunication Equip.
Atlantic Pajama Co. (Workers)	New York, NY	6/18/90	6/05/90	24,519	Coats.
Boston Gear (USAU)	N. Quiney, MA	6/18/90	5/30/90	24,520	Gears.
Cone Mills Corp. (Workers)	Greenville, SC	6/18/90	5/05/90	24,521	Fabric.
Conifer Pacific Plywood (Workers)	Willimina, OR	6/18/90	6/01/90	24,522	Plywood.
Extel Corp. (Workers)	Northbrook, IL	6/18/90	6/06/90	24,523	Telecommunication Equip.
General Electric (Workers)	Morristown, TN	6/18/90	6/06/90	24,524	Fuse Boxes.
Hilltop Clothing, Inc. (ACTWU)	Brownsville, PA	6/18/90	5/22/90	24,525	Mens' Sportswear.
Jos. Markovits & Son (UE)	Totowa, NJ	6/18/90	6/05/90	24,526	Artifical Flowers.
Loren Cook, Co. (SMWIA)	Berea, OH	6/18/90	6/05/90	24,527	Exhaust Fans.
Louisiana Operators, Inc. (Workers)	Lafayette, LA	6/18/90	5/18/90	24,528	Oil & Gas.
Magnetek Universal Electric (Company)	Owosso, MI	6/18/90	5/29/90	24,529	Electric Motors.
Michele Bags, Inc. (Workers)	New York, NY	6/18/90	6/06/90	24,530	Ladies' Handbags.
OMC-Milwaukee (USW)	Milwaukee, WI	6/18/90	6/06/90	24,531	Lawn Care Equip.
Pat Fashions, Inc. (ILGWU)	New York City, NY	6/18/90	6/08/90	24,532	Ladies' Sportswear.
Pennsylvania Optical (POWA)	Reading, PA	6/18/90	6/05/90	24,533	Reading Glasses.
Prophecy Corp. (Company)	Carrollton, TX	6/18/90	6/05/90	24,534	Ladies' Sportwear.
Superwear Mfg. Co., Inc. (IBT)	Newark, NJ	6/18/90	6/08/90	24,535	Bedding Items.
Syroco, Inc. (Workers)	Syracuse, NY	6/18/90	5/10/90	24,536	Furniture & Accessories.
Tipperary Corp. (Company)	Denver, CO	6/18/90	6/05/90	24,537	Oil & Gas.
Todd Shipyard Corp. (Workers)	Galveston, TX	6/18/90	6/05/90	24,538	Shipbuilding.
Yale Material Handling Corp. (USWA)	Flemington, NJ	6/18/90	5/31/90	24,539	Fork Lifts & Parts.

[FR Doc. 90-14786 Filed 6-25-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20-703 et al.]

Revised Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Health Tex Inc.

In the matter of

TA-W-20,703 Diamond Hill Plant, Cumberland, RI
TA-W-21, 519 Warehouse & Distribution Ctr, Cranstron, RI
TA-W-23, 646 88 Martin Street, Cumberland, RI
TA-W-24, 094 Warehouse & Distribution Ctr, Cumberland, RI

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued Certifications Regarding Eligibility to Apply for Worker Adjustment Assistance on June 29, 1988 for workers at the Diamond Hill plant in Cumberland, Rhode Island (TA-W-20, 703); January 24, 1989 for workers at the Warehouse & Distribution Center in Cranston, Rhode Island (TA-W-21, 519); February 16, 1990 for workers at 88 Martin Street, Cumberland, Rhode Island (23, 646); and on May 4, 1990 for workers of Cumberland Warehouse and Distribution Center, 147 Martin Street, Cumberland, Rhode Island (TA-W-94).

Certifications for workers at the Diamond Hill Plant in Cumberland, Rhode Island, (TA-W-20, 703); the Warehouse and Distribution Center in Cranston, Rhode Island, (TA-W-21, 519); the 88 Martin Street facility in Cumberland, Rhode Island (TA-W-23, 646) and the Warehouse and Distribution Center in Cumberland, Rhode Island (TA-W-24, 094) were published in the Federal Register on July 12, 1988 (53 FR 26329); March 29, 1989 (54 FR 12971) March 8, 1990 (55 FR 8618) and May 30, 1990 (55 FR 21955), respectively.

On the basis of additional information that some workers were employed by more than one of the certified plants in the 52 weeks prior to their layoff, the Office of Trade Adjustment Assistance, on its own motion, revised the certifications to put the following plants under a single certification. This permits workers to use their combined time in adversely affected employment for establishing eligibility for trade readjustment allowance (TRA) payments.

The separate certifications applicable to Health-Tex workers at the Diamond Hill Plant in Cumberland, Rhode Island; the Cranston Warehouse and Distribution Center, Cranston, Rhode Island; the 88 Martin Street Facility, Cumberland, Rhode Island; and the Cumberland Warehouse and Distribution Center, 147 Martin Street, Cumberland, Rhode Island are hereby revised as follows:

All workers at the following facilities of Health-Tex, Inc., who became totally or partially separated from employment on or after the indicated impact dates are eligibile to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

TA-W-	Plant	Impact date
20,703	Diamond Hill Plant, Cumberland, R.I.	May 16, 1987.
21,519	Wholesale & Distr Ctr. Cranston, R.I.	Oct. 17, 1987.

TA-W-	Plant	Impact date
23,646	88 Martin St. Facility, Cumberland, R.I.	Nov. 14, 1988.
24, 094	147 Martin St. Facility, Cumberland R.I.	Feb. 15, 1989.

The expiration and termination dates in the original certifications remain unchanged.

Signed at Washington, DC, this 15th day of June 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-14787 Filed 6-25-90; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period June 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,262; M.V.D. T/A Olympic Jr., Newark, NJ

TA-W-24,280; Baytech, Inc., Midland, TX

TA-W-24,263; Mercury Stainless, Inc., Massillon, OH

TA-W-24,249; Firestone Industrial Products Co., Noblesville, IN

TA-W-24,261; Ligia Fashions, Inc., Newark NJ

TA-W-24,231; Aloha Shake, Pacific Beach, WA

TA-W-24,184; James River-Mass Mill #8, 701 Westminster St., Fitchburg, MA

TA-W-24,282; Bralco Foundry, Inc., Seattle, WA

TA-W-24,276; The Young American Clothing Co., Newark, NJ

TA-W-24,110; Unitrode Corp., Westbrook, ME

TA-W-24,329; B & V Coats, Inc., Newark, NJ

TA-W-24,223; Trangle Circuits of Connecticut, Danbury, CT

TA-W-24,176; Diebold, Inc., Canton, OH

TA-W-24,169; W.S. Libbey Co., Lewiston, ME

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-24,272; TRW, Inc., Knoxville, TN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,303; Union Drilling (A Div of Equitable Resources Exploration Co.) Centerville, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24,311; Caltex Petroleum Corp., Irving, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,308; Burlington Industries, Inc., Dublin Terminal, Dublin, VA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,279; Arrow Elastic Corp., Springfield, MA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,281; Bourns, Inc., Ames, IA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,299; Oster-Sunbeam Co., McMinnville, TN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,147; Electro-Wire Products of Texas, Owosso, MI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24,287; Demco, Oklahoma City, OK

U.S. imports of machinery negligible.

TA-W-24,321; PBI Machine & Welding, Inc., Sweetwater, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,370; Dave Holcomb Logging, McCleary, WA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,275; Unisys Corp., Electronic & Information System Group of The Defense Systems Operations, St. Paul, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,248; Fairfield Textiles, Inc., Fairfield, NJ

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally to partially separated as required for certification.

TA-W-24,270; Spectrum Polytronics, Inc., Tucson, AZ

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally to partially separated as required for certification.

TA-W-24,314; Greenville Manufacturing, Greenville, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,268; Racal Data Communications, Inc., Racal-Milgo Div., Sunrise, FL

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally to partially separated as required for certification.

TA-W-24,242; Compuscan, Inc., Bloomfield, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,159; Murata Weidemann, King of Prussia, PA

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA-W-24,284; Chevron, Inc., Grants, NM

U.S. imports of uranium declined absolutely in the first half of 1989 compared to the same period of 1988.

TA-W-24,304; Westinghouse Electric Corp., Pittsburgh, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,278; Applied Resource Management, Hoquiam, WA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,339; Fashionland, Inc., Jersey City, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24,340; Fashionland Production, LTD, Jersey City, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-24,296; L.C.I Industries, Inc., Newark, NJ

A certification was issued covering all workers separated on or after March 29, 1989.

TA-W-24,218; The Proctor & Gamble Co., (The Proctor & Gamble Paper Products Co), Cheboygan, MI

A certification was issued covering all workers engaged in employment related to the production of Always product line separated on or after January 1, 1990.

TA-W-24,283; Garland Corp., Bristol Knitting Div., Fall River, MA

A certification was issued covering all workers separated on or after April 4, 1989.

TA-W-24,290; Garland Corp., Brockton MA

A certification was issued covering all workers separated on or after April 4, 1989.

TA-W-24,291; Garland Corp., Garland Distribution Center, Fall River, MA

A certification was issued covering all worker separation on or after April 4, 1989.

TA-W-24,301; TDC Supply, Inc., San Angelo, TX

A certification was issued covering all workers separated on or after March 30, 1989.

TA-W-24,302; Tucker Drilling Co., Inc., San Angelo, TX

A certification was issued covering all workers separated on or after March 30, 1989.

TA-W-24,272; Teal Cedar Products, Burlington, WA

A certification was issued covering all workers separated on or after March 23, 1989.

TA-W-24,215; North Hoquiam Cedar Products, Hoquiam, WA

A certification was issued covering all workers separated on or after March 21, 1989.

TA-W-24,260; The Lee Apparel Co., Inc., Jasper, GA

A certification was issued covering all workers separated on or after March 26, 1989.

TA-W-24,253; Goodall Rubber Co., Trenton, NJ

A certification was issued covering all workers separated on or after March 26, 1989.

TA-W-24,341; Ferro Corp., Huron, OH

A certification was issued covering all workers separated on or after March 1, 1989.

TA-W-24,257; John Roberts, Bidderford, ME

A certification was issued covering all workers separated on or after March 30, 1989

TA-W-24,228; Westend Cedar, Clallam Bay, WA

A certification was issued covering all workers separated on or after March 9, 1989.

TA-W-24,232; Amity Casuals/ Embroidery Management, Inc./ S.M.C. Corp., Belleville, NJ

A certification was issued covering all workers separated on or after March 30, 1989.

TA-W-24,227; WI Forest Products, Peshastin, WA

A certification was issued covering all workers separated on or after March 14, 1989.

TA-W-24,259; Lee Apparel Corp., Guntersville, AL

A certification was issued covering all workers separated on or after March 29, 1989.

TA-W-24,258; Kellwood Co., Altus, OK

A certification was issued covering all workers separated on or after April 9, 1989.

TA-W-24,250; Garrett Automobile, Los Angeles, CA

A certification was issued covering all workers separated on or after March 19, 1989.

TA-W-24,277; AVX Tantalum Corp., Biddeford, ME

A certification was issued covering all workers separated on or after April 2, 1989.

TA-W-24,111; Winters Industries, Canton, OH

A certification was issued covering all workers separated on or after February 21, 1989.

TA-W-24,112; Winters Industries, Alliance, OH

A certification was issued covering all workers separated on or after February 21, 1989.

TA-W-24,240; City Design, Inc., Newark, NJ

A certification was issued covering all workers separated on or after March 28, 1989.

TA-W-24,140; Any-Sew, Inc., Hialeah, FL

A certification was issued covering all workers separated on or after March 1, 1989.

TA-W-24,289; Franette Manufacturing Co., Inc., West New York, NJ

A certification was issued covering all workers separated on or after March 29, 1989 and before December 31, 1989.

TA-W-24,154; Harve Benard, Secaucus, NJ

A certification was issued covering all workers separated on or after March 1, 1989.

TA-W-24,319; Northern Geophysical of America, Englewood, CO

A certification was issued covering all workers separated on or after March 22, 1989.

TA-W-24,316; Hercules, Inc., Radford Army, Ammunition Plant, Radford, VA

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-24,310; Calmor, Inc., Adairsville, GA

A certification was issued covering all workers separated on or after April 12, 1989.

TA-W-24,312; Chicopee Undergarment Co., Chicopee, MA

A certification was issued covering all workers separated on or after April 10, 1989.

TA–W–24,307; Arrow Cedar Co., Concrete, WA

A certification was issued covering all workers separated on or after April 9, 1989.

TA–W–24,318; North Star Directional Drilling Co., Lafayette, LA

A certification was issued covering all workers separated on or after June 1, 1989.

TA–W–24,285; Climax Molybdenum Co., Tungsten Plant, Fort Madison, IA

A certification was issued covering all workers separated on or after April 3, 1989.

TA–W–24,320; O & K Trojan, Inc., Batavia, NY

A certification was issued covering all workers separated on or after April 12, 1989.

TA–W–24,293; High Q Manufacturing Co., Atlanta, MI

A certification was issued covering all workers separated on or after January 1, 1989.

TA–W–24,298; Lennon Wallpaper, Shorewood, IL

A certification was issued covering all workers separated on or after March 31, 1989 and before January 1, 1990.

TA–W–24,246; Dunn & McCarthy, Inc., Auburn, NY

A certification was issued covering all workers separated on or after March 30, 1989.

TA–W–24,247; Eltsac Apparel, Inc., Long Branch, NJ

A certification was issued covering all workers separated on or after March 27, 1989.

I hereby certify that the aforementioned determinations were issued during the month of June 1990. Copies of these determinations are available for inspection in room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 19, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90–14788 Filed 6–25–90; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the National Commission On AIDS.

DATE AND TIME:

July 17, 1990; 9 a.m.–5 p.m.
July 18, 1990; 9 a.m.–5 p.m.
July 19, 1990; 9 a.m.–5 p.m.

PLACE:

July 17, 1990; Potowmack Landing, George Washington Memorial Parkway at Washington Sailing Marina, Alexandria, VA 22314.
July 18–19, 1990; Interstate Commerce Commission, Hearing room B, 12th and Constitution Avenue, NW., Washington, DC 20423.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254–5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: On July 17th the Commission will meet to discuss the plans for fiscal year 1991. On July 18th and 19th the Commission will hold a hearing on the issues of personnel and the workforce in the HIV epidemic. A variety of public witnesses will address recruitment, retention, education, and training of health care providers and volunteers.

Maureen Byrnes,

Executive Director.

[FR Doc. 90–14668 Filed 6–25–90; 8:45 am]

BILLING CODE 6820–CN–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on July 12, 1990, from 9 a.m.–5:30 p.m. in Room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 19, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–14687 Filed 6–25–90; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear Corp.; and Jersey Central Power & Light Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 140 to Provisional Operating License No. DPR–16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment is effective as of the date of issuance.

The amendment revises Technical Specification 3.3.F.2. Specifically, the change would include limitations on operation with an idle recirculation loop which is isolated. A revision to section 3.3 and 3.10 bases would also be needed to reflect this change.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the

Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 10, 1990 (55 FR 13341). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 19, 1990, (2) Amendment No. 140 to License No. DPR–16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland, this 18th day of June 1990.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–14734 Filed 6–25–90; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28131; File No. SR–AMEX–90–10]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the Deutscher Aktienindex (DAX)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 8, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing, under section 106 of the Amex Company Guide, to list index warranties based on the Deutscher Aktienindex ("DAX"), a capitalization-weighted index of 30 German stocks trading on the Frankfurt Stock Exchange ("FSE").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In October 1988, the Commission approved amendments to section 106 (Currency and Index Warrants) of the Amex Company Guide and other Amex rules to permit the listing of index warrants based on established market indices, both foreign and domestic.[1]

In approving the aforementioned amendments, the Commission expressed concern over the impact of additional index products on U.S. markets, and stated that the Amex would be required to submit for Commission approval any specific index warrants that it proposed to trade. Consistent with the Index Approval Order, the Amex is now proposing to list index warrants based on the DAX Index, an internationally recognized, capitalization-weighted index consisting of 30 leading stocks listed and traded on the FSE. The DAX Index is calculated by the FSE and is updated on a continuous basis. The stocks included on the DAX are among the largest German corporations, whose shares are among the most actively traded German issues.

The Amex represents that such warrant issues will conform to the listing guidelines under section 106 of the Amex Company Guide, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in section 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

DAX index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the DAX Index has declined below a pre-stated cash settlement value. Conversely, the holder of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the DAX Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The Amex has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Exchange Rule 411, Commentary .02 renders the options suitability standard in Exchange Rule 923 applicable to recommendations regarding index warrants. The Exchange also recommends that index warrants be sold only to options-approved accounts. Exchange Rule 421, Commentary .02 required a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day the order is entered. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the DAX Index.

[1] *See* Securities Exchange Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988) ("Index Warrant Approval Order").

In the Index Warrant Approval Order, the Commission noted that, with respect to foreign index warrants, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks. In this regard, the Amex is actively engaged in discussions with representatives of the FSE to establish an appropriate means to accomplish such information sharing.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose an inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Recieved from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14757 Filed 6-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28132; File No. SR-CBOE-90-13]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Trading in Certain Unit Investment Trusts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 25, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend certain Exchange rules to permit the trading of unit investment trusts and interests in or relating to any such trust. The text of the proposed rule change is available at the Office of the Chairman of CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE previously has filed rules with the Commission that would authorize the trading on the Exchange of stocks, warrants (including currency and index warrants), and other securities instruments and contracts, on either a listed or an unlisted basis.[1] Those rules, which are presently pending before the Commission, would add a new chapter XXX to the rules of the Exchange and generally would supplement the CBOE's existing rules in chapters I through XIX with respect to stock, warrants and other securities. This rule filing amends the proposed rules set forth in File No. SR-CBOE-90-08 in certain minor respects, as described below.

The current proposal also expands the scope of proposed Chapter XXX specifically by authorizing the trading on the CBOE of "UIT interests," to be defined in proposed paragraph (pp) of Exchange Rule 1.1 to mean any share, unit, or other interest in or relating to a unit investment trust, including any component resulting from the subdivision or separation of such an interest. The current proposal adds Interpretation and Policies .01 to Exchange Rule 1.1 to make it clear that interests in unit investment trusts sponsored by SuperShare Services Corporation, known as SuperShares and SuperUnits are "UIT interests" within the meaning of the Rules of the Exchange.[2]

The current proposal is essentially a refinement of the proposed rules set forth in File No. SR-CBOE-90-08. Specifically, the current proposal would amend Exchange Rule 6.3 to authorize Floor Officials, determining whether to halt trading in an index UIT interest, to consider whether trading in index options has been halted pursuant to the

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[1] File No. SR-CBOE-90-08.

[2] The proposed Interpretation and Policy .01 further elaborates upon the definition of UIT interest by providing that there are four types of SuperShares (Appreciation SuperShares, Priority SuperShares, Protection SuperShares, and Income and Residual SuperShares) and two types of SuperUnits (Index Trust SuperUnits and Money Market Trust SuperUnits). The CBOE intends to trade SuperShares. The American Stock Exchange, Inc. has filed a proposed rule change to trade SuperUnits (*See*, SR-Amex-90-06).

provisions of Exchange Rule 24.7, which is the same standard that, under SR-CBOE-90-08 would apply to index warrants. Similarly, the current proposal amends proposed Interpretation and Policies .01 to Exchange Rule 6.3A[3] to specify that, in the event of a halt in the trading of all stock on the New York Stock Exchange, trading is to be halted in index UIT interests in a manner similar to any halt in the trading of index options.

Exchange Rule 8.5, relating to the Letters of Guarantee that must be obtained by each Market-Maker trading on the floor of the Exchange, is amended by the current proposal to permit a Market-Maker to obtain separate Letters of Guarantee for the securities traded subject to the rules in proposed Chapter XXX.

Exchange Rule 8.8 generally prohibits a member from acting in both a principal and agency capacity on the same business day with respect to any of the securities traded at a given station on the floor of the Exchange. Under SR-CBOE-90-08, the CBOE has proposed to amend Exchange Rule 8.8 to make that restriction applicable to any of the securities traded subject to the rules in proposed chapter XXX, as well as any security that is related to such a security. The current proposal amends proposed Interpretation and Policies .02 to Exchange Rule 8.8 to add index UIT interests to the previously proposed list of index-based securities (index options, market baskets, index participations, and index warrants) that are deemed to be related to each other where those securities are based on either the Standard & Poor's ("S&P") 100 Stock Price Index or S&P 500 Stock Price Index, so that a member could not act as a Market-Maker and as a Floor Broker in any of the foregoing securities on the same business day.

The Introduction to proposed Chapter XXX would be amended to make it clear that the proposed rules in that Chapter are applicable to the trading of UIT interests in the same manner as those rules would apply with respect to stocks and warrants (*i.e.*, the proposed rules in proposed chapter XXX are in some instances supplemented or replaced by rules in chapters I through XIX).

The current proposal amends proposed rule 30.4 [4] to specify that the hours of trading for UIT interests shall be the same as the hours of trading for index options. The current proposal also adds Interpretation and Policies .01 to proposed rule 30.10 to state that the CBOE Board of Directors has determined that the unit of trading in SuperShares shall be 100 SuperShares. Further, the current proposal amends proposed rule 30.12 to provide that the types of orders defined therein (*e.g.*, "day orders," and "at the close" orders) may be applicable to trading in UIT interests.

The current proposal amends proposed Rule 30.41, relating to Market-Maker margin requirements, to describe with greater specificity the positions in members' accounts which may be carried on a margin basis that is satisfactory to the member and the carrying broker. Among other things, the proposed amendments to proposed rule 30.41 will provide "good faith" margin treatment for positions in SuperShares and SuperUnits where a CBOE member makes a market in SuperShares.

The current proposal amends proposed Rule 30.50, relating to doing business with the public, by amending paragraph (h) relating to the supervision of customer accounts. As proposed in SR-CBOE-90-08, rule 30.50(h) would have made the supervision standards of Exchange rule 9.8 applicable to the trading of stocks and other securities. Among other things Exchange Rule 9.8 requires member organizations to appoint Senior Registered Options Principals and Compliance Registered Options Principals to perform certain of the supervisory functions contemplated by that Rule. The Exchange believes that if the provisions of Exchange Rule 9.8 were to apply to securities other than options, CBOE member organizations that currently assign responsibility for the supervision of stock and other non-options transactions to employees that are not "options-qualified" would be required to reassign personnel and realign their internal procedures before accepting customer orders for the trading on the CBOE of stock and any other securities other than options. Accordingly, the current proposal amends proposed rule 30.50(h) to specify appropriate supervisory standards for the securities traded subject to the rules in proposed chapter XXX, but which will not require the appointment of an Options Principal.

The current proposal also adds an Interpretation and Policies .03 to proposed rule 30.50 which provides that customers should be provided with an explanation of any special characteristics and risks attendant to trading UIT interests. The Exchange will circulate to its membership information describing any such characteristics and risks before trading commences in a UIT interest.

Proposed Interpretation and Policies .03 also provides that before a member organization, or an officer, partner or employee of that member organization recommends a transaction in the component securities resulting from the subdivision or separation of any UIT interest or in units that may be divided into such component securities, such member organization, officer, partner or employee should make a determination that such component securities or units are not unsuitable for the customer, and should have a reasonable basis for believing that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and special characteristics, and is financially able to bear the risks, or the recommended transaction. This differs somewhat from the standard for option transactions set forth in existing Exchange Rule 9.9. The Exchange believes, however, that recommendations relating to UIT interests can reasonably be subject to a different standard because of the differing characteristics of UIT interests and options. Thus, Interpretation and Policies .03 is intended to provide the person making the recommendation with some flexibility in the application of these requirements in view of the nature of the recommendation, the characteristics of the particular UIT interest that has been recommended, and the investment objectives, financial situation, and needs of each customer.

The current proposal adds a new rule 30.51 which establishes minimum margin requirements for customers trading in SuperShares. Under this proposed Rule, the minimum initial margin for a long customer position in SuperShares would be 50% of the current market value of any long SuperShares in a customer margin account; the minimum initial margin for any short position in SuperShares would be 50% of the current market value of the short position plus 100% of the sale proceeds. (For purposes of the proposed Rule, "current market value" is to be defined as the total cost or net proceeds of the SuperShare transaction on the day the SuperShare position was purchased or sold. At any other time, current market value will be equal to the closing price of that SuperShare position on the CBOE.) The minimum customer maintenance margin requirements would be set at (i) 25% of the current market value of all long SuperShare or 100% of current market value, whichever is greater, for each SuperShare short in

[3] Interpretation and Policies .01 is proposed under SR-CBOE-90-13.

[4] Rules 30.4, 30.10, 30.12, 30.41, and 30.50 are proposed under SR-CBOE-90-08.

the account which has a current market value of less than $5.00, plus (iii) $5.00 per SuperShare or 30% of the current market value of $5.00 or more.

The CBOE, in SR–CBOE–90–08, has submitted for Commission approval rules which establish listing standards and procedures. The current proposal amends those proposed Rules to add provisions specifically relating to UIT interests. In particular, the current proposal amends proposed rule 31.5 to establish standards for the original listing of UIT interests. Similarly, the current proposal amends proposed rule 31.94 to establish standards for the suspension of trading in and delisting of any listed UIT.

The proposed rule change is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: June 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14760 Filed 6–25–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28125; File No. SR–PHILADEP–90–02]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Philadelphia Depository Trust Co., Inc. Relating to an Amendment to Its Schedule of Charges for Withdrawals of Certificates by Participants

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 30, 1990, the Philadelphia Depository Trust Co., Inc. ("PHILADEP" or "Depository") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends PHILADEP's schedule of charges for withdrawals of certificates by participants. PHILADEP proposes to increase its service charge for withdrawals of certificates in nominee name from $8 per withdrawal to $12.75 for such service. All other fees and charges on the schedule will remain the same.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed service change increase is to amend the Depository's Schedule of Charges respecting withdrawals of certificates in PHILADEP's nomainee name. This service is the physical withdrawal of a certificate of a specific CUSIP for a specific number of shares. The withdrawal is classified as a "street withdrawal" because the securities being sent to the Depository's participant are generally registered in the Depository's nominee name, PHILADEP and Co.

The increased service charge will better cover PHILADEP's costs in providing this service. It should be noted that PHILADEP and others in the securities industry attempt to maintain to the extent possible all securities in book-entry form. Full book-entry processing allows for less expensive automated book-entry delivery and settlement services. Physical withdrawals of certificates in the Depository's nominee name require manual processing and at times cause additional work if the certificates remain in nominee name after a record date because of the need to track and process dividend claims. The manual processing and relatively small volume of transactions collectively contribute to the cost of the service.

The proposed increase of a particular charge is consistent with section 17A(b)(3)(D) of the Act in that it provides for equitable allocation of

[5] 17 CFR 200.30–3(a)(12) (1989).

reasonable dues, fees and other charges amongst the Depository's participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not believe that the proposed increase of a particular service charge will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on this particular service charge increase have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder because the proposed rule change is a change in the clearing agency's fees. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PHILADEP–90–02 and be submitted by July 17, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 15, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14761 Filed 6–25–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28130; File No. SR–PHLX–90–08]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Warrants

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 4, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX hereby submits a proposed rule change to provide listing requirements and procedures for the trading of index warrants on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] On May 17, 1990, the PHLX amended its proposal to provide that the Exchange's options suitability and discretionary account rules would be applicable to trading in index warrants. *See* letter from William W. Uchimoto, General Counsel, PHLX, to Thomas Gira, Branch Chief, Options Regulation, Commission, dated May 17, 1990.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX is proposing to list index warrants, which will be direct, unsecured obligations of their issuer, registered with the Commission and subject to cash settlement in U.S. dollars during terms ranging from one to five years. The PHLX believes index warrants will provide a hedge on the composite marketplace as reflected in the index, and, accordingly, will serve as another strategic investment opportunity for investors.

Upon exercise, or at the warrant's expiration date if not exercisable prior to such date, the holder of a warrant resembling a put option would receive payment in U.S. dollars to the extent that the underlying index has declined below a pre-stated cash settlement value. Conversely, the holder of a warrant resembling a call option, would receive payment in U.S. dollars to the extent that the index has increased above the pre-stated cash settlement value. Warrants that are "out-of-the-money" at the end of the stated term will expire worthless.

The PHLX intends to list both American style warrants, which can be exercised throughout their term, as well as European style warrants, which can only be exercised on their expiration date. Only established market indexes will be used as a basis for index warrants. When an index is based on securities traded primarily on a foreign exchange, the PHLX shall effect a surveillance agreement with that foreign exchange respecting information sharing concerning the trading in the underlying securities of the index prior to permitting the trading of any warrant based on that index.

Due to the unique characteristics of such index warrants, the PHLX will recommend to its members and member organizations that the special characteristics and risks attendant to trading index warrants, including any limitations on exercise, be fully explained to investors. Specifically, the PHLX recommends that the warrants be sold only to investors whose accounts have been approved for options trading. If, however, a member or member organization undertakes to effect a transaction in warrants for a customer whose account has not been so approved, such member or member organization must make a careful determination that such warrants are suitable for such customer in conformance with the PHLX's suitability

rule, Rule 1026. In addition, prior to trading in each particular index warrant, the PHLX proposes to distribute to its membership a circular describing the risks associated with trading in such index warrant.

The Exchange also proposes to amend PHLX Rule 1027 entitled "Discretionary Accounts" so that a Senior Registered Options Principal ("SROP") or Registered Options Principal ("ROP") will be required to approve and initial any discretionary index warrant transaction on the day it is executed. The SROP will also be required to review the acceptance of each discretionary account to determine that the ROP had a reasonable basis to believe that the customer was able to understand and bear the risks of the proposed transactions, thus ensuring that investors will be offered an explanation of the special characteristics and rules applicable to the trading of index warrants.

The PHLX believes the proposed rule change is consistent with section 6(b)(5) of the Act which provides, in part, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commisison, 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 for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14758 Filed 6-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28129; File No. SR-NYSE-90-27]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to New Member Application Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 30, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to establish a fee category for processing certain new member applications. The new fee would represent a reduction of costs for existing members who are seeking to become non-public floor professionals. The text of the Exchange's amended fee scheduled is as follows:

Clearing organizations	$20,000
Introducing organizations	7,500
Non-public floor professionals	2,500
Option trading right holders	2,500
Existing Members becoming Non-public floor professionals *	1,000

[Additions are italicized.]

* *Applies to indivdual members who are associated with a member organization and who leave that member organization to become a non-public floor professional or to become associated with a new non-public floor professional entity comprised of existing members. Also applies to new non-public floor professional entities comprised solely of existing members.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a fee category for processing certain new members applications, as authorized by Exchange Rule 311.[1] The imposition of fees under Rule 311 serves to offset, in part, the cost to the Exchange of processing new member applications.

The current fee for processing all applications for non-public floor professionals is $2,500. The Exchange is proposing that a $1,000 fee category be established for individual members who are currently associated with a member organization and who are leaving that member organization to become a non-public floor professional or to become associated with a new non-public floor professional entity comprised of existing

[1] NYSE Rule 311 allows the Exchange to charge "any applicable fee" to any person who proposes to form a member organization or who proposes to become a member or allied member in an organization for which application is made for approval as a member organization and any member organization which proposes to admit therein any member, allied member, or approved person.

members. The $1,000 fee would also apply to new non-public floor professinal entities comprised solely of existing members.

The time required of Exchange staff and the amount of paperwork entailed in reviewing and processing such applications is far less than for other new applications and, accordingly, the fee should be less. The fee would be payable upon submission of an application.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of dues, fees, and other charges among Exchange members and issuers and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose 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

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–90–27 and should be submitted by July 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14759 Filed 6–25–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17537; 811–5519]

CMC Real Estate Corp.; Application

June 18, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: CMC Real Estate Corporation.

RELEVANT 1940 ACT SECTIONS: Deregistration under section 8(f) and rule 8f–1.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application was filed on April 2, 1990, and an amendment thereto was filed on May 18, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 13, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, c/o Chicago Milwaukee Corporation, 547 West Jackson Boulevard, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant was organized as a corporation under the laws of the State of Wisconsin on March 31, 1927, and its principal business was that of a common carrier by rail. In 1971, at the direction of Applicant's board of directors, Chicago Milwaukee Corporation ("CMC") was formed in connection with a diversification program in which CMC would become the parent holding company parent of Applicant. Under an exchange offer consummated in January 1972, CMC became Applicant's parent by owning approximately 96% of Applicant's outstanding equity securities. In December 1986, by virtue of a merger in which the public shareholders of Applicant were paid cash and a deferred cash consideration right, Applicant became a wholly-owned subsidiary of CMC.

2. Applicant registered on March 23, 1988, as a closed-end, non-diversified management investment company under the 1940 Act. Pursuant to an order of the SEC issued on April 9, 1990, *see* Investment Company Act Release No. 17414, however, Applicant is exempt from the requirement in section 8(b) of the 1940 Act that it file a registration statement on Form N–2 with the SEC.

3. In Feburary 1986, Applicant's board of directors adopted a plan of complete liquidation. At a meeting of the boards of directors of Applicant and CMC held on August 2, 1989, each board authorized the appropriate officers of Applicant and CMC to take such action and deliver such documents and instruments as would be necessary or appropriate for the liquidation and dissolution of Applicant under the plan of complete liquidation. Approval and authorization of the plan was obtained from CMC, Applicant's sole shareholder, pursuant to written consent.

4. On November 30, 1989, the liquidation of Applicant was completed. As of such date, all of Applicant's assets

and properties were transferred to CMC and CMC assumed all of Applicant's obligations and liabilities arising on or after November 30, 1989, to the extent of the value of the property and assets transferred. No debts or liabilities of Applicant remain outstanding. On December 11, 1989, Applicant's Articles of Dissolution were filed by the Wisconsin Secretary of State and on that date Applicant ceased to exist as a legal entity.

5. The following liabilities were assumed by CMC in connection with Applicant's liquidation:

a. Iowa Interstate Railroad ("Iowa Interstate") filed a claim on September 12, 1985 in the Reorganization Court against Applicant in the amount of approximately $8.6 million. Applicant has been disputing the claim on its merits. On September 10, 1986, the Reorganization Court dismissed Iowa Interstate's claim against Applicant relating to malicious prosecution, antitrust and RICO and a portion of the maintenance claim, reducing the remaining damages claimed by Iowa Interstate to approximately $3.2 million. The total amount of the remaining damages claimed by Iowa Interstate is not more than $2.5 million. CMC anticipates that a trial date will be set.

b. The State of Minnesota filed a claim on November 30, 1979 in the Reorganization Court against Applicant, which claim was subsequently amended, demanding approximately $6.0 million, plus interest and penalties of over $7.0 million, relating to various state taxes allegedly due Minnesota for periods from 1974 through 1980. CMC is disputing Minnesota's claims on their merits. A trial date has been set for July, 1990. In 1976, Applicant filed an action which is pending in the Minnesota state courts demanding a refund of $16.2 million, plus interest, in gross earnings taxes on the grounds that the gross earnings tax statute was constitutionally infirm. CMC anticipates that a trial date will be set.

c. In 1985, the Idaho State Tax Commission assessed an income tax deficiency against Applicant's wholly owned subsidiary, Milwaukee Land Corporation, as a result of a dispute of the Idaho income tax allocation formula. The amount assessed was $3.0 million, plus interest, for the years 1980 and 1981. The parties have reached an agreement settling these claims in the amount of approximately $660,000.

d. The Railway Labor Executives' Association ("RLEA"), which represents most of Applicant's labor organizations, and certain employees of Applicant, filed claims with the Reorganization Court for interest on payments arising out of the wage reduction agreement entered into between the court appointed trustee of Applicant and various employees. On September 7, 1988, the Reorganization Court ordered payment of interest at the rates specified in the Reorganization Plan on reduced wage amounts from February 19, 1985 to the date of payment. CMC filed an appeal of this decision and the Seventh Circuit Court reversed it. The RLEA filed a request for rehearing with the Seventh Circuit Court but was denied.

6. The following is a summary of known environmental problems in which government agency notice has been received or given:

a. Wheeler Pit, located near Janesville, Wisconsin, was used by Applicant as a source of gravel in the early part of the century. Applicant and General Motors Corporation have entered into a consent decree with the United States Environmental Protection Agency to perform an investigation of the site. CMC's contribution to the cost of investigation is limited to $87,500. It is not clear at this time what, if any, remedial action will be undertaken at the site. Nor is it clear what portion of responsibility for any remedial action will be borne by CMC as opposed to other parties.

b. Applicant has been notified that it is a potentially responsible party for a cleanup under superfund legislation of a land fill in Muskego, Wisconsin. Applicant has no record that it disposed of any hazardous or toxic substances at this land fill and has so informed the United States Environmental Protection Agency. Applicant has been named as one of over fifty third-party defendants in an action by the federal government to recover cleanup costs of a polluted scrap yard in Minneapolis, Minnesota. According to the complaint, the costs of cleanup have been $1.3 million to date. CMC has not been served in this matter. CMC believes that another party may be responsible for part or all of this liability under that party's agreement with CMC relating to that party's 1985 purchase of Applicant's railroad operating properties and that the orders of the Reorganization Court may bar any action against CMC in this matter.

7. On November 30, 1989, Applicant had 2,092,727 shares of common stock, par value $1.00 per share outstanding. Of the outstanding shares, 2,092,720 were owned by CMC and one share was owned by each of Applicant's seven directors. There are presently no outstanding shares of Applicant' stock. Prior to the liquidation and dissolution of Applicant, except for directors' qualifying shares, CMC was Applicant's sole shareholder.

8. Applicant incurred legal expenses with respect to the liquidation and incurred tax and accounting expenses with respect to Applicant's business withdrawal from various states. These expenses were allocated to Applicant. The Applicant also incurred tax expenses with respect to federal income tax returns and ralted matters and these expenses were shared by the Applicant and CMC.

9. As Applicant has ceased doing business, its corporate existence has terminated and all debts, liabilities and obligations have been provided for, Applicant submits that it would be appropriate for an order to be issued declaring that Applicant has ceased to be an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14762 Filed 6-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17536; 811-4699]

Hidden Strength Funds; Application for Deregistration

June 18, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Hidden Strength Funds ("Fund").

RELEVANT 1940 ACT SECTION: Section 8(f) and Rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The Application was filed on October 10, 1989 and amended on April 25, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may rquest a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 16, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certification of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, One Harmon Meadow Boulevard, Secaucus, New Jersey 07094.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511 or Max Berueffy, Branch Chief, (202) 272–3016.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland, (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a business trust under Massachusetts law on June 6, 1986. On June 9, 1986, Applicant filed a Notification of Registration on Form N–8A and a registration statement under the Securities Act of 1933 on Form N–1A. On August 18, 1989, the date of the asset sale described below, Applicant had issued and outstanding shares of six portfolios: the Growth Portfolio, the Money Market Portfolio, the U.S. Government High Yield Portfolio, the Conservative Asset Allocation Portfolio, the Moderate Asset Allocation Portfolio and the Aggressive Asset Allocation Portfolio (the "Portfolios").

2. On February 8, 1989, the Board of Trustees of the Applicant approved an Agreement and Plan of Reorganization (the "Asset Sale"), pursuant to which the Fund would sell substantially all of its assets to North American Security Trust ("NAST") in exchange for shares of NAST and distribute the NAST shares to Applicant's shareholders. NAST is a Massachusetts business trust registered with the Commission as an open-end diversified management investment company (File No. 811–5797) consisting of six Portfolios whose investment objectives were substantially similar to the corresponding Portfolios of the Applicant.

3. Proxy materials relating to the Asset Sale were filed with the SEC on July 14, 1989. On August 18, 1989, a majority of the shareholders of each of the Portfolios voted to approve the Asset Sale. On August 17, 1989, Applicant paid to its shareholders a special dividend and capital gains distribution in connection with the Asset Sale. These distributions were paid in order to comply with the provisions of the Internal Revenue Code that govern Regulated Investment Companies.

4. Substantially all of the assets of the Fund were transferred for shares of NAST on August 28, 1989 (the "Closing Date"). On the Closing Date, the net asset value of each of Applicant's Portfolios was computed as of the close of business on August 25, 1989 (the "Valuation Date"). On the Valuation Date, each of the NAST portfolios (other than the Money Market Portfolio) consisted of only nominal assets. On the Closing Date, the net asset value of a share of each portfolio of NAST was set at the net asset value of a share of the corresponding Portfolio of the Applicant. Applicant transferred substantially all of the assets of each of its Portfolios (except for the cash reserve described below) to NAST in exchange for shares of the corresponding NAST portfolio having an aggregate net asset value equal to the aggregate value of the transferred assets as of the close of business on the Closing Date. Applicant had discharged or made provision for the discharge of all of its liabilities prior to the Closing Date. The NAST shares were distributed to the Fund's shareholders in complete liquidation of the Fund.

5. Applicant retained a "Cash Reserve" in the amount of $475,000 to pay any accrued liabilities not paid as of the Closing Date. The principal uses of the Cash Reserve were: $200,641.07 paid to Global Capital Investors Corporation for distribution expenses related to the Funds' Distribution Plan adopted pursuant to Rule 12b–1; $77,931.46 paid to Sass Southmark Investment Corporation for investment advisory services and management fees for July and August 1989; and $100,000 for federal income taxes. Subsequent to August 28, 1989, Applicant exhausted the Cash Reserve. Any additional expenses incurred in connection with the winding up of the Applicant have been assumed by an affiliate of Global Capital.

6. Southmark Corporation ("Southmark"), the investment adviser of the Applicant, agreed to assume all of Applicant's expenses associated with the Asset Sale. Such expenses included severance pay for employees, amounts owed for computer services, the cost of preparing and mailing the proxy materials, legal fees incurred in connection with the Asset Sale and the assumption of a leasehold obligation for office space.

7. A lawsuit filed in New York Supreme Court named Applicant as a defendant. Plaintiff seeks compensation for computer services allegedly performed for one or more of the named defendants. Subsequent to the Closing Date, a default judgment was entered against the Applicant. However, because Applicant has no assets, Applicant believes that the judgment will have to be enforced against the other defendants.

8. Applicant had no shareholders at the time of filing of this application. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14763 Filed 6–25–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17539; 812–7069]

Mutual Fund Group et al.; Application

June 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Mutual Fund Group (the "Trust"), Chase First Lincoln Bank, N.A. ("Chase Lincoln"), The Chase Manhattan Bank, N.A. ("Chase"), and Vista Broker-Dealer Services, Inc. ("VBDS" or the "Distributor").

RELEVANT ACT SECTIONS. Order requested under section 6(c) which would grant a conditional exemption from the provisions of sections 18(f)(1), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit the Trust to issue two classes of shares representing interests in the same investment portfolio, which classes would be identical in all respects except for differences related to Rule 12b–1 distribution expenses, shareholder service expenses, voting rights, and dividend payments.

FILING DATE: The application was filed on July 15, 1988 and amended on March 6, 1990, April 26, 1990, and June 13, 1990.

HEARING OR NOTIFICATION OF HEARING: A conditional order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 16, 1990, and should be accompanied by

proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Attention: James Bernaiche, 156 West 56th Street, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Sheryl Siman Maliken, Staff Attorney, at (202) 272–2190, or Jeremy N. Rebenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Trust is a non-diversified, open-end management investment company registered under the Act that is currently composed of nine series, each of which issues a single class of shares (the "Existing Shares"). The Trust proposes to issue and sell a new class of shares ("New Shares") that would represent a proportionate interest in the same investment portfolio as the Existing Shares of four of the nine current series of the Trust: Vista U.S. Government Money Market Fund ("USGMMF"), Vista New York Tax Free Money Market Fund ("NYTFMMF"), Vista Tax Free Money Market Fund ("TFMMF"), and Vista Premier Global Money Market Fund ("PGMMF") (collectively, the "Money Market Funds").

2. Applicants request that any relief extend to any future series of the Trust and any other registered open-end investment company (i) Whose investment adviser is Chase Lincoln or Chase or an investment adviser that is under common control with Chase Lincoln or Chase, (ii) whose principal underwriter is the Distributor, or a principal underwriter that is under common control with the Distributor, (iii) which hold themselves out to investors as being related for purposes of investment and investor services, and (iv) whose shares are divided into two classes of securities which are aimilar in all material respects to those of the Money Market Funds' Existing Shares and New Shares. Any such series or investment company will be subject to each of the conditions in the application. All series of the Trust, whether or not yet existing, are referred to as the "Funds." Future investment companies, series or classes thereof are referred to as "Future Funds."

3. Chase manages the assets of all of the existing Funds except USGMMF, for which it receives a specified percentage (.15% for NYTFMMF, TFMMF and PGMMF) of each Fund's average daily net assets. Chase Lincoln serves as administrator to the Trust, and in return for its administrative services receives .10% of each Fund's average daily net assets. In addition, Chase Lincoln acts as investment adviser to USGMMF, for which it receives .15% of USGMMF's average daily net assets.

4. VBDS acts as the principal underwriter and distributor of the Funds, and provides certain sub-administration services to the Trust, including providing officers, clerical staff and office space. VBDS may receive .05% of each Fund's average daily net assets for sub-administration services.

5. Shares of the Funds are sold at net asset value without a sales load to customers of financial institutions such as federal or state-chartered banks, trust companies or savings and loan associations (collectively, the "Shareholder Service Agents") that have entered into shareholder servicing agreements (the "Servicing Agreements") with the Trust that are not adopted under rule 12b–1. The Trust's Shareholder Servicing Agents, Chase and Chase Lincoln, are affiliated persons of the Trust as defined in the Act.

6. Each Shareholder Servicing Agency receives a fee in an amount determined by the Board of Trustees. For USGMMF, NYTFMMF AND TFMMF, each shareholder servicing fee may not exceed .40% of the average daily net assets of the USGMMF, NYTFMMF and TFMMF Existing Shares owned by customers for whom such Shareholder Servicing Agency maintains a servicing relationship. For PGMMF, each shareholder servicing fee may not exceed .15% of the average daily net assets of the PGMMF Existing Shares owned by customers for whom such Shareholder Servicing Agency maintains a servicing relationship. PGMMF intends, subject to trustee approval, to increase this limit to .20%.

7. Shares of the Funds also may be sold without a sales load: (i) Through broker-dealers that enter into selected dealer agreements with the Distributor, or (ii) through other persons or organizations, who have not entered into Shareholder Servicing Agreements with the Trust, ("12b–1 Servicing Agents") that have entered into shareholder processing and servicing agreements with the Trust or the Distributor.

8. Under the distribution plan for USGMMF, NYTFMMF, and TFMMF (The "Existing Shares Plan"), broker-dealers and 12b–1 Servicing Agents may be paid an amount (the "Basic Distribution Fee") not to exceed, in the aggregate, .20% of the average daily net assets of USGMMF, NYTFMMF and TFMMF. Payments also may be made for advertising to promote the sale of Existing Shares in an amount not to exceed .05% of the average daily net assets of such Existing Shares. Therefore, the total payments under the Existing Shares Plan may not exceed .25% of the average daily net assets of the USGMMF, NYTFMMF and TFMMF Existing Shares.

9. PGMMF Existing Shares are sold pursuant to a distribution plan (the "PGMMF Existing Shares Plan") similar in all material respects to the Existing Shares Plan, except that the aggregate distribution fees are limited to .10% of PGMMF's average daily net assets. In addition, no payments may presently be made for advertising. PGMMF intends, subject to shareholder approval, to adopt a distribution plan permitting aggregate Basic Distribution Fee payments of up to .15% of the PGMMF Existing Shares average daily net assets, plus up to .05% for advertising, for a total limit of .20% of the average daily net assets of the PGMMF Existing Shares.

10. No Shareholder Servicing Agent will be entitled to receive any Basic Distribution Fees under a Fund's Rule 12b–1 distribution plan. The Trust has determined that the creation of mutually exclusive (non-rule 12b–1) Shareholder Servicing Agents and 12b–1 Servicing Agents will permit the Trust to increase the number of financial institutions that sell shares of the Trust. The Trust has determined that the creation of two separate categories of servicing agents, each of which may receive compensation for services rendered to their clients, is important to the growth of the Trust. The Trustees shall consider, among other things, the nature of the Trust's relationship with each prospective financial institution, as well as a financial institution's overall ability to service the needs of its clients, when determining which type of shareholder servicing arrangement should be offered to a prospective financial institution. In addition, The Trustees may consider a financial institution's self-imposed constraints or other restrictions under the Glass Steagall Act and other

applicable federal or state laws with respect to their determination as to which type of shareholder servicing arrangement is entered into with a particular financial institution.

11. The Trust intends to create New Shares representing a proportionate interest in the same investment portfolio as Existing Shares within the same Fund. Except for the designation and the allocation of certain expenses and voting rights as described below, the New Shares would be identical in all respects to the Existing Shares that represent interests in the same Fund.

12. USGMMF, NYTFMMF and TFMMF Existing Shares are made available to "retail investors" with a minimum investment of $2,500. USGMMF, NYTFMMF and TFMMF New Shares will be made available, with a $100,000 minimum investment requirement, only to "institutional investors" including, but not limited to, various international divisions of the Shareholder Servicing Agents such as: (i) Direct Interbanking; (ii) Corporate Cash Management Accounts; (iii) Pensions; (iv) Custody; (v) Escrow; (vi) Master Trusts; (vii) Private and Personal Banking; and (viii) other internal banking divisions of a Shareholder Servicing Agent.

13. Shareholder servicing fees for the USGMMF, NYTFMMF and TFMMF New Shares may not exceed .20% of the average daily net assets of the USGMMF, NYTFMMF and TFMMF New Shares, respectively, in contrast to the .40% maximum for Existing Shares. The Shareholder Servicing Agents will receive a reduced shareholder servicing fee for the USGMMF, NYTFMMF and TFMMF New Shares because such New Shares only will be made available to the institutional clients enumerated above, the accounts of which, in applicants' opinion, are easier and less expensive to maintain. Each Shareholder Servicing Agent will create one or more accounts for each of its institutional clients with the particular institutional client primarily responsible for the sub-accounting and shareholder servicing of its clients, thereby resulting in greater economies of scale and decreased operating expenses for the Shareholder Servicing Agents.

14. PGMMF Existing Shares are made available only to institutional investors, as described above. PGMMF New Shares will be made available to retail investors with a minimum investment of $2,500. This retail clientele is, in applicants' opinion, more expensive to maintain than the institutional clientele of PGMMF Existing Shares. Therefore, PGMMF New Shares will be sold subject to a shareholder servicing fee not to exceed .40% of the PGMMF New Shares average daily net assets as compared to the .15% (or, if approved, .20%) of average daily net assets for PGMMF Existing Shares.

15. New Shares and Existing Shares of each Fund would also bear different 12b–1 distribution fees. USGMMF, NYTFMMF and TFMMF New Shares would be sold pursuant to a rule 12b–1 distritution plan similar in all material respects to such Funds' Existing Shares Plan, except that the aggregate amount of the Basic Distribution Fees payable under the USGMMF, NYTFMMF and TFMMF New Shares Plan will not exceed .15% of the average daily net assets of the applicable Fund's New Shares, as compared to .20% under the Existing Shares Plan. In addition, payments may be made for advertising in an amount not to exceed .05% of the average daily net assets of the applicable Fund's New Shares, as is the case under the Existing Shares Plan. Therefore, the total aggregate amount of all payments under the USGMMF, NYTFMMF and TFMMF New Shares Plan shall not exceed .20% of the average daily net assets of the applicable Fund's New Shares, as compared to .25% under the Existing Shares Plan.

16. PGMMF New Shares would be sold pursuant to a Rule 12b–1 distribution plan similar in all material respects to the USGMMF, NYTFMMF and TFMMF Existing Shares Plan, under which the aggregate amount of the Basic Distribution Fees will not exceed .20% of the average daily net assets of the PGMMF New Shares. In addition, payments may be made for advertising in an amount not to exceed .05% of the average daily net assets of the applicable Fund's New Shares. Thus, the total aggregate amount of all payments under the PGMMF New Shares Plan shall not exceed .25% of the average daily net assets of the PGMMF New Shares, as compared to .10% (or, if approved, .20%) under the Existing Shares Plan.

17. The net asset value of all outstanding shares in the same Fund would be computed on the same day and at the same time by adding the value of all portfolio securities and other assets, subtracting the liabilities, allocating the resulting net assets between the two classes and dividing the results by the number of outstanding shares for the respective class. Further, the gross income of a Fund would be allocated on a pro rata basis to each outstanding share in the Fund and, except for the payments made under the rule 12b–1 distribution plans and the disproportionate shareholder servicing fees, the expenses incurred by the Trust on behalf of each Fund would be borne on a pro rata basis by such outstanding shares of each Fund.

18. Application of the charges called for under the alternate shareholder servicing arrangements and the distribution plans would cause the net income of (and dividends payable to) the Existing Shares to be higher or lower than the net income of the New Shares, depending upon the circumstances, e.g., PGMMF New Shares with increased 12b–1 payments and shareholder servicing fees would have lower net income dividends payable than PGMMF Existing Shares with lower 12b–1 payment and shareholder servicing fees. Dividends paid to the Existing Shares and the New Shares of each of the Money Market Funds would, however, be determined in the same manner and declared and paid on the same days and at the same times.

Applicants' Legal Conclusions

1. The proposed issuance of New Shares does not create the potential for the abuses relating to complex capital structures and mutuality of risk which section 18 of the Act was designed to correct, since both the Existing Shares and the New Shares in a particular Money Market Fund would bear, pro rata, all of the operating expenses of the Fund except that each of the Existing Shares and the New Shares of a Fund would bear expenses specifically related to those shares, such as 12b–1 payments and the disproportionate shareholder servicing fees.

2. Both the New Shares and the Existing Shares of a Money Market Fund will be redeemable at all times, and neither will have any preference or priority over the other in the usual sense. In addition, the similarities and dissimilarities of the New Shares and Existing Shares will be fully disclosed in each prospectus. Therefore, investors will not be given misleading impressions as to the safety or the risk of the New Shares and Existing Shares and the nature of the New Shares and Existing Shares will not be rendered speculative.

3. The Trust's capital structure under the proposed arrangement will not induce any group of shareholders to invest in risky securities to the detriment of any other group of shareholders since the investment risks of each Fund will be borne equally by all of its shareholders.

4. The concern that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value the Trust's securities are not present

under the proposed arrangement. With respect to this latter concern, it may be noted that the Trust represents herein that it will take appropriate steps to ensure that the respective yields on both the New Shares and the Existing Shares are fairly disclosed in the applicable prospectuses and shareholder reports.

5. The Trust believes that it is appropriate for clients of brokers, 12b–1 Servicing Agents, and Shareholder Servicing Agents to be included in the groups of shareholders comprising each class of shares, to bear the costs associated with such class, and to benefit from the economies of scale created by combining such groups, since the services provided and the expenses associated with such services are substantially similar. For example, services offered by brokers, 12b–1 Servicing Agents and Shareholder Servicing Agents to their respective clients may include specialized services provided in connection with the purchase and redemption of Fund shares, such as pre-authorized or automatic purchase and redemption programs and "sweep" checking programs. Any such services, to the extent they are offered to any shareholder in a class, will be offered to all shareholders in such class whether they purchase their shares through a broker, 12b–1 Servicing Agent or Shareholder Servicing Agent.

6. By allowing the creation of New Shares in each of the Money Market Funds, the Trust will save the organizational and other continuing costs that would be incurred if the Trust were required to establish a new separate investment fund for the New Shares of each Money Market Fund. Moreover, to the extent that the Trust is able, through the proposed arrangement, to maintain and expand its current shareholder base and more effectively manage the portfolio of assets owned by the Money Market Funds, its beneficial owners will benefit to the extent that each Money Market Fund's pro rata operating expenses per share are lower than they would be otherwise.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The New Shares and Existing Shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between New Shares and Existing Shares of the same Fund will relate solely to the impact of: (a) Disproportionate payments made under the Rule 12b–1 distribution plans adopted for each of the New Shares and the Existing Shares; (b) disproportionate shareholder servicing fees for the New Shares and the Existing Shares; (c) any other incremental expenses subsequently identified that should be properly allocated to either the Existing Shares or the New Shares which expenses shall be approved by the SEC pursuant to an amended order; (d) the fact that classes will have separate voting rights on matters which pertain to the Rule 12b–1 distribution plans; and (e) the designation of the shares of a Fund as Existing Shares or New Shares.

2. The Trustees of the Trust, including a majority of the independent Trustees, have approved and will continue to approve annually the Dual Distribution System by an affirmative vote. The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Dual Distribution System will reflect in detail the reasons for the Trustees' determination that the proposed Dual Distribution System is in the best interests of each Fund and its shareholders and such minutes will be available for inspection by the SEC staff and will be preserved for a period of not less than six years, the first two years in an easily accessible place.

3. On an ongoing basis, the Trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the New Shares and the Existing Shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Chase, Chase Lincoln and VBDS will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, Chase, Chase Lincoln and VBDS, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. The Rule 12b–1 distribution plans relating to the sale of the Existing Shares and the New Shares of the Funds will be approved and reviewed by the Trustees in accordance with the requirements and procedures set forth in Rule 12b–1, both currently and as that rule may be amended in the future. The Rule 12b–1 distribution plans to permit the assessemnt of a Rule 12b–1 fee on USGMMF, NYTFMMF and TFMMF New Shares, PGMMF Existing Shares and PGMMF New Shares will be submitted to the public shareholders of USGMMF, NYTFMMF and TFMMF New Shares, PGMMF Existing Shares and PGMMF New Shares for approval at the next meeting of such shareholders after the initial issuance of the USGMMF, NYTFMMF and TFMMF New Shares, PGMMF Existing Shares and PGMMF New Shares. Such meeting is to be held within one year from the date that USGMMF, NYTFMMF and TFMMF New Shares, PGMMF Existing Shares and PGMMF New Shares are initially issued. Any other series or investment company in relying in the future on the order granted on the application will hold a meeting of shareholders within one year of the first date that more than one class of shares is issued and outstanding and will submit its Rule 12b–1 distribution plan for the separate approval of the public holders of each class of shares at such meeting; provided that the approval of a particular class of shareholders shall not be necessary if the existing Rule 12b–1 plan has already been submitted for the approval of the public shareholders of such class.

5. The shareholder servicing arrangements will be adopted and operated in accordance with the procedures set forth in Rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to Rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating the shareholder servicing arrangements, the Trustees will specifically consider whether (a) The shareholder servicing arrangements are in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the shareholder servicing arrangements are required for the operation of the applicable classes, (c) the Shareholder Servicing Agents can provide services at least equal, in nature and quality, to those provided by others, including the Trust, providing similar services, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

6. Each Shareholder Servicing Agreement entered into pursuant to the shareholder servicing arrangements will contain a representation by the service provider that any compensation payable to the service provider in connection with the investment of its customer's assets in the Fund (a) Will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the service provider.

7. Each Shareholder Servicing Agreement entered into pursuant to the shareholder services plan will provide

that, in the event an issue pertaining to the shareholder services arrangement is submitted for shareholder approval, the service provider will vote any shares held for its own account in the same proportion as the vote those shares held for its customers' accounts.

8. The Trustees of the Trusts will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of Rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties.

9. Dividends paid by each Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that distribution and shareholder servicing payments relating to each respective class of shares will be borne exclusively by that class.

10. The methodology and procedures for calculating the net asset value and dividends and distributions of the two classes and the proper allocation of expenses between the two classes has been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to each of the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. The Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the Existing Shares and the New Shares and the proper allocation of expenses between the two classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (10) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (10) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or an appropriate substitute Expert.

12. Each Fund will have more than one class of shares outstanding only when and for so long as such Fund declares its dividends on a daily basis, accrues its payments under the Plan and the Shareholder Servicing Agreements daily, and has received undertakings from the persons that are entitled to receive payments under the Plan and Shareholder Servicing Agreements waiving such portion of any such payments to the extent necessary to assure that payments (if any) required to be accrued by any class of shares on any day do not exceed the income to be accrued to such class on that day. In this manner, the net asset value per share for all shares in a Fund will remain the same.

13. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

14. The Distributor will adopt compliance standards, substantially in the form of Exhibit D to the Application, as to when each class of shares may appropriately be sold to particular investors. Applicants will require all Shareholder Servicing Agents or broker-dealers selling shares of each of the Funds to agree to conform to such standards.

15. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Dual Distribution System will be set forth in guidelines which will be furnished to the Trustees.

16. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privilege applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or perforance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by Applicants for publication in any newspaper or similar listing of each Fund's net asset value and public offering price will present each class of shares separately.

17. The Applicants acknowledge that the grant of the exemptive order requested by this Application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Trust may make pursuant to Rule 12b–1 distribution plans or shareholder servicing arrangements in reliance on the exemptive order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14764 Filed 6–25–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Rescheduling of Meeting; Region II Advisory Council Public Meeting

The U.S. Small Business Administration Region II Advisory Council meeting scheduled for June 28, 1990 has been postponed until July 19, 1990.

The meeting will be held at the Jacob K. Javits Federal Building, room 3100 (31st floor), 26 Federal Plaza, New York,

NY 10278, to discuss such matters as may be presented by members, staff of the Small Business Administration, or other present.

For further information, write or call Mr. Bert X. Haggerty, District Director, U.S. Small Business Administration, 26 Federal Plaza, New York, NY 10278, telephone (212) 264–1318.

Dated: June 20, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–14751 Filed 6–25–90; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 05/05–0215]

Application for a Small Business Investment Company License; Harriscorp Equity Corp.

An application for a license to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.)* has been filed by Harriscorp Equity Corp. (Applicant), 111 West Monroe, Chicago, Illinois, 60690, with the Small Business Administration pursuant to 13 CFR 107.102 (1990).

The Proposed Officers, Directors and Shareholders of the Applicant will be as follows:

Name	Title or position	Percent of ownership
Roger A. Molzahn, 8107 Winter Circle, Downers Grove, Il 60516.	President/Director	
Peter D. Morris, 2320 Lawndale, Evanston, Il 60201.	Executive Vice President/ Director	
Jeffrey D. Butterfield, 667 Bluff, Glencoe, Il 60022.	Executive Vice President Director	
William L. Johnson, 1228 Jane, Naperville, Il 60540.	Vice President	
Jeffrey D. Nicholas, 53 Dogwood Street, Park Forest, Il 60466.	Vice President	
Philip A. Washburn, 263 Woodlawn Avenue, Glencoe, Il 60093.	Vice President	
Thomas R. Sizer, 233 E. Wacker Dr., Chicago, Il 60601.	Secretary/Assistant Treasurer	
P. David Hubbard, 7841 Keystone, Skokie, Il 60076.	Treasurer/ Assistant Secretary	
David S. Finch, 9 Stonewood Drive, St. Charles, Il 60174.	Director	
Edward W. Lyman, Jr., 1510 Tower Road, Winnetka, Il 60093.	Director	
Luke D. Knecht, 1340 W. Deerpath, Lake Forest, Il 60045.	Director	
Ben T. Wilson, 240 Buckminster, Lake Bluff, IL 60044.	Director	
Harris Bankcorp, Inc., 111 West Monroe, Chicago, IL 60690.	Sole Shareholder	100
Bank of Montreal, First Canadian Place, Toronto, Ontario, Canada M5X 1A1.	Indirect Shareholder.	100

The Applicant, a Delaware corporation, is expected to begin operations with $1,000,000 of private capital. The Applicant will conduct its activities in the Midwest region of the United States.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the existing company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in Illinois.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 18, 1990.

Robert G. Lineberry,

Associate Administrator for Investment.

[FR Doc. 90–14752 Filed 6–25–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–90–28]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 16, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 20, 1990.

Deborah E. Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 24808.
Petitioner: Pan American World Airways.

Sections of the FAR Affected: 14 CFR 121.404, 121.433, and 121.441 and part 121, appendix F.
Description of Relief Sought: To extend Exemption No. 4833, as amended, that allows petitioner to combine recurrent training and proficiency checks for pilots in command into one annual training and proficiency check session. In addition, the exemption allows the line check required by § 121.440 to be administered 6 months subsequent to the annual training and proficiency check session in lieu of the recurrent training.

Docket No.: 26249.
Petitioner: Simmons Airlines/American Eagle.
Sections of the FAR Affected: 14 CFR 121.356.
Description of Relief Sought: To exempt petitioner from the 20 percent and 50 percent equipage requirement of the TCAS II traffic alert and collision avoidance system regulation.

Dispositions of Petitions

Docket No.: 23869.
Petitioner: Strong Enterprises, Inc., and The Relative Workshop, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/ Disposition: To extend Exemption No. 4943 that allows petitioners and their respective employees, representatives, and other volunteer experimental parachute test jumpers under their direction and control to make tandem parachute jumps, and to permit the pilots in command of aircraft involved in their operations to allow such persons to make parachute jumps wearing a dual harness, dual parachute pack having at least one main parachute and one approved auxiliary parachute. *Grant, June 14, 1990. Exemption No. 4943A.*

Docket No.: 25864.
Petitioner: Jet Management International, Inc.
Sections of the FAR Affected: 14 CFR 25.857(b)(2).
Description of Relief Sought/ Disposition: To allow the Learjet 25B–170 to be approved for operation in a cargo configuration. *Denial, June 7, 1990, Exemption No. 5188.*

Docket No.: 26009.
Petitioner: Jerry L. Chap.
Regulations Affected: 14 CFR 65.91(c)(1).
Description of Relief Sought/ Disposition: To waive the requirement for holding an airframe and powerplant mechanic rating for at least 3 years prior to eligibility for receipt of an inspector's authorization. *Grant, June 11, 1990. Exemption No. 5191.*

Docket No.: 26063.
Petitioner: British Aerospace, Inc.
Sections of the FAR Affected: 14 CFR 121.411 (a)(2), (a)(3), and (b)(2); 121.413 (b) (c), and (d); part 121, appendix H; 135.337 (a)(2) and (a)(3); and 135.339 (a)(2), (b), and (c).
Description of Relief Sought/ Disposition: To allow petitioner to use certain qualified instructor pilots to train pilots of part 121 and part 135 certificate holders in a Phase II simulator and in airplanes manufactured by petitioner. *Grant, June 11, 1990. Exemption No. 5190.*

Docket No.: 26253.
Petitioner: MarkAir.
Sections of the FAR Affected: 14 CFR 121.411 (a)(1), (a)(2), (a)(3), and (a)(6) and 121.413 (b) and (c).
Description of Relief Sought/ Disposition: To allow petitioner to utilize certain highly qualified pilot flight and simulator instructors from FlightSafety, Canada, for the purpose of training petitioner's initial cadre of pilots in the DHC Dash 8–300 type airplane in Canada without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of subpart N of part 121. *Grant, June 11, 1990. Exemption No. 5189.*

[FR Doc. 90–14714 Filed 6–25–90; 8:45 am]
BILLING CODE 4910–01–M

Federal Railroad Administration

[BS–Ap–No. 2923]

Southern Pacific Transportation Co.; Cancellation of Public Hearing

The Federal Railroad Administration (FRA) has cancelled the public hearing on the captioned signal petition because the petition has been withdrawn by the railroad. The hearing had been scheduled for July 11, 1990, in San Bernardino, California.

In the now-withdrawn application that was to be the subject of this hearing, the Southern Pacific Transportation Company petitioned the FRA seeking approval to discontinue and remove the traffic control system on 901 Track near Colton, California. (See the original hearing notice in 55 FR 21139 and 21140, May 22, 1990.)

The FRA regrets any inconvenience occasioned by the cancellation of this hearing.

Issued in Washington, DC, on June 20, 1990.
Phil Olekszyk,
Deputy Associate Administrator for Safety.
[FR Doc. 90–14736 Filed 6–25–90; 8:45 am]
BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 20, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0175.
Form Number: 4626.
Type of Review: Revision.
Title: Alternative Minimum Tax—Corporations.
Description: Form 4626 is used by corporations to calculate their alternative minimum tax and environmental tax.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 100,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—10 hours, 31 minutes
Learning about the law or the form—11 hours, 49 minutes
Preparing and sending the form to IRS—12 hours, 31 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 3,485,000 hours.

OMB Number: 1545–0177.
Form Number: 4684.
Type of Review: Extension.
Title: Casualties and Thefts.
Description: Form 4684 is used by all taxpayers to compute their gain or loss from casualties or thefts and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 300,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—1 hour, 12 minutes
Learning about the law or the form—20 minutes

Preparing the form—58 minutes
Copying, assembling, and sending the form to IRS—35 minutes

Frequency of Responses: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 924,000 hours

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports Management Officer.

[FR Doc. 90–14718 Filed 6–25–90; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 123
Tuesday, June 26, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION.

Notice

June 20, 1990

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–49), 5 U.S.C. 552B:

DATE AND TIME: June 27, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*** Note—Items listed on the agenda may be deleted without further notice.**

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

This a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 919th Meeting—June 27, 1990, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 7270–005, Northern Wasco County People's Utility District
CAH–2.
Project No. 1869–007, The Montana Power Company
CAH–3.
Project No. 3623–030, Youghiogheny Hydroelectric Authority
CAH–4.
Project No. 10845–001, Parcoal Energy, Inc.
CAH–5.
Project No. 10521–001, Mahoning Hydro Associates
CAH–6.
Project No. 8282–004, K&K Hydroelectric
CAH–7.
Project Nos. 3021–018 and 023, Allegheny Hydro No. 8 L.P. and Allegheny Hydro No. 9 L.P.
CAH–8.
Project No. 619–013, Pacific Gas and Electric Company
CAH–9.
Project No. 6188–001, Camille E. Held, Walton B. Held, A.W. Stuart Trust, W. Titus Nelson and Dale E. Grenoble
CAH–10.
Omitted.
CAH–11.
Project No. 1957–005, Wisconsin Public Service Corporation
CAH–12.
Omitted.
CAH–13.
Project No. 199–053, South Carolina Public Service Authority
CAH–14.
Project No. 10102–001, Franklin Springer
CAH–15.
Project No. 5833–000, Pennsylvania Hydroelectric Development Corporation
CAH–16.
Project No. 10502–000, Garkane Power Association, Inc.
Project No. 10334–000, Warren T. Jacobson
CAH–17.
Project No. 137–002, Pacific Gas and Electric Company
Project No. 619–023, City of Santa Clara, California

Consent Agenda—Electric

CAE–1.
Docket No. ER90–348–000, Southern California Edison Company
CAE–2.
Docket No. ER90–304–000, Florida Power & Light Company
CAE–3.
Docket No. ER90–38–000, Entergy Services, Inc.
CAE–4.
Docket No. EC89–10–000, Consumers Power Company
Docket No. ER89–256–000, Palisades Generating Company
CAE–5.
Docket No. ER90–247–001, Montaup Electric Company, Eastern Edison Company and Blackstone Valley Electric Company
CAE–6.
Docket No. ER89–581–001, Partland General Electric Company
CAE–7.
Docket No. ER90–232–001, Union Electric Company
CAE–8.
Omitted
CAE–9.
Docket No. ER90–165–001, Pacific Gas and Electric Company
CAE–10.
Docket No. ER90–184–001, Ford Motor Company and Rouge steel Company
CAE–11.
Docket No. ER85–720–013, The Connecticut Light and Power Company
Docket No. ER85–707–009, Western Massachusetts Electric Company
Docket No. ER85–689–009, Holyoke Water Power Company and Holyoke Power and Electric Company
CAE–12.
Docket No. ER90–65–001, Arkansas Power & Light Company
CAE–13.
Docket Nos. ER90–26–001 and ER89–470–004, American Electric Power Service Corporation
CAE–14.
Omitted
CAE–15.
Docket No. QF89–205–002, Virginia Turbo Power Systems-II, L.P.
CAE–16.
Docket No. ER86–645–001, ER87–140–001, ER87–159–001 and ER87–160–001, Boston Edison Company
CAE–17.
Docket Nos. E–7777–000, and 011 (Phase II), Pacific Gas ad Electric Company
Project No. 67–000, Southern California Edison Company
CAE–18.
Docket No. ER89–203–000, Carolina Power & Light Company
CAE–19.
Docket No. QF85–199–002, Vulcan/BN Geothermal Power Company
Docket No. ER86–727–003, Del Ranch, L.P.
Docket No. QF86–1043–001, Desert Power Company
Docket No. QF87–511–002 and QF89–297–001, Earth Energy, Inc.

Consent Agenda—Gas and Oil

CAG–1.
Docket No. RP90–118–000, Northwest Pipeline Corporation
CAG–2.
Docket No. RP90–121–000, NATGAS U.S. Inc.
CAG–3.
Docket No. RP90–122–000, Tennessee Gas Pipeline Company
CAG–4.
Docket No. RP90–123–000, Williams Natural Gas Company
CAG–5.
Docket No. RP90–125–000, Transcontinental Gas Pie Line Corporation
CAG–6.
Docket No. RP87–62–004, Pacific Gas Transmission Company
CAG–7.
Docket No. TA90–1–8–000, South Georgia Natural Gas Company
CAG–8.
Docket No. TF90–3–63–000, Carnegie Natural Gas Company
CAG–9.
Docket No. TM90–3–2–000, East Tennessee Natural Gas Company
CAG–10.
Docket No. TQ90–3–16–000, National Fuel Gas Supply Corporation
CAG–11.
Docket No. TA90–1–33–000, El Paso Natural Gas company
CAG–12.
Docket Nos. GT90–6–000 and 001, United Gas Pipe Line Company
CAG–13.
Docket No. TA90–1–17–000, Texas Eastern Transmission Corporation

CAG–14.
Omitted
CAG–15.
Docket No. RP90–114–000, Mississippi River Transmission Corporation
CAG–16.
Docket Nos. RP89–38–002, 004, 006, RP89–99–002, 004 and 006, U–T Offshore System
CAG–17.
Docket No. RP90–119–000, Texas Eastern Transmission Corporation
CAG–18.
Docket No. RP90–106–000, Mississippi River Transmission Corporation
CAG–19.
Docket Nos. RP90–98–002 and RP90–99–002, Transcontinental Gas Pipe Line Corporation
CAG–20.
Docket No. RP89–124–005, CNG Transmission Corporatin
CAG–21.
Docket No. RP90–100–002, Sea Robin Pipe Line Company
CAG–22.
Docket Nos. RP87–82–003 and RP86–148–005, Pacific Gas Transmission Company
CAG–23.
Docket No. RP86–136–007, National Fuel Gas Supply Corporation
CAG–24.
Docket Nos. RP85–11–028, RP86–11–028 and RP87–66–014, KN Energy, Inc.
CAG–25.
Docket No. TM90–7–17–001, Texas Eastern Transmission Corporation
CAG–26.
Docket No. CP83–254–403, Williston Basin Interstate Company
CAG–27.
Docket Nos. RP88–259–020, RP89–136–001 and 005, Northern Natural Gas Company, Division of Enron Corporation
CAG–28.
Docket No. RP90–52–001 and RP88–115–010, Texas Gas Transmission Corporation
CAG–29.
Docket Nos. RP88–115–009, CP89–31–001, CP88–818–001 and CP88–59—002, Texas Gas Transmission Corporation
CAG–30.
Docket No. RP89–194–001, Texas Gas Transmission Corporation
CAG–31.
Docket Nos. TA90–1–7–001 and RP90–45–002, Southern Natural Gas Company
CAG–32.
Omitted
CAG–33.
Docket No. TA90–1–40–003, Raton Gas Transmission Corporation
CAG–34.
Docket Nos. TQ90–2–40–002 and TQ90–1–40–000, Raton Gas Transmission Company
CAG–35.
Docket No. PR90–4–000, J–W Gathering Company
CAG–36.
Docket Nos. RP89–36–000, CP90–273–000, CP88–338–000, CP88–266–000, CP87–107–000 and CP87–106–000, Viking Gas Transmission Company
CAG–37.
Docket No. ST89–3601–000, Sonat Intrastate-Alabama Inc.
CAG–38.
Docket Nos. RP90–69–000 and RP87–30–000, Colorado Interstate Gas Company
CAG–39.
Docket No. TM90–13–28–000, Panhandle Eastern Pipe Line Company
CAG–40.
Docket No. RM89–16–001, Order Implementing the Natural Gas Wellhead Decontrol Act of 1989
CAG–41.
Docket No. CI85–513–012, Tenngasco Gas Supply Company v. Southland Royalty Company
CAG–42.
Docket No. CI87–547–008, Enron Gas Marketing, Inc.
CAG–43.
Docket No. CP88–136–022, Texas Eastern Transmisison Corporation
CAG–44.
Docket No. CP88–171–002, Tennessee Gas Pipeline Company
Docket Nos. CP88–94–003 and CP88–194–005, National Fuel Gas Supply Corporation
Docket No. CP88–92–002, Transcontinental Gas Pipe Line Corporation
Docket No. CP88–195–006, PennEast Gas Services Corporation, CNG Transmission Corporation, Texas Eastern Transmission Corporation
Docket Nos. CP87–131–003 and CP87–132–004, Tennessee Gas Pipeline Company
CAG–45.
Docket No. CP89–1953–001, ANR Storage Company
CAG–46.
Docket No. CP88–557–001, Koch Hydrocarbon Company
CAG–47.
Docket Nos. CP89–1580–001, and CP86–578–026, Northwest Pipeline Corporation
Docket No. G–17350–009, Pacific Gas Transmission Company
CAG–48.
Docket No. CP89–1628–000, Trunkline Gas Company
CAG–49.
Omitted.
CAG–50.
(A) Docket No. CP89–1851–002, Altamont Gas Transmission Company
(B) Docket No. CP89–18[51–001, Altamont Gas Transmission Company
(C) Docket Nos. CP89–460–000 and 001, Pacific Gas Transmission Company
(D) Docket No. CP90–1375–000, Altamont Gas Transmission Company
CAG–51.
Docket No. RP90–124–000, Northern Natural Gas Company, A Division of Enron Corporation

Hydro Agenda

H–1.
Project No. 9711–000, Inghams Corporation. Order on motion to dismiss preliminary permit application.
H–2.
Project No. 9712–000, Beardslee Corporation. Order on motion to dismiss preliminary permit application.
H–3.
Project No. 9049–002, Carex Hydro. Order on appeal of order issuing license.
H–4.
Project No. 2528–004, Central Maine Power Company. Order on appeal of order issuing license.

Electric Agenda

E–1
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters.

PR–1.
(A) Docket Nos. RP87–15–019 and RP89–160–000, Trunkline Gas Company. Initial decision on refunctionalization of gathering costs and classification of LNG costs.
(B) Docket No. RP87–15–027 (Phase I), Trunkline Gas Company. Remand on minimum bill.
(C) Docket No. RP87–15–001, Trunkline Gas Company. Rehearing of a suspension order.
PR–2.
Docket Nos. OR87–1–000, OR87–2–000, OR87–3–000, OR87–4–000, OR87–5–000, and OR87–8–000, Oxy Pipeline, Inc.
Docket No. OR87–6–000, Cxy Offshore Systems Inc.
Docket No. OR85–2–000, Samedan Pipe Line Corporation. Declaratory order on jurisdiction under the Interstate Commerce Act over oil pipelines on the outer Continental Shelf.
PR–3.
Docket Nos. RP90–72–001, and 000, Carnegie Natural Gas Company. Technical conference on gas inventory charge passthrough mechanism and rehearing.

II. Producer Matters

PF–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Omitted
PC–2.
Docket Nos. CP88–180–000 and 002, Texas Eastern Transmission Corporation
Docket Nos. CP88–185–000 and 002, Algonquin Gas Transmission Company. Certificate application to construct facilities, to sell and transport natural gas, and to abandon sales of natural gas (CDS project).
PC–3.
Omitted
PC–4.
Docket No. CP89–1223–000, Delta Pipeline Company. Optional certificate application to construct and operate facilities out of Arkoma Basin and for blanket certificate.
PC–5.
Docket No. CP89–2064–000, Colorado Interstate Gas Company. Certificate application to add compression to increase transportation capacity.

Lois D. Cashell,

Secretary.

[FR Doc. 90–14845 Filed 6–21–90; 4:49 am]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m. June 28, 1990.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573–0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED: North Altantic Enforcement Program—Status Report.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 90–14852 Filed 6–21–90; 4:50 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, June 29, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless amember of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of proposed amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) to reduce the filing requirements under the Change in Bank Control Act.

Discussion Agenda

2. Publication for comment of proposed modifications in the Board's Section 20 securities orders regarding director, officer and employee interlocks, cross-marketing activities, and the purchase and sale of U.S. agency securities.

3. Proposed 1991 Federal Reserve Bank budget objective.

4. Proposed establishment of a third investment fund for the Thrift Plan for employees of the Federal Reserve System.

5. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–14862 Filed 6–22–90; 9:55 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Friday, June 29, 1990, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–14863 Filed 6–22–90; 9:55 am]

BILLING CODE 6210–01–M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, June 26, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: There is a correction and addition to the agenda items listed in the notice, served June 19, 1990, for the Commission voting conference to be held on June 26, 1990.

MATTERS TO BE DISCUSSED:

The fifth agenda item should read as follows:

Docket No. 40131 (Sub-No. 1) *Ashley Creek Phosphate Company v. Chevron Pipe Line Company.*

The following item has been added to the agenda:

Docket No. MC–1515, *Greyhound Lines, Inc. (Dallas, Texas), Authorization to be a Self-Insurer—Show Cause Order.*

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of Government and Public Affairs, Telephone: (202) 275–7252.

Noreta R. McGee,

Secretary.

[FR Doc. 90–14942 Filed 6–22–90; 3:53 pm]

BILLING CODE 7035–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, July 3, 1990.

PLACE: Conference Room 8 A, B, C, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Aviation Accident Report: US Air, Inc. Flight 5050 Boeing 737–400, Flushing, New York 09/20/90.

News Media PLEASE Contact TED LOPATKIEWICZ 382–6605

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: June 22, 1990.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 90–14888 Filed 6–22–90; 2:09 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 25, July 2, 9, and 16, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 25

Wednesday, June 27

9:00 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

3:00 p.m.
Civil Litigation Matters (Closed—Ex. 10)

Week of July 2—Tentative

There are no Commission meetings scheduled for the Week of July 2.

Week of July 9—Tentative

There are no Commission meetings scheduled for the Week of July 9.

Week of July 16—Tentative

Monday, July 16

2:00 p.m.
Briefing by NUMARC on Essentially Complete Design Issue for Part 52 Submittals (Public Meeting)

Tuesday, July 17

2:00 p.m.

Briefing on Resolution of Uncertainties in the HLW Repository Program (Public Meeting)

Wednesday, July 18

2:00 p.m.
Briefing on Essentially Complete Design Issue for Part 52 Submittals (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: June 21, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90–14946 Filed 6–22–90; 3:53 pm]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, July 10, 1990, in Hartford, Connecticut. The meeting is open to the public and will be held in the Goodwin Room of the J.P. Morgan Hotel at Goodwin Square, One Haynes Street, Hartford. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, July 9, 1990, but it is not open to the public. It will consist entirely of briefings, the agenda item to discuss possible strategies in collective bargaining negotiations noted in 55 FR 23835, June 12, 1990, having been deleted.

Agenda

Tuesday Session—J.P. Morgan Hotel—Goodwin Room
July 10—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 4–5, 1990.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Report on the Northeast Region. (William R. Cummings, Regional Postmaster General)
4. Report on the Hartford Division. (Robert L. Payne, Field Division General Manager/Postmaster)
5. Capital Investments:
   a. Retrofit of Flats Sorting Machines. (Peter A. Jacobson, Assistant Postmaster General, Engineering and Technical Support Department)
   b. Seattle, Washington, Area Plan, Delivery Distribution Centers. (Stanley W. Smith, Assistant Postmaster General, Facilities Department, and Craig G. Wade, Seattle Field Division General Manager/Postmaster)
   c. 373 Cargo Vans. (Arthur I. Porwick, Assistant Postmaster General, Operations, Systems and Performance Department)
6. Tentative Agenda for August 6–7, 1990, meeting in Washington, DC.

David F. Harris,

Secretary.

Neva R. Watson,

Certifying Officer.

[FR Doc. 90–14905 Filed 6–22–90; 2:11 pm]

BILLING CODE 7710–12–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that on June 26, 1990, the Board of Directors of the Resolution Trust Corporation will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the Discussion Agenda.

Matters regarding the resolution of certain failed thrift institutions.

Discussion Agenda:

Recommendation regarding the Corporation's administrative activities.

Recommendation regarding the relocation and leasing of office space for the Corporation's Western Regional Office.

The meeting will be held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550–17th Street, NW., Washington, DC., immediately following the FDIC Board of Directors' closed meeting beginning at 2:00 p.m.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7572.

Dated: June 21, 1990.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

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federal register

Tuesday
June 26, 1990

Part II

Federal Election Commission

11 CFR Parts 102, 104 and 106
Methods of Allocation Between Federal and Non-Federal Accounts; Payments, Reporting; Final Rule; Transmittal of Regulations to Congress

FEDERAL ELECTION COMMISSION

11 CFR Parts 102, 104 and 106

[Notice 1990-6]

Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting

AGENCY: Federal Election Commission.

ACTION: Final rules; transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations at 11 CFR Parts 102, 104 and 106. These regulations implement the contribution and expenditure limitations and prohibitions established by 2 U.S.C. 441a and 441b, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), 2 U.S.C. 431 *et seq.*, by providing for allocation of expenses for activities that jointly benefit both federal and non-federal candidates and elections. The amended rules apply to party committees, nonconnected committees, and (under certain circumstances) separate segregated funds making disbursements on behalf of both federal and non-federal candidates and elections. The revisions provide guidance to committees on how to allocate such costs by creating a comprehensive set of allocation rules, and by enhancing the Commission's ability to monitor the allocation process to ensure that prohibited funds are excluded from federal election activities. In addition, the revisions clarify how committees are to allocate expenses attributable to more than one clearly identified candidate. The revisions also specify additional information that is to be reported to the Commission by each type of committee covered by the rules. Further information on these revisions is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR parts 102, 104 and 106. These revisions set forth rules for allocation of expenses for four categories of activity that jointly benefit both federal and non-federal candidates and elections. These include (1) Administrative expenses such as rent, utilities, office supplies, and salaries; (2) the direct costs of fundraising programs or events; (3) state and local party activities exempt from the definitions of "contribution" and "expenditure" under the Act, when conducted in conjunction with non-federal election activities; and (4) generic voter drive activity such as voter identification, voter registration, and get-out-the-vote campaigns. The new rules set percentages and methods by which committees are to allocate the costs of these activities between their federal and non-federal accounts. The rules also provide procedures for how committees are to pay the bills resulting from these activities, and require disclosure of information related to allocated expenses and disbursements.

The final allocation rules published today are the result of a long and complex rulemaking process. The Commission first considered revising its allocation regulations in 1984. In November of that year, the Commission received a petition for rulemaking urging it to address the alleged use of funds raised outside of the Act's requirements for the prohibited purpose of influencing federal elections. The Commission received five written comments on the petition, in response to a Notice of Availability issued on January 4, 1985. See 50 FR 477. On December 18, 1985, the Commission published a Notice of Inquiry seeking further input on the alleged use of undisclosed funds to influence federal elections (see 50 FR 51535), and received seventeen comments in response. In addition, a public hearing was held on January 29, 1986, at which three witnesses testified. After reviewing all comments and testimony, the Commission voted on April 17, 1986, to deny the petition for rulemaking. See 51 FR 15915.

The petitioner subsequently filed suit in federal district court for judicial review of the denial of the petition. The court rejected the claim that the Commission was required to prohibit the allocation of any expenses to non-federal accounts. The court did, however, direct the Commission to revise its allocation regulations to give party committees more guidance in complying with the FECA. See *Common Cause* v. *Federal Election Commission*, 692 F. Supp. 1391, 1396 (D.D.C. 1987). The Commission issued a new Notice of Inquiry in compliance with this order on February 23, 1988 (see 53 FR 5277), and received three comments in response.

On September 29, 1988, the Commission issued a Notice of Proposed Rulemaking ("NPRM") in which it sought comments on proposed revisions to its allocation regulations. See 53 FR 38012. In the Notice, the Commission presented four alternative proposals, along with draft regulatory language for each alternative. These proposals ranged from complex sets of rules providing options of allocation methods for different categories of activity and varying requirements for different types of election years, to a uniform requirement that all committees with federal and non-federal accounts must allocate their expenses on a fixed percentage basis between those accounts. A public hearing was held on December 15, 1988, at which six witnesses presented testimony on the issues raised in the rulemaking. These witnesses represented national committees of both major political parties, a state party committee, and two public interest organizations. The Commission also received sixteen written comments, including several submitted after the close of the comment period while the Commission was considering drafts of final allocation rules.

In addition to the Notice of Proposed Rulemaking and the public hearing, the Commission initiated two other measures to obtain input relevant to allocation of expenses for federal and non-federal activities. On February 10, 1989, the Commission sent a seven-page questionnaire to the 110 Democratic and Republican state party chairs, soliciting information on current allocation practices in the states. Twenty-two responses to the questionnaire were received, providing a substantial amount of new information supplementing the comments previously submitted. In addition, on April 17, 1989, the Commission sent letters and questions to the chief fundraiser for each of the major political parties during the 1988 election year. These questions focused on (1) the fundraisers' roles in their parties' presidential campaigns and in the national party committees during the 1988 election cycle, (2) the relationship between the national party committees' fundraising activities and the presidential campaigns, and (3) the national parties' involvement in raising and spending money not subject to federal limits and prohibitions.

Each of these forms of input provided valuable information which serves as the basis for the revised rules published today. These rules also incorporate elements of each of the four proposals previously published in the Notice of Proposed Rulemaking.

Section 438(d) of title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days before they are finally promulgated. These regulations were transmitted to Congress on June 15, 1990.

Explanation and Justification

In regulations promulgated in 1977, the Commission required political committees active in both federal and non-federal elections to allocate their administrative expenses between separate federal and non-federal accounts "in proportion to the amount of funds expended on federal and non-federal elections, or on another reasonable basis." 11 CFR 106.1(e). Since 1978, the Commission has also recognized that such committees may allocate the costs of certain activities that affect both federal and non-federal elections, provided that they defray a reasonable portion of those costs with funds permissible under the Act. See Advisory Opinion 1978–10.

The revised regulations published today provide committees with significantly more guidance on how they are to allocate their administrative expenses and costs for combined federal and non-federal activities. Unlike current 11 CFR 106.1(e), which addresses only administrative expenses, the revisions specify explicit percentages or methods for allocation of each category of allocable expense by each type of committee covered by the rules. See §§ 106.5 and 106.6. Similarly, new paragraph 106.1(a) extends the allocation and reporting requirements of current 11 CFR 106.1(a) to cover payments that include both amounts attributable to specific non-federal candidates and amounts attributable to specific federal candidates, as well as expenditures on behalf of specific federal candidates alone. The new rules also ensure that the public record reflects how committees are allocating their shared federal and non-federal expenses by requiring more detailed disclosure of such allocation, to be reported on a new set of reporting forms. See § 104.10. In addition, the revised rules significantly alter the procedure by which committees are to pay the bills for their allocable activities. For the first time, committees are required to pay their allocable expenses from their regular federal accounts or from new separate allocation accounts, rather than making such payments from their non-federal accounts as permitted under the Commission's current policy. The new rules include specific payment and reimbursement procedures to allow the Commission to track the flow of non-federal funds transferred into federal accounts, and to ensure that such funds are used solely to pay the non-federal portion of a committee's allocable expenses. See paragraphs 106.5(g) and 106.6(e). Finally, the new rules provide additional safeguards against the use of impermissible funds in federal election activity by expanding the disclosure of receipts and disbursements by national party committees, and by creating a presumption that funds solicited by party committees with reference to federal candidates or elections are solicited for the purpose of influencing federal elections. See §§ 102.5(a)(3), 104.8, and 104.9.

Part 102—Registration, Organization and Recordkeeping by Political Committees

Section 102.5 Organizations Financing Political Activity in Connection With Federal and Non-federal Elections, Other Than Through Transfers and Joint Fundraisers

Revised § 102.5 adds a technical amendment regarding transfers of non-federal funds into a committee's federal accounts, and sets forth a presumption regarding funds solicited by party committees. Current 11 CFR 102.5(a)(1)(i) prohibits committees from transferring funds from a non-federal account to a federal account for any reason. Under the new rules, committees are required to make such transfers for the limited purpose of paying for allocated expenses. See paragraphs 106.5(g) and 106.6(e). Thus, paragraph (a)(1)(i) has been amended to allow transfers of non-federal funds into a federal account as provided in paragraphs 106.5(g) and 106.6(e) of the new rules.

New paragraph (a)(3) creates a presumption that any funds solicited by a party committee with reference to a federal candidate or election are raised for the purpose of influencing a federal election, and are thus subject to the prohibitions and limitations of the Act. This presumption may be rebutted by demonstrating that the funds were solicited with express notice that they would not be used for federal election purposes. Paragraph (a)(3) has been added to the rules to address the common perception, reflected in several comments, that funds prohibited under the Act have been solicited on behalf of political parties with the implication that they would be used to benefit federal candidates when, in fact, the funds could only be used for non-federal election activity. This provision, in combination with current 11 CFR 102.5(a)(2) regarding funds deposited in federal accounts, will ensure that funds collected by party committees are used for the purpose for which they were solicited, and will make clear to donors that funds prohibited under the Act will only be used to support non-federal candidates and elections.

Part 104—Reports by Political Committees

Section 104.8 Uniform Reporting of Receipts

Revised § 104.8 requires national party committees to disclose the source and amount of receipts by their non-federal accounts and building funds, as well as by their federal accounts as required under the current rules. The section has therefore been retitled to reflect its broadened application to both federal and non-federal receipts.

Paragraph (a), which governs disclosure of receipts by all reporting committees, has been amended to make clear that it only applies to committee's federal accounts. New paragraphs (e) and (f) require natonal party committees to also disclose information about receipts to their non-federal accounts and buildings funds. The language of paragraphs (e) and (f) parallels that of paragraph (a), applying the same itemization threshold to all three types of accounts. National party committees are to disclose this information on a separate Schedule A for each of their accounts, but shall list their non-federal and building fund receipts as memo entries, in order to isolate them from the federal receipts that are summarized for each reporting period.

This broadened disclosure provision has been added to the rules based on the Commission's belief that it will help eliminate the perception that prohibited funds have been used to benefit federal candidates and elections. This approach was supported by several comments on the rules. Representatives of the major parties' national committees testified that their committees did not object to broader disclosure at the national party level. However, several commenters strongly objected to such disclosure at either state or local party levels, and some Commissioners expressed concern about the FEC's jurisdiction to require such reporting by state and local party committees. Based, in part, on this input, the Commission has limited the reporting of non-federal receipts to national party committees. The Commission also took into consideration

the national committees' primary involvement in Presidential and other federal elections, such committees' ability to comply with more complicated reporting requirements, and the fact that there is no comprehensive reporting of non-federal activity by national party committees that is comparable to the non-federal reporting by state and local party committees at the state level.

Section 104.9 Uniform Reporting of Disbursements

This section has been amended to require national party committees to disclose disbursements from their non-federal accounts and building funds, as well as from their federal accounts as required under the current rules. These changes parallel the expansion of § 104.8 regarding national committee disclosure of non-federal receipts. Section 104.9 has also been retitled to reflect its broadened application to both federal and non-federal disbursements.

Paragraph (a), which governs disclosure of expenditures by all reporting committees, has been amended to make clear that it only applies to a committee's federal accounts. New paragraphs (c) and (d) require national party committees to also disclose information about disbursements from their non-federal accounts and building funds. The language of paragraphs (c) and (d) parallels that of paragraph (a), applying the same itemization threshold to all three types of accounts. In addition, new paragraph (e) requires national party committees to report each transfer of funds from their non-federal accounts to the non-federal account of a state or local party committee. National party committees are to disclose this information on a separate Schedule B for each of their accounts, but shall list their non-federal and building fund disbursements as memo entries, in order to isolate them from the federal expenditures that are summarized for each reporting period.

These revisions, together with revised § 104.8, have been added to the rules based on the belief that increased disclosure will help eliminate the perception that prohibited funds have been used to benefit federal candidates and elections. Like the disclosure of non-federal receipts, the reporting of disbursements from non-federal accounts has been limited to national party committees.

Section 104.10 Reporting of Expenses Allocated Among Candidates and Activities

Section 104.10 sets forth the rules for the reporting of information related to a committee's allocable expenses. These rules only apply to committees that qualify as "political committees" under the Act. See 2 U.S.C. 431(4). Current 11 CFR 104.10 addresses only the reporting of allocation of expenditures made on behalf of more than one specific candidate. In contrast, the revised section also covers the reporting of allocation of a committee's administrative expenses and its costs for fundraising, exempt activities, and generic voter drive activity. The new section has therefore been retitled to reflect its broadened application to the reporting of expenses allocated between federal and non-federal activities as well as expenses allocated between specific candidates.

New § 104.10 is based on the reporting provisions described in the Notice of Proposed Rulemaking. However, several additional requirements have been added to the final rules to reflect the changed procedure by which payment for allocable activities is made. Under that procedure, committees are to pay their allocable expenses from their regular federal accounts or from new separate allocation accounts, which are also federal accounts and therefore subject to the full reporting requirements of the Act. See §§ 106.5(g) and 106.6(e). Revised § 104.10 requires committees to itemize each transfer of non-federal funds to their federal or allocation accounts, as well as each allocated disbursement made from those accounts.

These rules were designed to provide sufficient information to allow the Commission to monitor committees' allocation procedures, while reflecting the Commission's commitment to avoiding overly burdensome reporting requirements. The information required is the minimum necessary to track the flow of non-federal funds into federal accounts, and to ensure that the use of such funds is strictly limited to payment for the non-federal share of allocable activities. In contrast, any information that could be deduced from a committee's reports or calculated by the Commission will not be required on the new reporting forms, which are being designed to implement these reporting provisions.

It should also be noted that these rules have been placed in a different section than the reporting provisions described in the Notice of Proposed Rulemaking. The NPRM alternatives addressed reporting in draft § 106.5, which was intended to cover all allocation issues. In the revised regulations, these requirements have been moved to § 104.10, so that all reporting requirements will continue to be located together in part 104 of the regulations.

Paragraph 104.10(a) Expenses Allocated Among Candidates

This paragraph expands current 11 CFR 104.10 to more clearly describe the rules for reporting the allocation of expenses attributable to specific candidates. In the case of expenditures allocated between more than one clearly identified federal candidate, political committees must report the amount of each in-kind contribution, independent expenditure, or coordinated party expenditure attributed to each candidate. In the case of payments involving both expenditures on behalf of one or more specific federal candidates and disbursements on behalf of one or more specific non-federal candidates, political committees with separate federal and non-federal accounts shall report the payments according to the instructions included in new paragraph 104.10(a). These instructions parallel those contained in paragraph 104.10(b) for the reporting of other allocable costs, but make clear the added requirements for reporting costs attributable to specific federal candidates. In paragraphs (a)(1) through (a)(4), the new rules set forth procedures by which committees are to report their allocation ratios used, as well as transfers of funds between their accounts and disbursements made from their federal accounts for the purpose of paying for activities conducted on behalf of both specific federal and specific non-federal candidates. Committees are instructed to assign a unique identifying title or code to each such activity, in order to track the funds designated to pay for its costs. These identifying titles and codes are also intended to decrease the burden placed on reporting committees, by allowing them to state relevant allocation ratios one time only, rather than repeating them for every itemized expense. Thus, it is especially critical that committees use precisely the same identifier each time they refer in their reports to a particular activity.

Paragraph 104.10(b) Expenses Allocated Among Activities

This new paragraph sets forth the rules by which political committees with separate federal and non-federal accounts are to report their allocation of administrative expenses and the costs of fundraising, exempt activities, and generic voter drive activity. In paragraphs (b)(1) through (b)(5), the new rules set forth procedures by which committees are to report their allocation ratios used for each category of activity,

as well as transfers of funds between their accounts and disbursements made from their federal accounts for the purpose of paying their allocable expenses. In contrast to the allocation of administrative expenses and generic voter drive costs, for which one ratio is calculated for each category as a whole, committees are to calculate a separate allocation ratio for each fundraising program or exempt activity because the allocation methods used for these categories would be expected to yield different ratios for each such event. See paragraphs 106.5 (e) and (f) and 106.6(d). Committees are also instructed to assign a unique identifying title or code to each fundraising program or exempt activity, in order to track the funds designated to pay for its costs.

Part 106—Allocations of Candidate and Committee Activities

Section 106.1 Allocation of Expenses Between Candidates

Current 11 CFR 106.1 contains both the rules for allocation between specific candidates and the rules for allocation of administrative expenses. In the revised regulations, the Commission has created new §§ 106.5 and 106.6 to govern allocation of administrative expenses and the costs of all activities not attributable to specific candidates, including fundraising events, exempt activities, and generic voter drive activity. Thus, new § 106.1 is limited to allocation of expenses attributable to more than one clearly identified candidate, and has been retitled accordingly. Paragraph 106.1(a) has been revised to clarify how committees are to allocate expenses for activities conducted on behalf of several specific candidates. Paragraph 106.1(e) has been revised to cross-reference the reader to new §§ 106.5 and 106.6 for the rules governing allocation of administrative expenses, and the costs of fundraising, exempt activities, and generic voter drive activity.

Paragraph 106.1(a) General Rule

This paragraph has been expanded to more fully describe the methods by which committees are to allocate expenses attributable to more than one specific candidate, including in-kind contributions, independent expenditures, and coordinated party expenditures. These rules present no change in Commission policy as to when a given expense constitutes an in-kind contribution or particular type of expenditure. Rather, the rules are intended to provide guidance as to how committees are to allocate such expenses once they are determined to be in-kind contributions, independent expenditures, or coordinated party expenditures.

The new paragraph retains the general rule of current 11 CFR 106.1(a) that expenses shall be attributed to each candidate according to the benefit reasonably expected to be derived. The revision adds examples of the general rule, specifying allocation methods for two different types of activity that may be conducted on behalf of several specific candidates.

The first example stated in the rules covers publications and broadcast communications, which are to be allocated according to the space or time devoted to each candidate as compared to the total space or time devoted to all candidates. If the costs of a phone bank are attributable, in whole or in part, to one or more federal candidates as an in-kind contribution, independent expenditure, or coordinated party expenditure, then those costs should be allocated on a similar basis, according to the number of questions or statements devoted to each candidate.

The second example stated in the rules covers the costs of fundraising events where funds are collected by one committee for more than one clearly identified candidate. Such costs are to be allocated according the amount of funds received on behalf of each candidate as compared to the total receipts by all candidates. This situation should not be confused with that described in 11 CFR 102.17, which concerns joint fundraising activities conducted by more than one committee. The Commission intends that any other types of activity not covered by the stated examples are to be allocated according to the general rule of this paragraph when those activities are conducted on behalf of more than one clearly identified candidate.

New paragraph 106.1(a) also makes clear that committees are to use the designated methods to allocate costs between specific federal candidates, as well as to allocate payments involving both expenditures on behalf of specific federal candidates and disbursements on behalf of specific non-federal candidates. In the case of the latter type of payments, political committees with separate federal and non-federal accounts are to make such payments according the same procedures required for paying administrative expenses and the costs of joint federal and non-federal activities (see paragraphs 106.5(g) and 106.6(e)), but shall report such payments according to paragraph 104.10(a). It should be noted that the methods set forth in paragraph 106.1(a) will also be used by publicly-financed presidential general election candidates, who are to allocate the costs of joint activities pursuant to 11 CFR 9002.11(b)(3). Such candidates must keep records of their allocable expenses pursuant to paragraph 104.10(a).

Paragraph 106.1(e)

This paragraph cross-references the reader to new §§ 106.5 (for party committees) and 106.6 (for nonconnected committees and separate segregated funds) for the rules governing allocation for administrative expenses and all activities not attributable to specific candidates. In contrast to current 11 CFR 106.1(e), which provides only for allocation of administrative expenses, the new rules apply the referenced allocation requirements to fundraising events, exempt activities, and generic voter drive activity as well. This expanded application is consistent with the Commission's position in Advisory Opinions 1978–10, 1978–28, and 1978–50. These opinions clarified the scope of 11 CFR 106.1(e) by interpreting "administrative expenses" as including generic voter activities such as voter registration and get-out-the-vote drives, and requiring that such activities be allocated according to the same methods as approved for other administrative expenses. The Commission has also interpreted the allocation requirement of 11 CFR 106.1(e) as applying to publications and fundraising events. See Advisory Opinions 1978–46 and 1979–12.

In addition, the new rules extend the allocation requirements to all committees that make disbursements for joint federal and non-federal election activities, whereas current 11 CFR 106.1(e) applies only to political committees with separate federal and non-federal accounts. Under the revised rules, organizations that are not political committees and that maintain only a single account shall demonstrate, upon the Commission's request, that their expenses for joint activities have been allocated as required by these rules, and that the federal share of such expenses has been paid with funds permissible under the Act. See 11 CFR 102.5(b)(1)(ii).

Section 106.5 Allocation of Expenses Between Federal and Non-federal Activities by Party Committees

This section has been added to the rules to provide party committees with detailed instructions as to how they are to allocate their administrative expenses and costs for combined federal and non-federal activities. These rules apply only

to those committees that make disbursements in connection with both federal and non-federal elections. Paragraphs 106.5 (a) through (g) specify percentages and methods by which different types of party committees are to allocate expenses for each category of allocable activity, and set forth procedures by which committees are to pay the bills for these allocable expenses. The allocation methods required by § 106.5 are based on those previously approved in Commission advisory opinions and described in the Notice of Proposed Rulemaking. However, following receipt of the comments and testimony on the rules, the Commission refined several of the allocation methods, and combined aspects of the four NPRM proposals.

One of the major issues addressed by the Commission in developing these regulations was whether uniform rules should be applied to all committees and activities, or whether options of methods should be available for certain committees and circumstances. Of the four alternatives described in the Notice of Proposed Rulemaking, two specified uniform allocation methods to be used by all committees, and two offered a choice of methods in given situations. The latter two alternatives also allowed committees the option of allocating expenses "on any other reasonable basis approved by the Commission in an advisory opinion," based on the language of the current allocation rule at 11 CFR 106.1(e).

In response to the Notice, one non-party commenter urged the Commission to adopt a uniform method for all committees, based on the concern that too much flexibility would lead to confusion in application of the rules. This comment also suggested that allowing different methods for state versus local party committees would result in a diversion of funds to whichever level permitted a higher non-federal share of allocable expenses. In constrast, the party committee commenters stressed the importance of flexibility in the rules, given the disparities between political activity at different levels of party organizations, and in different states and localities.

While concerned about keeping the rules as simple as possible, the Commission concluded that some differences between types of committees and activities must be acknowledged. Thus, the revised regulations include different requirements for national versus state and local party committees, as well as special variations for the House and Senate campaign committees, and for state and local party committees that elect statewide offices in years with no regularly scheduled federal elections. In the course of the rulemaking, it also became clear that some allocation methods were appropriate for certain activities and committees, while inappropriate for others. For example, the funds received method (see paragraph 106.5(f)) may reflect a fair division of costs involved in paying for a particular fundraising event, but bears no relationship to a committee's administrative functions and get-out-the-vote activities. Similarly, the ballot composition method (see paragraph 106.5(d)) may accurately reflect the priorities of state and local party committees, but is less applicable to national party committees primarily focused on national candidates and elections. Thus, the new regulations require different allocation methods for different types of committees and expenses, and eliminate the option of choosing between methods within each category of activity. While these variations may initially appear complex, once a committee determines the category into which it falls, the rules applied to that class of committee will be clear, and will not vary from year to year.

A second major issue addressed by the Commission in developing these regulations was whether committees should be required to allocate fixed or minimum percentages to their federal accounts for certain categories of activity. One alternative described in the Notice of Proposed Rulemaking would have set a minimum federal percentage for all allocable expenses, to be applied if greater than the percentages produced by the specified allocation methods. A second alternative would have set fixed allocation percentages for all activities, with a higher federal percentage required for generic voter drive costs in presidential election years. A third alternative would have required different allocation methods in federal versus non-federal election years, with a set minimum federal percentage for generic voter drive costs in presidential election years.

Following receipt of the comments on the NPRM alternatives, the Commission considered several variations on the concept of minimum or fixed allocation percentages. These ranged from proposals that would have set minimum federal percentages only for national party committees or in presidential election years, to other proposals that would have applied minimum percentages to all activities by all party committees in all years. The Commission also considered proposals that would have set fixed allocation percentages presumed appropriate for all party committees, but that would have allowed a committee to rebut the presumption by demonstrating through the advisory opinion process that, in its case, the fixed federal percentage was too high.

The new allocation rules published today are drawn from the proposals described in the Notice of Proposed Rulemaking and from the variations subsequently considered by the Commission. In the revised rules, the Commission has retained the concept of minimum percentages only for allocation of administrative expenses and costs of generic voter drive activity by the House and Senate campaign committees of the national parties. See paragraph 106.5(c). For other national party committees, the Commission has set fixed percentages for allocation of these categories of expense. See paragraph 106.5(b). In contrast, all of these committees are to allocate their fundraising costs solely according to the funds received method, as described in this section. See paragraph 106.5(f). State and local party committees, nonconnected committees, and separate segregated funds shall also calculate allocation ratios according to methods specified in the rules, with neither fixed nor minimum federal percentages required. See paragraphs 106.5 (d), (e) and (f), and 106.6 (c) and (d).

The revised regulations also eliminate the option of case-by-case approval of customized allocation methods through the advisory opinion process, as well as the option of allowing committees to rebut fixed allocation percentages by a showing of individual circumstances. These decisions were based on the Commission's concern that such open-ended options would be very difficult to administer, and would potentially allow many exceptions to the general rules. They would also risk a return to the "any reasonable method" standard of the current rules that was disapproved by the United States District Court. See *Common Cause* v. *Federal Election Commission*, 692 F.Supp. 1391, 1396 (D.D.C. 1987).

Paragraph 106.5(a) General Rules

This paragraph provides a general overview of the allocation rules for party committees and defines the four categories of activity for which costs are to be allocated. These include administrative expenses, fundraising programs, exempt activities conducted by state and local parties, and generic voter drive activity such as voter

registration and get-out-the-vote campaigns. While earlier drafts of these rules and the alternatives described in the Notice of Proposed Rulemaking included fundraising costs in the category of administrative expenses, the revised rules divide these expenses into two separate categories. This distinction became necessary to allow for the difference in allocation methods applied to each of these types of expense. See paragraphs 106.5(b), (c), (d) and (f). Please note that all administrative expenses must be allocated between federal and non-federal accounts, if incurred by a committee that makes disbursements in connection with both federal and non-federal elections, and that chooses to pay any portion of such disbursements from its non-federal account. Such committees must also allocate all costs of generic voter drive activity, except for get-out-the-vote drives conducted on behalf of a wholly federal or wholly non-federal special election. In contrast, fundraising costs are allocable only when federal and non-federal funds are collected by one committee through the same fundraising event. Similarly, exempt activities are allocable only when conducted in conjunction with non-federal election activities.

One of the alternatives described in the Notice of Proposed Rulemaking offered committees the option of defraying the total cost of an allocable activity with funds raised under federal law. This option has been retained in paragraph 106.5(a)(1), reflecting the Commission's view that allocating a portion of certain costs to a committee's non-federal account is a permissive rather than a mandated procedure. Thus, the amounts that would be calculated under the rules for a committee's federal share of allocable expenses represent the minimum amounts to be paid from the committee's federal account, without precluding the committee from paying a higher percentage with federal funds.

The same NPRM alternative offered certain local party committees the option of selecting fixed allocation percentages for their administrative expenses and generic voter drive activity. In subsequent drafts of this paragraph, the Commission considered a similar "safe harbor" provision by which certain local party committees could choose to allocate these categories of expense according to a low fixed federal percentage. This option was originally conceived as a way for local party committees with limited activity to avoid the burden of calculating complicated allocation ratios, and to be assured of a relatively low federal percentage. However, the Commission has since revised the ballot composition method by which such committees are to allocate their administrative expenses and generic voter drive costs. See paragraph 106.5(d). Under the revised method, the process of calculating an allocation ratio is greatly simplified, and the resulting federal percentages for all local party committees are generally similar to those provided by the "safe harbor" option. For these reasons, the Commission decided to eliminate this option from the final allocation rules.

Paragraph 106.5(b) National Party Committees Other Than Senate or House Campaign Committees; Fixed Percentages for Allocating Administrative Expenses and Costs of Generic Voter Drive Activity

This paragraph sets forth the rules by which national party committees other than the House or Senate campaign committees are to allocate their administrative expenses and costs of generic voter drive activity. Unlike other committees, which are to calculate individualized ratios according to specified allocation methods for these categories of activity, the national party committees are to allocate fixed percentages to their federal and non-federal accounts each year. The fixed federal percentage is set at 65% in presidential election years, and at 60% in all other years. While committees are free to allocate higher percentages to their federal accounts, they may not allocate less than the specified percentages.

The Commission adopted this fixed percentage rule after considering several other alternative approaches. Previous drafts of the regulations would have allowed national party committees to allocate their administrative expenses and costs of generic voter drive activity according to the funds expended method or an aggregate ballot composition method, in combination with specified minimum federal percentages. These approaches were ultimately rejected by the Commission based on concerns about the practicability of applying either method at the national committee level. The particular percentages adopted by the Commission are intended to reflect the national party committees' primary focus on presidential and other federal candidates and elections, while still recognizing that such committees also participate in party-building activities at state and local levels of the party organizations.

Paragraph 106.5(c) Senate and House Campaign Committees of a National Party; Method and Minimum Federal Percentages for Allocating Administrative Expenses and Costs of Generic Voter Drive Activity

This paragraph sets forth the rules by which the Senate and House campaign committees of the national parties are to allocate their administrative expenses and costs of generic voter drive activity. Such expenses shall be allocated according to the funds expended method, with a minimum of 65% to be allocated to the committees' federal accounts each year. This rule differs from that applied to the other national party committees, which sets fixed allocation percentages that need not be compared to any other calculated ratios. In contrast, the minimum percentages required by this paragraph create a floor for federal allocation, while requiring a higher federal share if a higher percentage is calculated under the funds expended method. This more stringent requirement has been applied to the House and Senate campaign committees due to their narrower focus on Congressional candidates, and their limited involvement in non-federal elections.

The funds expended method was first described in Advisory Opinion 1975–21 and is codified in the current allocation rule at 11 CFR 106.1(e). It also appeared in two of the alternatives described in the Notice of Proposed Rulemaking. Under one alternative, committees were to allocate their administrative expenses and costs of generic voter drive activity according to the ratio of federal disbursements to total federal and non-federal disbursements made in the year four years prior to the year in question. The second alternative would have required committees to estimate a ratio at the beginning of the calendar year based upon their federal and non-federal disbursements in a prior comparable year, and to adjust their allocation ratio at the end of the year to reflect actual disbursements made during the year.

These proposals were addressed in several of the comments received by the Commission. While commenters from both national parties endorsed the concept of the funds expended method, they opposed as unworkable the four year "look back" approach described in the first NPRM alternative. One non-party commenter opposed any "prior year" model based on the concern that it would allow continued misallocation if the prior year's ratio had been improperly calculated. Another non-

party commenter described the method as circular, requiring a committee to have calculated an allocation ratio for a prior year without any guidance on how the calculation should have been done. This commenter supported the use of estimated and adjusted allocation ratios, using actual disbursements in the prior year as a guideline for estimating the initial allocation.

The revised regulations incorporate elements of several of these approaches. New paragraph 106.5(c) requires committees to report estimated allocation ratios at the beginning of the year, and to adjust their ratios on each periodic report to reflect the ratio of actual federal and non-federal funds expended, to date. However, the method has been revised from earlier drafts of the rules to resolve a concern about its application in years in which no federal election is held. Under the revised method, allocation ratios are determined by disbursements made over the two-year federal election cycle, rather than by disbursements made in the current calendar year. Thus, committees would have a basis for allocating their administrative expenses and costs of generic voter drive activity each year, including years in which no federal election is held. Such allocation is necessary to account for the portion of a committee's off-year administrative functions and generic activities that impact on future federal elections. The estimated ratio reported at the beginning of the year may be based either on disbursements from a prior comparable election cycle, or on a reasonable prediction of disbursements in the coming election cycle if no data from prior years is relevant or available. The revised rule also requires committees to transfer funds from their federal to their non-federal accounts to reflect their adjusted ratios, if the non-federal account has paid more than its allocable share due to an estimate later shown to be incorrect.

Paragraph 106.5(d) State and Local Party Committees; Method for Allocating Administrative Expenses and Costs of Generic Voter Drive Activity

This paragraph sets forth the rules by which state and local party committees are to allocate their administrative expenses and costs of generic voter drive activity. Paragraph 106.5(d)(1) states the general rule that such committees are to allocate these categories of expense according to the ballot composition method, as set forth in paragraphs (d)(1) (i) and (ii).

The ballot composition method was first described in the Commission's response to Advisory Opinion Request 1976–72, which permitted committees to allocate expenses according to the ratio of federal offices on the ballot to total federal and non-federal offices on the ballot, with the federal offices given proportionately more weight. It also appeared in three of the alternatives described in the Notice of Proposed Rulemaking, with two of them specifically limiting use of the method to allocation of administrative expenses and costs of generic voter drive activity by state and local party committees. The new rule replaces the poorly defined "weighting" concept with an "average ballot" approach, as suggested by several of the comments received on this method. Under this approach, committees are to calculate a ballot composition ratio according to the ballot which an average voter would face in that committee's state or geographic area, rather than basing the ratio on the aggregates of all federal and all non-federal reaces on the ballot. The method has been further simplified to produce a ratio by counting the categories of offices on the ballot rather than counting each individual office. Paragraph 106.5(d)(1)(ii) specifies the categories to be included in the ratio, and the number of federal or non-federal offices to be counted for each such category.

It should be noted that in states where candidates for governor and lieutenant governor run on a single ticket, the latter office may not be separately counted in the category of "other partisan statewide executive candidates." The same principle applies to the offices of president and vice president, which are counted together as one federal office. In contrast, in states where the governor and lieutenant governor are independently elected, the office of lieutenant governor may be counted separately from the governor, in the category of "other partisan statewide executive candidates." California is one example of such a state, where candidates from different parties may be simultaneously elected to the offices of governor and lieutenant governor.

The ballot composition method was the subject of several late comments from national and state party committees, expressing concern that the scope of party activity at state and local levels was not adequately reflected in the method, as revised. In response to this concern, the Commission reexamined the method and further refined the ballot composition rules. In the final version of paragraph 106.5(d)(1)(ii), the Commission deleted the category of "partisan statewide judicial offices," which would have benefited only those states that elect statewide judges through partisan elections. In its place, the Commission added to the ratio an additional non-federal office to reflect state party support for partisan local candidates. Thus, this non-federal slot is now available to virtually every state party committee.

It should be noted that the ballot composition method has also been revised from earlier drafts of the rules to resolve a concern about its application in years in which no federal election is held. Under the revised method, allocation ratios are determined by the offices expected on the ballot in the next general election to be held in the committee's state or geographic area. Thus, committees would have a basis for allocating their administrative expenses and costs of generic voter drive activity each year, including years in which no federal election is held. Such allocation is necessary to account for the portion of a committee's off-year administrative functions and generic activities that impact on future federal elections.

The broader language of new paragraph 106.5(d)(1) also generally covers years in which a special election is held. However, because of the varying situations that might arise, the Commission has not spelled out rules to cover each variation. The allocation formula to be used and attribution of disbursements to specific candidates will have to be determined on a case-by-case basis.

In the course of refining the ballot composition method, the Commission became aware of an additional problem in applying the method to states that do not hold federal and non-federal elections in the same year. The method as described in paragraph 106.5(d)(1) would have allowed these states to allocate 100% of their administrative expenses and costs of generic voter drive activity to their non-federal accounts in years in which "the next general election" was only for non-federal offices. Such an allocation would not account for the impact of these activities on upcoming federal elections. Thus, the Commission adopted an exception to the regular rule for states that hold non-federal elections in odd-numbered years when no special federal election is scheduled. Paragraph 106.5(d)(2) describes a variation of the ballot composition method to be used by such states, whereby one ratio is calculated for generic voter drive costs based on the election to be held that year, and a separate ratio is calculated for administrative expenses based on the federal election cycle. This variation

will ensure that committees allocate a portion of their administrative expenses to their federal accounts even in solely non-federal election years, as well as providing guidance on how to allocate costs in years in which no elections are held.

Paragraph 106.5(e) State and Local Party Committees; Method for Allocating Costs of Exempt Activities

This paragraph sets forth the rules by which state and local party committees are to allocate the costs of activities that are exempt from the definitions of "contribution" and "expenditure" under the Act (see 11 CFR 100.7(b)(9), (15) and (17), and 100.8(b)(10), (16) and (18)), when such activities are conducted in conjunction with non-federal election activities. Committees are to allocate these expenses according to the time or space devoted to federal elections as compared to the total time or space devoted to federal and non-federal elections in a particular publication or phone bank. This method was described in Advisory Opinion 1978–46, and appeared in two of the alternatives included in the Notice of Proposed Rulemaking. Under the method, committees are to calculate a separate allocation ratio for each individual exempt activity, unlike administrative expenses and generic voter drive activity, which are allocated according to a single ratio calculated for the entire category of activity. This procedure is necessary because each exempt communication is likely to devote a different amount of time or space to federal and non-federal elections. It should also be noted that an exempt activity may be conducted in conjunction with a non-exempt activity that is attributable to one or more clearly identified candidates. In that case, the costs of the activity must be proportionally allocated between the committee's federal and non-federal accounts according to this paragraph, and allocated between candidates as required by paragraph 106.1(a).

Paragraph 106.5(f) All Party Committees; Method for Allocating Direct Costs of Fundraising

Paragraph 106.5(f) sets forth the rules by which all party committees are to allocate the direct costs of each fundraising program or event, where both federal and non-federal funds are collected by one committee through such program or event. These rules should not be confused with 11 CFR 102.17, which concerns joint fundraising activities conducted by more than one committee. Under this paragraph, committees are to allocate their fundraising costs according to the funds received method. As with allocation of exempt activity costs, committees are to calculate a separate allocation ratio for each individual fundraising event.

The funds received method was first described in the *FEC Record* of December 1977 as an example of an allocation procedure that would meet the "reasonable basis" requirement of current 11 CFR 106.1(e). The method was subsequently cited in several advisory opinions as a permissible method for allocating administrative expenses (later extended to include voter registration and get-out-the-vote drives), along with the funds expended and ballot composition methods. See, *e.g.*, Advisory Opinion 1978–46.

Of the four alternatives described in the Notice of Proposed Rulemaking, only one retained the funds received method, proposing that it be used to allocate administrative expenses and costs of generic voter drive activity in non-federal election years. All of the comments received on this method expressed concern that the amount of federal versus non-federal funds received by a committee is not meaningfully related to how expenses for joint federal and non-federal activities should be divided. However, several commenters suggested that the method be retained for the narrow purpose of allocating the costs of fundraising activities, because it provides the most accurate basis for division of these costs. Based on these comments, the Commission adopted this method for allocating the direct costs of fundraising programs and events through which both federal and non-federal funds are obtained.

Paragraph 106.5(g) Payment of Allocable Expenses by Committees With Separate Federal and Non-federal Accounts

This paragraph sets forth the procedures by which party committees with separate federal and non-federal accounts are to pay the bills for their administrative expenses and shared federal and non-federal activities. These rules do not apply to organizations that maintain only a single account, even though such organizations may be required to demonstrate to the Commission that they have allocated their expenses as required by other sections of the allocation regulations.

The provisions of new paragraph 106.5(g) represent a significant departure from the Commission's current policy. In enforcing the current allocation rule at 11 CFR 106.1(e), the Commission has permitted three procedures by which committees may pay their administrative expenses. Under current policy, committees are allowed to write two separate checks from their federal and non-federal accounts to cover the respective portions of each expense. Alternatively, committees could pay the entire expense from their non-federal accounts, which would then be reimbursed by their federal accounts. Finally, committees could pay the expense through a separate "escrow" account established solely for the purpose of paying for allocable expenses. Reimbursement of a federal account by a non-federal account that contains funds prohibited by the Act is not permitted under the current rules. See 11 CFR 102.5(a)(1)(i) and Advisory Opinion 1978–6.

While the Commission has interpreted 11 CFR 106.1(e) to also require allocation of fundraising, exempt activity, and generic voter drive costs (see Advisory Opinions 1978–10, 1978–28, 1978–46, 1978–50 and 1979–12), it has limited the option of paying allocable bills through a non-federal account to the payment of administrative expenses. This distinction has been based on the premise that fundraising, voter drives, and exempt activities have a direct impact on federal elections, and thus committees should not be permitted to advance non-federal funds for those purposes.

This distinction was incorporated into three of the alternatives described in the Notice of Proposed Rulemaking. Those alternatives would have allowed payment of an entire administrative expense by a committee's non-federal account, provided that it was reimbursed by the committee's federal account within ten days after the bill was paid. All other allocable expenses were to be paid by two separate checks from the federal and non-federal accounts, which was also provided as an option for payment of administrative expenses. The fourth NPRM alternative permitted the same two procedures, but made no distinction between different categories of expense. The option of paying expenses through a separate "escrow" account was eliminated in all four of the NPRM alternatives, but was raised for comment as an additional issue.

The Commission received considerable comment on these proposed payment procedures. First, the ten-day reimbursement limitation was unanimously rejected as unworkable. Several commenters asserted that at least thirty days were needed for such reimbursement to realistically occur. Second, two commenters expressed the

concern that federal account reimbursement of a state account could trigger state law disclosure requirements for the federal account, thus creating a duplicate federal and state-level reporting burden. Third, the same two commenters proposed that the current "escrow" procedure be retained as a payment option, even though it had been excluded from the alternatives described in the Notice of Proposed Rulemaking. Finally, one commenter suggested that the Commission consider changing its policy to allow a committee to pay an entire allocable expense through its federal account, with reimbursement from its non-federal account. This procedure would ensure that disbursements for allocable expenses would be disclosed by a committee's federal accounts under the Act's reporting requirements.

Based on these comments, the Commission significantly revised the proposed payment procedures described in the Notice of Proposed Rulemaking. Paragraph 106.5(g)(1) of the rules published today offers committees an option of two procedures by which they may pay for their administrative expenses and shared federal and non-federal activities. Under the first procedure, committees would pay an entire bill from their regular federal accounts, and would transfer funds from their non-federal accounts to their federal accounts to cover the non-federal share of the allocable expense. The second procedure would allow committees to establish a separate allocation account (referred to previously as an "escrow" account), which is considered by the Commission to be a federal account, and to transfer funds to that account from their regular federal accounts and their non-federal accounts solely for the purpose of paying allocable expenses. Under both procedures, transfers of non-federal funds must be itemized in the committee's reports to show the allocable activities for which they are intended to pay, and must occur within ten days before or thirty days after the bills for those activities are paid. Each allocated disbursement from a committee's federal account or allocation account must also be itemized, to show the particular expenses covered by that disbursement. These requirements will allow the Commission to track the flow of non-federal funds into federal accounts, and to ensure that the use of such funds is strictly limited to payment for the non-federal share of allocable activities.

It should be noted that this is the first time that the Commission has allowed non-federal funds to be transferred to a committee's federal account, and that it does so now only for the limited purpose of paying allocable expenses. Under the new rules, committees are prohibited from making such payments through their non-federal accounts, as permitted under the Commission's current policy. That procedure has failed to provide sufficient disclosure of the federal and non-federal portions of allocated disbursements. Such disclosure is critical to the Commission's ability to monitor whether expenses have been allocated as required, and is the basis for the procedures adopted by the new allocation rules.

It should also be noted that the new rules allow committees to transfer funds to their federal account or allocation account prior to actual payment of a vendor's bill, as well as allowing reimbursement of those accounts after the bill has been paid. This rule is more flexible than that proposed by the NPRM alternatives, which would have limited such transfers to post-payment reimbursement. However, the new rules set a ten-day time limit on pre-payment transfers that are made from a non-federal account, in order to prevent such accounts from subsidizing federal election activity with prohibited funds. This ten-day limit differs from the one objected to by the commenters in response to the Notice, as the new rules provide for a total forty-day time period in which transfers for allocation purposes may occur.

The procedures contained in paragraph 106.5(g) are intended to provide committees the flexibility to make single payments to their vendors, rather than requiring that every expense be paid with two separate checks. Such flexibility is indispensable for committees paying large numbers of bills from many different vendors. In fact, the new rules have eliminated the two-check option altogether, as that procedure does not provide sufficient disclosure of how funds allocated for shared federal and non-federal activity are actually spent. Instead, committees must choose from the two payment procedures authorized by the new allocation rules.

Section 106.6 Allocation of Expenses Between Federal and Non-Federal Activities by Separate Segregated Funds and Nonconnected Committees

This section has been added to the rules to provide separate segregated funds and nonconnected committees with detailed instructions as to how they are to allocate their administrative expenses and costs for combined federal and non-federal activities. These rules apply only to those committees that make disbursements in connection with federal and non-federal elections. For purposes of this section, "nonconnected committee" includes any committee that conducts activities in connection with a federal election, but which is not a party committee, an authorized committee of any candidate for federal office, or a separate segregated fund.

Paragraph 106.6(b) describes the categories of activity that are to be allocated by each type of committee. These categories are generally the same as those defined in paragraph 106.5(a)(2) for party committees, with one important difference. Unlike party committees and nonconnected committees, separate segregated funds need only allocate their administrative and fundraising expenses if those expenses are not paid by their connected organizations, as permitted by 11 CFR 114.5(b).

Paragraph 106.6(c) specifies the method for allocating administrative expenses and the costs of generic voter drive activity. Separate segregated funds and nonconnected committees are to allocate these expenses according to the funds expended method calculated over a two-year federal election cycle. This method is identical to that described in paragraph 106.5(c) for use by the Senate and House campaign committees, except that no minimum federal percentages are required for separate segregated funds or nonconnected committees.

Paragraph 106.6(d) specifies the method for allocating the direct costs of each fundraising program or event, where both federal and non-federal funds are collected by one committee through such program or event. Separate segregated funds and nonconnected committees are to allocate these expenses according to the funds received method, which is identical to that described in paragraph 106.5(f) for use by all party committees.

Paragraph 106.6(e) sets forth procedures by which separate segregated funds and nonconnected committees are to pay the bills for their allocable expenses. These procedures are identical to those described in paragraph 106.5(g) for use by all party committees.

In earlier drafts of these regulations, the Commission considered combining the allocation rules for separate segregated funds and nonconnected committees with those required for party committees. However, the Commission was concerned that different types of committees might have difficulty sorting out the particular rules that applied to

them. By creating new § 106.6, the Commission intends to make it as simple as possible for each type of committee to easily locate the appropriate set of allocation rules. In contrast, the reporting requirements of part 104 apply to all political committees, including party committees, separate segregated funds, and nonconnected committees. Similarly, the rules set forth in § 106.1 apply to all committees that make disbursements on behalf of more than one clearly identified candidate.

List of Subjects

11 CFR Part 102

Political committees and parties, Campaign funds.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting requirements, Political candidates.

11 CFR Part 106

Campaign funds, Political committees and parties, Political candidates.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The primary purpose of the revision is to clarify the Commission's rules governing allocation of certain costs by party committees, nonconnected committees and separate segregated funds.

For the reasons set out in the preamble, title 11, chapter I, subchapter A of the Code of Federal Regulations, is amended as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

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

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. Section 102.5 is amended by revising paragraph (a)(1)(i), and by adding paragraph (a)(3) as follows:

§ 102.5 Organizations financing political activity in connection with Federal and non-federal elections, other than through transfers and joint fundraisers.

(a) * * *

(1) * * *

(i) Establish a separate federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate federal political committee which shall comply with the requirements of the Act including the registration and reporting requirements of 11 CFR part 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate federal account. All disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account. No transfers may be made to such federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-federal elections, except as provided in 11 CFR 106.5(g) and 106.6(e). Administrative expenses shall be allocated pursuant to 11 CFR part 106 between such federal account and any other account maintained by such committee for the purpose of financing activity in connection with non-federal elections; or

* * * * *

(3) Any party committee solicitation that makes reference to a federal candidate or a federal election shall be presumed to be for the purpose of influencing a federal election, and contributions resulting from that solicitation shall be subject to the prohibitions and limitations of the Act. This presumption may be rebutted by demonstrating to the Commission that the funds were solicited with express notice that they would not be used for federal election purposes.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b).

4. Section 104.8 is amended by revising the heading and paragraph (a), and by adding paragraphs (e) and (f) as follows:

§ 104.8 Uniform reporting of receipts.

(a) A reporting committee shall disclose the identification of each individual who contributes an amount in excess of $200 to the committee's federal account(s). This identification shall include the individual's name, mailing address, occupation, the name of his or her employer, if any, and the date of receipt and amount of any such contribution. If an individual contributor's name is known to have changed since an earlier contribution reported during the calendar year, the exact name or address previously used shall be noted with the first reported contribution from that contributor subsequent to the name change.

* * * * *

(e) National party committees shall disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's non-federal account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

(f) National party committees shall also disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's building fund account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

5. Section 104.9 is amended by revising the heading and paragraph (a), and by adding paragraphs (c), (d) and (e) as follows:

§ 104.9 Uniform reporting of disbursements.

(a) Political committees shall report the full name and mailing address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made from the reporting committee's federal account(s), together with the date, amount and purpose of such expenditure, in accordance with 11 CFR 104.9(b). As used in 11 CFR 104.9, "purpose" means a brief statement or

description as to the reasons for the expenditure. See 11 CFR 104.3(b)(3)(i)(A).

* * * * *

(c) National party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of $200 within the calendar year is made from the committee's non-federal account(s), together with the date, amount and purpose of such disbursement, in accordance with 11 CFR 104.9(b). As used in 11 CFR 104.9, "purpose" means a brief statement or description as to the reasons for the disbursement. See 11 CFR 104.3(b)(3)(i)(A).

(d) National party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of $200 within the calendar year is made from the committee's building fund account(s), together with the date, amount and purpose of such disbursement, in accordance with 11 CFR 104.9(b). As used in 11 CFR 104.9, "purpose" means a brief statement or description as to the reasons for the disbursement. See 11 CFR 104.3(b)(3)(i)(A).

(e) National party committees shall report in a memo Schedule B each transfer from their non-federal account(s) to the non-federal account(s) of a state or local party committee.

6. Section 104.10 is revised to read as follows:

§ 104.10 Reporting of expenses allocated among candidates and activities.

(a) *Expenses allocated among candidates.* A political committee making an expenditure on behalf of more than one clearly identified candidate for federal office shall allocate the expenditure among the candidates pursuant to 11 CFR part 106. Payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates shall also be allocated pursuant to 11 CFR part 106. For allocated expenditures, the committee shall report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each federal candidate. If a payment also includes amounts attributable to one or more non-federal candidates, and is made by a political committee with separate federal and non-federal accounts, then the payment shall be made according to the procedures set forth in 11 CFR 106.5(g) or 106.6(e), as appropriate, but shall be reported pursuant to paragraphs (a)(1) through (a)(4), as follows:

(1) *Reporting of allocation of expenses attributable to specific federal and non-federal candidates.* In each report disclosing a payment that includes both expenditures on behalf of one or more federal candidates and disbursements on behalf of one or more non-federal candidates, the committee shall assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, shall state the allocation ratio calculated for the program or activity, and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts attributed to each candidate, to date, for each joint program or activity.

(2) *Reporting of transfers between accounts for the purpose of paying expenses attributable to specific federal and non-federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall report each transfer of funds from its non-federal account to its federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one program or activity, the committee shall itemize the transfer, showing the amounts designated for each program or activity conducted on behalf of one or more clearly identified federal candidates and one or more clearly identified non-federal candidates.

(3) *Reporting of allocated disbursements attributable to specific federal and non-federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall also report each disbursement from its federal account or its separate allocation account in payment for a program or activity conducted on behalf of one or more clearly identified federal candidates and one or more clearly identified non-federal candidates. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one program or activity, the committee shall itemize the disbursement, showing the amounts designated for payment of each program or activity conducted on behalf of one or more clearly identified federal candidates and one or more clearly identified non-federal candidates. The committee shall also report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each federal candidate, and the total amount attributed to the non-federal candidate(s). In addition, the committee shall report the total amount expended by the committee that year, to date, for each joint program or activity.

(4) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocation on behalf of specific federal and non-federal candidates, in accordance with 11 CFR 104.14.

(b) *Expenses allocated among activities.* A political committee that has established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those accounts its administrative expenses and its costs for fundraising, exempt activities, and generic voter drives according to 11 CFR 106.5 or 106.6, as appropriate, and shall report those allocations according to paragraphs (b) (1) through (5), as follows:

(1) *Reporting of allocation of administrative expenses and costs of generic voter drives.*

(i) In the first report in a calendar year disclosing a disbursement for administrative expenses or generic voter drives, as described in 11 CFR 106.5(a)(2) or 106.6(b), the committee shall state the allocation ratio to be applied to these categories of activity according to 11 CFR 106.5 (b), (c) or (d) or 106.6(C), and the manner in which it was derived. The Senate and House campaign committees of each political party shall also state whether the calculated ratio or the minimum federal percentage required by 11 CFR 106.5(c)(2) will be used.

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement for administrative expenses or generic voter drives:

(A) The committee shall state the category of activity for which each allocated disbursement was made, and shall summarize the total amount spent by the federal and non-federal accounts that year, to date, for each such category.

(B) Nonconnected committees, separate segregated funds, and Senate and House campaign committees of a

national party that have allocated expenses according to the funds expended method as described in 11 CFR 106.5(c)(1) or 106.6(c) shall also report in a memo entry the total amounts expended in donations and direct disbursements on behalf of specific state and local candidates, to date, in that calendar year.

(2) *Reporting of allocation of the direct costs of fundraising and costs of exempt activities.* In each report disclosing a disbursement for the direct costs of a fundraising program or an exempt activity, as described in 11 CFR 106.5(a)(2) or 106.6(b), the committee shall assign a unique identifying title or code to each such program or activity, shall state the allocation ratio calculated for the program or activity according to 11 CFR 106.5 (e) and (f) or 106.6(d), and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts spent by the federal and non-federal accounts that year, to date, for each such program or activity.

(3) *Reporting of transfers between accounts for the purpose of paying allocable expenses.* A political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall report each transfer of funds from its non-federal account to its federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the committee shall itemize the transfer, showing the amounts designated for administrative expenses and generic voter drives, and for each fundraising program or exempt activity, as described in 11 CFR 106.5(a)(2) or 106.6(b).

(4) *Reporting of allocated disbursements.* A political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall also report each disbursement from its federal account or its separate allocation account in payment for a joint federal and non-federal expense or activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payment of administrative expenses and generic voter drives, and for each fundraising program or exempt activity, as described in 11 CFR 106.5(a)(2) or 106.6(b). The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

(5) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocated disbursement for three years, in accordance with 11 CFR 104.14.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

7. The authority citation for part 106 is revised to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

8. Section 106.1 is amended by revising the heading and paragraphs (a) and (e) to read as follows:

§ 106.1 Allocation of expenses between candidates.

(a) *General rule.* (1) Expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates. In the case of a fundraising program or event where funds are collected by one committee for more than one clearly identified candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates. These methods shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates.

(2) An expenditure made on behalf of more than one clearly identified federal candidate shall be reported pursuant to 11 CFR 104.10(a). A payment that also includes amounts attributable to one or more non-federal candidates, and that is made by a political committee with separate federal and non-federal accounts, shall be made according to the procedures set forth in 11 CFR 106.5(g) or 106.6(e), as appropriate, but shall be reported pursuant to 11 CFR 104.10(a).

* * * * *

(e) Party committees, separate segregated funds, and nonconnected committees that make disbursements for administrative expenses, fundraising, exempt activities, or generic voter drives in connection with both federal and non-federal elections shall allocate their expenses in accordance with § 106.5 or § 106.6, as appropriate.

9. Part 106 is amended by adding § 106.5 as follows:

§ 106.5 Allocation of expenses between federal and non-federal activities by party committees.

(a) *General rules.* (1) Party committees that make disbursements in connection with federal and non-federal elections shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Political committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to this section. Organizations that are not political committees but have established separate federal and non-federal accounts under 11 CFR 102.5(b)(1)(i), or that make federal and non-federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii) shall also allocate their federal and non-federal expenses according to this section. This section covers (i) General rules regarding allocation of federal and non-federal expenses by party committees, (ii) percentages to be allocated for administrative expenses and costs of generic voter drives by national party committees, (iii) methods for allocation of administrative expenses, costs of generic voter drives, and exempt activities by state and local party committees, and of fundraising costs by all party committees, and (iv) procedures for payment of allocable expenses. Requirements for reporting of allocated disbursements are set forth in 11 CFR 104.10.

(2) *Costs to be allocated.* Committees that make disbursements in connection with federal and non-federal elections shall allocate expenses according to this section for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where federal and non-federal funds are collected by one committee through such program or event;

(iii) State and local party activities exempt from the definitions of "contribution" and "expenditure" under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18) ("exempt activities") including the production and distribution of slate cards and sample ballots, campaign materials distributed by volunteers, and voter registration and get-out-the-vote drives on behalf of the party's presidential and vice-presidential nominees, where such activities are conducted in conjunction with non-federal election activities; and

(iv) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(b) *National party committees other than Senate or House campaign committees; fixed percentages for allocating administrative expenses and costs of generic voter drives*—(1) *General rule.* Each national party committee other than a Senate or House campaign committee shall allocate a fixed percentage of its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, to its federal and non-federal account(s) each year. These percentages shall differ according to whether or not the allocable expenses were incurred in a presidential election year. Such committees shall allocate the costs of each combined federal and non-federal fundraising program or event according to paragraph (f) of this section, with no fixed percentages required.

(2) *Fixed percentages according to type of election year.* National party committees other than the Senate or House campaign committees shall allocate their administrative expenses and costs of generic voter drives according to paragraphs (b)(2) (i) and (ii) as follows:

(i) *Presidential election years.* In presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their federal accounts at least 65% each of their administrative expenses and costs of generic voter drives.

(ii) *Non-presidential election years.* In all years other than presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their federal accounts at least 60% each of their administrative expenses and costs of generic voter drives.

(c) *Senate and House campaign committees of a national party; method and minimum federal percentage for allocating administrative expenses and costs of generic voter drives*—(1) *Method for allocating administrative expenses and costs of generic voter drives.* Subject to the minimum percentage set forth in paragraph (c)(2) of this section, each Senate or House campaign committee of a national party shall allocate its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, according to the funds expended method, described in paragraphs (c)(1) (i) and (ii) as follows:

(i) Under this method, expenses shall be allocated based on the ratio of federal expenditures to total federal and non-federal disbursements made by the committee during the two-year federal election cycle. This ratio shall be estimated and reported at the beginning of each federal election cycle, based upon the committee's federal and non-federal disbursements in a prior comparable federal election cycle or upon the committee's reasonable prediction of its disbursements for the coming two years. In calculating its federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total federal and non-federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

(ii) On each of its periodic reports, the committee shall adjust its allocation ratio to reconcile it with the ratio of actual federal and non-federal disbursements made, to date. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers on its periodic reports, submitted pursuant to 11 CFR 104.5.

(2) *Minimum federal percentage for administrative expenses and costs of generic voter drives.* Regardless of the allocation ratio calculated under paragraph (c)(1) of this section, each Senate or House campaign committee of a national party shall allocate to its federal account at least 65% each of its administrative expenses and costs of generic voter drives each year. If the committee's own allocation calculation under paragraph (c)(1) of this section yields a federal share greater than 65%, then the higher percentage shall be applied. If such calculation yields a federal share lower than 65%, then the committee shall report its calculated ratio according to 11 CFR 104.10(b), and shall apply the required minimum federal percentage.

(3) *Allocation of fundraising costs.* Senate and House campaign committees shall allocate the costs of each combined federal and non-federal fundraising program or event according to paragraph (f) of this section, with no minimum percentages required.

(d) *State and local party committees; method for allocating administrative expenses and costs of generic voter drives*—(1) *General rule.* All state and local party committees except those covered by paragraph (d)(2) of this section shall allocate their administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, according to the ballot composition method, described in paragraphs (d)(1)(i) and (ii) as follows:

(i) Under this method, expenses shall be allocated based on the ratio of federal offices expected on the ballot to total federal and non-federal offices expected on the ballot in the next general election to be held in the committee's state or geographic area. This ratio shall be determined by the number of categories of federal offices on the ballot and the number of categories of non-federal offices on the ballot, as described in paragraph (d)(1)(ii) of this section.

(ii) In calculating a ballot composition ratio, a state or local party committee shall count the federal offices of President, United States Senator, and United States Representative, if expected on the ballot in the next general election, as one federal office each. The committee shall count the non-federal offices of Governor, State Senator, and State Representative, if expected on the ballot in the next general election, as one non-federal office each. The committee shall count the total of all other partisan statewide executive candidates, if expected on the ballot in the next general election, as a maximum of two non-federal offices. State party committees shall also include in the ratio one additional non-federal office if any partisan local candidates are expected on the ballot in that election. Local party committees

shall also include in the ratio a maximum of two additional non-federal offices if any partisan local candidates are expected on the ballot in that election.

(2) *Exception for states that do not hold federal and non-federal elections in the same year.* State and local party committees in states that do not hold federal and non-federal elections in the same year shall allocate the costs of generic voter drives according to the ballot composition method described in paragraph (d)(1) of this section, based on a ratio calculated for that calendar year. These committees shall allocate their administrative expenses according to the ballot composition method described in paragraph (d)(1) of this section, based on a ratio calculated for the two-year Congressional election cycle.

(e) *State and local party committees; method for allocating costs of exempt activities.* Each state or local party committee shall allocate its expenses for activities exempt from the definitions of "contribution" and "expenditure" under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18), when conducted in conjunction with non-federal election activities, as described in paragraph (a)(2) of this section, according to the proportion of time or space devoted in a communication. Under this method, the committee shall allocate expenses of a particular communication based on the ratio of the portion of the communication devoted to federal candidates or elections as compared to the entire communication. In the case of a publication, this ratio shall be determined by the space devoted to federal candidates or elections as compared to the total space devoted to all federal and non-federal candidates or elections. In the case of a phone bank, the ratio shall be determined by the number of questions or statements devoted to federal candidates or elections as compared to the total number of questions or statements devoted to all federal and non-federal candidates or elections.

(f) *All party committees; method for allocating direct costs of fundraising.* If federal and non-federal funds are collected by one committee through a joint activity, that committee shall allocate its direct costs of fundraising, as described in paragraph (a)(2) of this section, according to the funds received method. Under this method, the committee shall allocate its fundraising costs based on the ratio of funds received into its federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its federal and non-federal revenue from that program or event, and shall be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant to 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event shall be allocated according to this estimated ratio. The committee shall adjust its estimated allocation ratio following each fundraising program or event from which both federal and non-federal funds are collected, to reflect the actual ratio of funds received. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers in its report for the period in which the fundraising program or event occurred.

(g) Payment of allocable expenses by committees with separate federal and non-federal accounts—(1) *Payment options.* Committees that have established separate federal and non-federal accounts under 11 CFR 102.5 (a)(1)(i) or (b)(1)(i) shall pay the expenses of joint federal and non-federal activities described in paragraph (a)(2) of this section according to either paragraph (g)(1) (i) or (ii), as follows:

(i) *Payment by federal account; transfers from non-federal account to federal account.* The committee shall pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense.

(ii) *Payment by separate allocation account; transfers from federal and non-federal accounts to allocation account.* (A) The committee shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities. Once a committee has established a separate allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

(B) The committee shall transfer funds from its federal and non-federal accounts to its allocation account in amounts proportionate to the federal or non-federal share of each allocable expense.

(C) No funds contained in the allocation account may be transferred to any other account maintained by the committee.

(2) *Timing of transfers between accounts.* (i) Under either payment option described in paragraphs (g)(1) (i) or (ii) of this section, the committee shall transfer funds from its non-federal account to its federal account or from its federal and non-federal accounts to its separate allocation account following determination of the final cost of each joint federal and non-federal activity, or in advance of such determination if advance payment is required by the vendor and if such payment is based on a reasonable estimate of the activity's final cost as determined by the committee and the vendor(s) involved.

(ii) Funds transferred from a committee's non-federal account to its federal account or its allocation account are subject to the following requirements:

(A) For each such transfer, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay, as required by 11 CFR 104.10(b)(3); and

(B) Such funds may not be transferred more than 10 days before or more than 30 days after the payment for which they are designated is made.

(iii) Any portion of a transfer from a committee's non-federal account to its federal account or its allocation account that does not meet the requirements of paragraph (g)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-federal account to a federal account, in violation of the Act.

(3) *Reporting transfers of funds and allocated disbursements.* A political committee that transfers funds between accounts and pays allocable expenses according to this section shall report each such transfer and disbursement pursuant to 11 CFR 104.10(b).

10. Part 106 is amended by adding new § 106.6 as follows:

§ 106.6 Allocation of expenses between federal and non-federal activities by separate segregated funds and nonconnected committees.

(a) *General rule.* Separate segregated funds and nonconnected committees that make disbursements in connection with federal and non-federal elections shall make those disbursements either entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Separate segregated funds and nonconnected committees that have established separate federal and non-federal accounts under 11 CFR

102.5 (a)(1)(i) or (b)(1)(i), or that make federal and non-federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii), shall allocate their federal and non-federal expenses according to paragraphs (c) and (d) of this section. For purposes of this section, "nonconnected committee" includes any committee which conducts activities in connection with an election, but which is not a party committee, an authorized committee of any candidate for federal election, or a separate segregated fund.

(b) *Costs to be allocated*—(1) *Separate segregated funds.* Separate segregated funds that make disbursements in connection with federal and non-federal elections shall allocate expenses for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries not attributable to a clearly identified candidate, if such expenses are not paid by the separate segregated fund's connected organization;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where federal and non-federal funds are collected through such program or event, if such expenses are not paid by the separate segregated fund's connected organization; and

(iii) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(2) *Nonconnected committees.* Nonconnected committees that make disbursements in connection with federal and non-federal elections shall allocate expenses for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where federal and non-federal funds are collected through such program or event; and

(iii) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(c) *Method for allocating administrative expenses and costs of generic voter drives.* Nonconnected committees and separate segregated funds shall allocate their administrative expenses and costs of generic voter drives, as described in paragraph (b) of this section, according to the funds expended method, described in paragraphs (c) (1) and (2) as follows:

(1) Under this method, expenses shall be allocated based on the ratio of federal expenditures to total federal and non-federal disbursements made by the committee during the two-year federal election cycle. This ratio shall be estimated and reported at the beginning of each federal election cycle, based upon the committee's federal and non-federal disbursements in a prior comparable federal election cycle or upon the committee's reasonable prediction of its disbursements for the coming two years. In calculating its federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total federal and non-federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

(2) On each of its periodic reports, the committee shall adjust its allocation ratio to reconcile it with the ratio of actual federal and non-federal disbursements made, to date. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers on its periodic reports, submitted pursuant to 11 CFR 104.5.

(d) *Method for allocating direct costs of fundraising.* If federal and non-federal funds are collected by one committee through a joint activity, that committee shall allocate its direct costs of fundraising according to the funds received method. Under this method, the committee shall allocate its fundraising costs based on the ratio of funds received into its federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its federal and non-federal revenue from that program or event, and shall be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant to 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event shall be allocated according to this estimated ratio. The committee shall adjust its estimated allocation ratio following each fundraising program or event from which both federal and non-federal funds are collected, to reflect the actual ratio of funds received. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers in its report for the period in which the fundraising program or event occurred.

(e) *Payment of allocable expenses by committees with separate federal and non-federal accounts*—(1) *Payment options.* Nonconnected committees and separate segregated funds that have established separate federal and non-federal accounts under 11 CFR 102.5 (a)(1)(i) or (b)(1)(i) shall pay the expenses of joint federal and non-federal activities described in paragraph (b) of this section according to either paragraph (e)(1) (i) or (ii), as follows:

(i) *Payment by federal account; transfers from non-federal account to federal account.* The committee shall pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense.

(ii) *Payment by separate allocation account; transfers from federal and non-federal accounts to allocation account.* (A) The committee shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities. Once a committee has established an allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

(B) The committee shall transfer funds from its federal and non-federal accounts to its allocation account in amounts proportionate to the federal or non-federal share of each allocable expense.

(C) No funds contained in the allocation account may be transferred to any other account maintained by the committee.

(2) *Timing of transfers between accounts.* (i) Under either payment option described in paragraphs (e)(1)(i) or (ii) of this section, the committee shall

transfer funds from its non-federal account or from its federal and non-federal accounts to its separate allocation account following determination of the final cost of each joint federal and non-federal activity, or in advance of such determination if advance payment is required by the vendor and if such payment is based on a reasonable estimate of the activity's final cost as determined by the committee and the vendor(s) involved.

(ii) Funds transferred from a committee's non-federal account to its federal account or its allocation account are subject to the following requirements:

(A) For each such transfer, the committee must itemize in its reports the allocable activities for which the tranferred funds are intended to pay, as required by 11 CFR 104.10(b)(3); and

(B) Such funds may not be transferred more than 10 days before or more than 30 days after the payment for which they are designated is made.

(iii) Any portion of a transfer from a committee's non-federal account to its federal account or its allocation account that does not meet the requirements of paragraph (e)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-federal account to a federal account, in violation of the Act.

(3) *Reporting transfers of funds and allocated disbursments.* A political committee that transfers funds between accounts and pays allocable expenses according to this section shall report each such transfer and disbursement pursuant to 11 CFR 104.10(b).

Dated: June 15, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

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Part III

Consumer Product Safety Commission

16 CFR Ch. II

Choking Hazards Associated With Toys and Children's Articles; Withdrawal of Advanced Notice of Proposed Rulemaking

Choking Hazards Associated With Balloons; Small Balls; Toys and Articles; and Marbles; Requests for Comments and Information; Proposed Rules

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Toys and Children's Articles Which Present Choking Hazards Because of Small Parts; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Commission has decided to terminate a proceeding for the possible amendment of regulations banning certain toys and articles intended for use by children younger than three years of age which present choking, aspiration, or ingestion hazards because of small parts. The Commission began this proceeding by publication of an advance notice of proposed rulemaking (ANPR) on June 7, 1988.

On March 21, 1990, the Commission decided to terminate this proceeding and to withdraw the ANPR published on June 7, 1988. The Commission took this action after considering written comments received in response to the ANPR, information about choking deaths and injuries to children during the years 1980 through 1989, estimates of costs to manufacturers and importers of toys and children's articles which could result from amendment of the existing small parts regulations, other written materials prepared by the Commission staff, on oral briefing presented by the Commission staff, and other information.

The Commission concluded that the existing small parts regulations, and the test cylinder specified by those regulations to determine if a toy has small parts which present a choking hazard, have been effective in preventing choking deaths and injuries to children younger than three years of age associated with toys and other articles intended for use by that age group. The Commission also concluded that any amendment of those regulations which would enlarge the size of the test cylinder could be expected to require modification of a significant percentage of toys and other articles intended for children younger than three years of age, and to impose widespread costs on almost every aspect of producing and selling those products.

FOR FURTHER INFORMATION CONTACT: David W. Thome, Program Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Background

In 1979, the Commission issued regulations under provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) to ban certain toys and other articles intended for children younger than three years of age which present unreasonable risks of injury because of small parts. Those regulations are codified at 16 CFR 1500.18(a)(9) and part 1501.

The regulation codified at 16 CFR 1500.18(a)(9) bans any toy or other article intended for children younger than three years of age which presents a choking, aspiration, or ingestion hazard because of small parts, and which is introduced into interstate commerce after January 1, 1980. The regulation codified at 16 CFR part 1501 specifies the equipment and test method to determine whether an article presents a choking, aspiration, or ingestion hazard because the article itself, or any part which could be detached or broken off during normal or reasonably foreseeable use, is too small. The equipment specified by 16 CFR part 1501 includes a hollow truncated cylinder having an interior diameter of 1.25 inches, a minimum interior depth of 1.0 inches, and a maximum interior depth of 2.25 inches. If the toy being tested, or any detachable component or part of that toy, fits entirely within the cylinder, it is banned by provisions of 16 CFR 1500.18(a)(9) and part 1501.

In the **Federal Register** of June 7, 1988 (53 FR 20865), the Commission published an advance notice of proposed rulemaking (ANPR) to begin a rulemaking proceeding for the possible amendment of the small parts regulations for toys and articles intended for children younger than three years of age (4).[1]

B. Information Considered by the Commission

On January 26, 1990, the Commission staff transmitted a briefing package to the Commission concerning the proceeding for amendment of the small parts regulations (1–12). That package included a summary of the written comments received in response to the ANPR (5); information about choking deaths and injuries to children associated with toys, children's articles, and other products (6, 7); and information about the manufacture and sale of toys and chlidren's articles (9).

The briefing package included an analysis by the Commission's Directorate for Epidemiology of choking-related deaths and injuries to children younger than 10 years of age associated with toys and children's articles (6). This analysis examined reports of 146 choking deaths received by the Commission from January 1980 through April 1989, and found that a large portion of these deaths were associated with toys and other children's articles which are either exempted from the small parts regulations, or are not subject to those regulations because they are intended for children three years of age and older. For example, balloons, small balls, and marbles were involved in 103 (approximately 70 percent) of the choking fatalities under consideration. However, balloons are excluded from the requirements of the small parts regulations by 16 CFR § 1501.3(a). In most cases, the staff was unable to determine whether any of the small balls involved in the fatalities under consideration were intended for children younger than three years of age. In the enforcement of the small parts regulations, the staff has taken the position that marbles are generally intended for children older than three years of age, unless they are part of a toy intended for children younger than three. For that reason, marbles ordinarily are not subject to the small parts regulations.

This analysis found only five choking deaths of children younger than three years old associated with a toy or children's article which was intended for children of that age group and which was large enough to comply with the existing small parts requirements (6). During the oral briefing presented to the Commissioners of the agency, the Commission staff reported that after the analysis of choking deaths had been completed, the staff received information about one additional choking death associated with a toy intended for children younger than three years of age and large enough to comply with the existing small parts regulations.

The Commission's Directorate for Economic Analysis estimated that as many as 150 million toys are purchased each year for children three years of age or younger, and that as many as 300 to 450 million toys may be in use during any given year by children of that age group (9). That directorate was not able to estimate the number of toys which would require modification if the small parts regulations were amended to increase the size of the test cylinder.

[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading room, 5401 Westbard Avenue, room 528, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 492–6800.

However, the staff expressed the expectation that any amendment of the small parts regulations to increase the size of the test cylinder would affect a significant percentage of the toys currently produced for use by children three years of age and younger (9). The staff also expressed the expectation that an amendment of the small parts regulations to increase the size of the test cylinder could require changes to almost every aspect of producing and selling the toys affected by such an amendment. Those changes could include modifications of molds, increased costs for materials, and redesign of packaging.

C. Action by the Commission

On March 21, 1990, the Commission voted to terminate the proceeding for amendment of the small parts regulations and to withdraw the ANPR published on June 7, 1988. The Commission took this action after considering written comments received in response to the ANPR, information about choking deaths and injuries to children during the years 1980 through 1989, estimates of costs to manufacturers and importers of toys and children's articles which could result from amendment of the existing small parts regulations, other written materials prepared by the Commission staff, an oral briefing presented by the Commission staff, and other information.

The Commission concluded that the existing small parts regulations, and the test cylinder specified by those regulations to determine if a toy has small parts which present a choking hazard, have been effective in preventing choking deaths and injuries to children younger than three years of age associated with toys and other articles intended for use by that age group.

The Commission also concluded that any amendment of those regulations which would increase the size of the test cylinder could be expected to require modification of a significant percentage of toys and other articles intended for children younger than three years of age, and to impose widespread cost on almost every aspect of producing and selling those products.

In addition to terminating the proceeding to amend the small parts regulations applicable to toys and other articles intended for children younger than three years of age, the Commission also directed the staff to develop regulatory options for preventing choking incidents caused by toys in the shape of small human figures and by other toys of similar dimensions with rounded ends, which pose a similar hazard.

Additionally, the Commission decided to begin rulemaking proceedings to address choking hazards to children associated with balloons, small balls, marbles, and toys and other articles intended for use by children three to six years of age which contain or consist of small parts. Elsewhere in this issue of the **Federal Register**, the Commission has published advance notices of proposed rulemaking to begin proceedings which may result in the development of mandatory labeling and other requirements for those specific categories of toys and children's articles.

The Commission concluded that any risks of choking deaths or injuries to children younger than three years of age which may be associated with toys or other children's articles can be adequately addressed by the actions taken with respect to toys in the shape of small human figures and other toys of similar dimensions with rounded ends, balloons, small balls, marbles, and toys and other articles intended for children three to six years of age with small parts.

Accordingly, the Commission hereby withdraws the ANPR published in the **Federal Register** of June 7, 1988 at 53 FR 20865.

Dated: June 21, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Memorandum to the Commission from David W. Thome, OPMB, concerning choking hazards, 16 pages, January 26, 1990.

2. Text of small parts regulations applicable to toys and articles intended for children younger than three years of age codified at 16 CFR 1500.18(a)(9) and part 1501, 2 pages.

3. Summary of provisions of mandatory regulations and voluntary standards which address choking hazards associated with toys and children's articles, 2 pages.

4. **Federal Register** notice "Toys and Articles Intended for Children Under Three Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Request for Comments and Information," published by the Consumer Product Safety Commission, 5 pages, June 7, 1988 (53 FR 20865).

5. Memorandum to the Commission from Elaine A. Tyrrell, OPMB, concerning comments received in response to advance notice of proposed rulemaking published on June 7, 1988, 10 pages, September 21, 1988.

6. "Analysis of Choking Related Hazards Associated with Children's Products," by Deborah Kale Tinsworth, Directorate for Epidemiology, 34 pages, September 1989.

7. "A Physiological Review of Toys Causing Choking in Children," by Sharee Pepper, Ph.D., Directorate for Health Sciences, 19 pages, September 1989.

8. **Federal Register** notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54 FR 2198).

9. Memorandum from Terrence R. Karels, ECPA, to David W. Thome, OPMB, concerning focus project on choking hazards, 4 pages, November 15, 1989.

10. Description of new test procedure to determine choking hazards presented by toys and articles intended for children younger than three years of age, 1 page.

11. Draft of Advance Notice of Proposed Rulemaking to address choking hazards associated with toys and children's articles.

12. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 10, 1990, entitled "Rationale for Labeling Requirements for Toys and Other Articles Intended for Use by Children Age 3 to 6 Years," 3 pages.

13. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 24, 1990, entitled "Review of Balloon Package Labels," 3 pages.

14. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

[FR Doc. 90-14720 Filed 6-25-90; 8:45 am]

BILLING CODE 6355-01-M

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16 CFR Ch. II

Choking Hazards Associated With Balloons; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission is beginning a rulemaking proceeding which may result in the issuance of labeling or other requirements for ballons to address risks of choking deaths and injuries to children associated with those products.

Research conducted by the Commission discloses that 63 children younger than 10 years of age died from choking on uninflated balloons or fragments of balloons during the years 1980 through 1989. Although the Commission has issued regulations banning certain toys and other articles intended for children younger than three years of age which present choking hazards because of small parts, balloons are exempted from those regulations.

In the proceeding initiated by this notice the Commission particularly

desires to receive technical and medical data and other information relevant to: (1) The possible need for and potential effectiveness of labeling of balloons or balloon packaging to warn of choking hazards which balloons may present to children of all ages; (2) changes in the design, construction, of materials used to produce balloons which might eliminate choking hazards associated with these products; and (3) the economic impact of any of the regulatory options discussed in this notice. The Commission also invites all interested persons to submit an existing standard or a statement of intent to modify or develop a voluntary standard to address risks of choking deaths and injuries to children associated with balloons.

DATES: Written comments and submission in response to this notice must be received by September 10, 1990.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, room 528, 5401 Westbard Avenue, Bethesda, Maryland; telephone (301) 492–6800.

FOR FURTHER INFORMATION CONTACT: David W. Thome, Program Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Background

Regulations codified at 16 CFR 1500.18(a)(9) and part 1501 ban certain toys and articles intended for children younger than three years of age which present a choking, aspiration, or ingestion hazard because of small parts if they are introduced into interstate commerce after January 1, 1980. The regulation codified at 16 CFR part 1501 exempts balloons and several other categories of products from its provisions. See 16 CFR § 1501.3(a)

In the Federal Register of June 7, 1988 (53 FR 20865), the Commission published an advance notice of proposed rulemaking (ANPR) with a view toward the possibility of amending the small parts regulations codified at 16 CFR 1500.18(a)(9) and part 1501(4).[1] On March 21, 1990, the Commission voted to terminate this proceeding. Elsewhere in this issue of the Federal Register, The Commission has published a notice to withdraw the ANPR of June 7, 1988, and to explain its reasons for terminating that proceeding.

In 1989, the Commission's Directorate for Epidemiology completed an analysis of reports of choking-related deaths and injuries to children younger than 10 years of age associated with children's products (6). This analysis examined reports of 146 choking-related deaths received by the Commission from January 1980 through April 1989, and found that balloons were involved in 63 choking deaths, more than 40 percent of the total. Victims of the fatal incidents involving balloons were about equally divided between children younger than three years of age and children three years old and older (6).

For this reason, the Commission is beginning a rulemaking proceeding which may result in the issuance of requirements applicable to balloons intended for use by children of all ages to eliminate or reduce risks of choking deaths and injuries to children which may be associated with those products. The regulations which may be issued as a result of this proceeding could include requirements for labeling or other technical requirements.

B. Statutory Authority

This proceeding is conducted under provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*). Section 2(f)1(D) of the FHSA (15 U.S.C. 1261(f)1(D)) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present "an electrical, mechanical, or thermal hazard." Section 2(s) of the FHSA provides that an article may be determined to present a "mechanical hazard" if in normal use or reasonably foreseeable use or abuse it presents an unreasonable risk of personal injury or illness because the article or any of its parts may be aspirated or ingested. The Commission may make its determination that a toy or children's article presents a mechanical hazard by issuance of a regulation in accordance with provisions of sections 3(e) through (i) of the FHSA (15 U.S.C. 1262(e) through (i)). The first step in a proceeding under provisions of sections 3(e) through (i) of the FHSA for issuance of a rule to declare that a toy or children's article presents a mechanical hazard is the publication of an advance notice of proposed rulemaking (ANPR) in accordance with provisions of section 3(f) of the FHSA. If, after considering comments received in response to the ANPR, the Commission decides to continue the proceeding, section 3(h) of the FHSA requires publication of the text of the proposed rule and a preliminary regulatory analysis of the proposal including a description of potential benefits and potential costs of the proposal. If the Commission issues a final rule, it must publish a third notice which sets forth the text of the final rule, a summary of significant issues raised by comments on the proposal, a final regulatory analysis including a description of potential benefits and potential costs, as well as specified findings about voluntary standards and the relationship of the costs and the benefits of the rule.

C. The Products and Risks of Injury

This proceeding is concerned with balloons, particularly latex or rubber balloons, and risks of choking deaths or injuries which may result when an uninflated balloon or a fragment of a balloon becomes lodged in a child's airway.

D. Voluntary Standard

The Commission is aware of only one voluntary standard applicable to balloons and the risks of injury with which this proceeding is concerned. That standard is published by the American Society for Testing and Materials and is designated F 963–86, Standard Consumer Safety Specification on Toy Safety.

This voluntary standard has provisions intended to address a variety of hazards presented by a wide range of toys, some of which are intended for children as old as 14 years of age.

The Commission staff has worked with the toy industry and the Toy Manufacturers of America to develop warning labels for balloon packages. The American Society for Testing and Materials (ASTM) has circulated a ballot on a proposed revision of the voluntary safety standard for toys to add provisions for labeling of balloons. The proposed revision of the voluntary standard would require the following statement to appear on all packages of balloons:

> **Warning:** Young Children Could Choke on or be Suffocated by an Uninflated Balloon or Piece of a Broken Balloon. Adults Should Inflate Balloons and Supervise Their Use With Children Under Six (6) Years. Discard Broken Balloons Immediately.

In comments to ASTM, the Commission staff recommended revisions of the wording and format of this labeling (1).

[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading Room, 5401 Westbard Avenue, room 528, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 492–6800.

The proposal to add requirements for labeling of balloons now being considered by ASTM contains provisions to specify a minimum type size for the label statement, and to require that the statement must be printed in a contrasting color and must be distinctively separate from other wording or designs on the package. In comments to ASTM, the Commission staff expressed concern that these provisions may not be adequate to assure the labeling statement will be sufficiently prominent and conspicous to be effective, and made recommendations to improve their effectiveness (14).

E. Regulatory Alternatives Under Consideration

In the proceeding initiated by publication of this ANPR, the Commission is considering the possibility of issuing one or more rules to address risks of choking deaths and injuries associated with balloons. The Commission is considering the following approaches:

1. Requiring labeling on packages of balloons to warn of choking hazards to children.

Uninflated balloons and fragments of balloons were involved in 63 of the 146 choking fatalities (approximately 43 per cent) reported to the Commission from 1980 through 1989. Balloons were involved in more of the reported choking fatalities than any other product (6). The balloons involved in these incidents appear to have been made from latex or rubber rather than from metalized polyester film or other materials, although in most instances the type of material was not reported.

The Commission is not aware of any immediately available technology which would prevent or appreciably reduce choking hazards associated with balloons. For this reason, the Commission is considering issuance of requirements for labeling on packages of balloons to warn purchasers of the risks of choking deaths and injuries to children associated with these products.

2. Developing technical requirements or other measures to eliminate or reduce choking hazards associated with balloons.

The Commission is aware of two innovative approaches to reducing risks of choking deaths and injuries to children associated with balloons. The first approach involves the use of a disk inside the balloon which would be large enough to prevent a child from swallowing an unbroken, deflated balloon. The second approach involves the use of a bittering agent in or on the surface of the material used in the production of balloons. Use of a bittering agent might make the taste of balloons sufficiently unpleasant to children that they would not want to keep balloons in their mouths or to chew on them.

While these and other innovative approaches might eliminate or reduce risks of choking deaths and injuries associated with balloons, the Commission does not have information about their practicability or effectiveness. Nor does the Commission have information about other hazards which might be created such approaches were used. In this notice, the Commission solicits information which could lead to the development of innovative technical requirements to eliminate or reduce choking hazards associated with balloons.

In addition to the regulatory alternatives described above, the Commission also is considering the possibility that the voluntary standard for toys, ASTM F 963–86, could be revised to reduce even further risks of choking deaths and injuries associated with balloons. The Commission also is considering the possibility that a new voluntary standard might be developed to address the risks of choking deaths and injuries to children which are associated with balloons.

F. Solicitation of Information and Comments

This advance notice of proposed rulemaking is the first step of a proceeding which could result in the issuance of regulations to eliminate or reduce risks of choking deaths and injuries to children associated with balloons. All interested persons are invited to submit to the Commission:

(1) Written comments concerning the risks of injury described in this notice; the regulatory alternatives being considered by the Commission to address those risks; and other possible alternatives to address those risks.

(2) Information and data on the potential effectiveness of labeling as a means of addressing the risks of death and injury described in this notice.

(3) Estimates of the potential effects of these regulatory alternatives on the cost, price, and utility of affected products, and any other economic effects such as those on trade and distribution of these products.

(4) Any existing standard or portion of an existing standard which could be published as a proposed regulation to address the risks of injury described in this notice.

(5) A statement of intent to modify or develop a voluntary standard to address the risks of injury discussed in this notice, together with a description of the plan for modification or development of that standard.

Any plan submitted with a statement of intent to modify or develop a voluntary standard should include, to the extent possible, a description of how interested groups and persons will be notified that a proceeding to modify or develop a voluntary standard is under way; a description of how the views of interested groups and persons will be addressed in the modification or development of the standard; a detailed discussion of how the modification or development of the standard will proceed; a realistic estimate of the length of time that will be required to modify or develop the standard; a list of persons expected to participate in the modification or development of the standard, together with information about backgrounds and experience; and a description of any facilities or equipment that will be used during the project.

All comments and submissions should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and received not later than September 10, 1990.

Dated: June 21, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Memorandum to the Commission from David W. Thome, OPMB, concerning choking hazards, 16 pages, January 26, 1990.

2. Text of small parts regulations applicable to toys and articles intended for children younger than three years of age codified at 16 CFR 1500.18(a)(9) and part 1501, 2 pages.

3. Summary of provisions of mandatory regulations and voluntary standard which address choking hazards associated with toys and children's articles, 2 pages.

4. **Federal Register** notice "Toys and Articles Intended for Children Under Three Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Request for Comments and Information," published by the Consumer Product Safety Commission, 5 pages, June 7, 1988 (53 FR 20865).

5. Memorandum to the Commission from Elaine A. Tyrrell, OPMB, concerning comments received in response to advance notice of proposed rulemaking published on June 7, 1988, 10 pages, September 21, 1988.

6. "Analysis of Choking Related Hazards Associated with Children's Products," by Deborah Kale Tinsworth, Directorate for Epidemiology, 34 pages, September 1989.

7. "A Physiological Review of Toys Causing Choking in Children," by Sharee Pepper, Ph.D., Directorate for Health Sciences, 19 pages, September 1989

8. Federal Register notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54 FR 2198).

9. Memorandum from Terrence R. Karels, ECPA, to David W. Thome, OPMB, concerning focus project on choking hazards, 4 pages, November 15, 1989.

10. Description of new test procedure to determine choking hazards presented by toys and articles intended for children younger than three years of age, 1 page.

11. Draft of Advance Notice of Proposed Rulemaking to address choking hazards associated with toys and children's articles.

12. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 10, 1990, entitled "Rationale for Labeling Requirements for Toys and Other Articles Intended for Use by Children Age 3 to 6 Years," 3 pages; memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 24, 1990, entitled "Review of Balloon Package Labels," 3 pages.

13. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

14. Letter from Elaine A. Tyrrell, Project Manager, Consumer Product Safety Commission, to Ms. Rose Dougherty, F 15 Committee Staff Manager, ASTM Standards Coordination, dated April 30, 1990, concerning comments of the staff of the Consumer Product Safety Commission on revision of F 963–86, Consumer Safety Specification on Toy Safety to include labeling of balloons.

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16 CFR Ch. II

Choking Hazards Associated With Small Balls; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission is beginning a rulemaking proceeding which may result in the issuance of labeling and other requirements for small balls to address risks of choking deaths and injuries to children associated with those products.

Research conducted by the Commission discloses that 32 children younger than 10 years of age died from choking on small balls during the years 1980 through 1989. The Commission has issued regulations banning certain toys and other articles intended for children younger than three years of age which present choking hazards because of small parts. The sizes of the balls involved in 10 choking fatalities during the year 1980 through 1989 are known. Six of those balls were large enough to comply with the requirements of the small parts regulations. Some of the balls involved in the 32 choking fatalities may not have been subject to the small parts regulations because they were not intended to be used by children younger than three years of age.

In the proceeding initiated by this notice the Commission particularly desires to receive technical and medical data and other information relevant to: (1) The possible need for and potential effectiveness of labeling of games of skill which contain or utilize small balls to warn of choking hazards they may present to children; (2) the possible need to establish a minimum size for children's balls which are not part of a game of skill and for balls which are part of a toy or game intended for children younger than three years of age to eliminate choking hazards associated with these products; and (3) the economic impact of any of the regulatory options discussed in this notice. The Commission also invites all interested persons to submit an existing standard or a statement of intent to modify or develop a voluntary standard to address risks of choking deaths and injuries to children associated with small balls.

DATES: Written comments and submission in response to this notice must be received by September 10, 1990.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, room 528, 5401 Westbard Avenue, Bethesda, Maryland; telephone (301) 492–6800.

FOR FURTHER INFORMATION CONTACT: David W. Thome, Program Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Background

Regulations codified at 16 CFR 1500.18(a)(9) and part 1501 ban certain toys and articles intended for children younger that three years of age which present a choking, aspiration, or ingestion hazard because of small parts. In the **Federal Register** of June 7, 1988 (53 FR 20865), the Commission published an advance notice of proposed rulemaking (ANPR) with a view toward the possibility of amending the small parts regulations (4).[1] On March 21, 1990, the Commission voted to terminate this proceeding. Elsewhere in this issue of the **Federal Register** the Commission has published a notice to withdraw the ANPR of June 7, 1988, and to explain its reasons for terminating that proceeding.

In 1989, the Commission's Directorate for Epidemiology completed an analysis of reports of choking-related deaths and injuries to children younger than 10 years of age associated with children's products (6). This analysis examined reports of 146 choking-related deaths received by the Commission from January 1980 through April 1989, and found that small balls were involved in 32 choking deaths, about 22 per cent of the total (6).

Nineteen of the children who died in choking incidents involving small balls were younger than three years of age; 13 of the children were three years of age and older (6).

For this reason, the Commission is beginning a rulemaking proceeding which may result in the issuance of requirements applicable to small balls intended for use by children of all ages to eliminate or reduce risks of choking deaths and injuries to children which may be associated with those products. The regulations which may be issued as a result of this proceeding could include requirements for labeling of games of skill which contain or utilize small balls to warn of choking hazards which those balls may present to children, and the specification of a minimum size for children's balls which are not part of a game of skill, or are part of a toy or other article intended for children younger than three years of age.

B. Statutory Authority

This proceeding is conducted under provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*). Section 2(f)1(D) of the FHSA (15 U.S.C. 1261(f)1(D)) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present "an electrical, mechanical, or thermal hazard." Section 2(s) of the FHSA provides that an article may be determined to present a "mechanical hazard" if in normal use or reasonably foreseeable use or abuse it presents an unreasonable risk of personal injury or

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[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading room, 5401 Westbard Avenue, room 528, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 492–6800.

illness because the article or any of its parts may be aspirated or ingested. The Commission may make its determination that a toy or children's article presents a mechanical hazard by issuance of a regulation in accordance with provisions of sections 3(e) through (i) of the FHSA (15 U.S.C. 1262(e) through (i)). The first step in a proceeding under provisions of sections 3(e) through (i) of the FHSA for issuance of a rule to declare that a toy or children's article presents a mechanical hazard is the publication of an advance notice of proposed rulemaking (ANPR) in accordance with provisions of section 3(f) of the FHSA. If, after considering comments received in response to the ANPR, the Commission decides to continue the proceeding, section 3(h) of the FHSA requires publication of the text of the proposed rule and a preliminary regulatory analysis of the proposal including a description of potential benefits and potential costs of the proposal. If the Commission issues a final rule, it must publish a third notice which sets forth the text of the final rule, a summary of significant issues raised by comments on the proposal, a final regulatory analysis including a description of potential benefits and potential costs, as well as specified findings about voluntary standards and the relationship of the costs and the benefits of the rule.

C. The Products and Risks of Injury

This proceeding is concerned with balls intended for use by children which have a diameter of less than approximately 1.75 inches. Some of these balls are components of, or are used in conjunction with, games of skill. Others are sold by themselves, and are not part of a game of skill. The balls which are the subjects of this proceeding may be intended for children who are younger than three years of age as well as for children three years of age and older.

This proceeding is concerned with risks of choking deaths or injuries which may result when any of the products described above become lodged in a child's throat.

D. Voluntary Standard

The Commission is aware of only one voluntary standard which may be applicable to small balls intended for use by children and the risks of injury with which this proceeding is concerned. That standard is published by the American Society for Testing and Materials and is designated F 963–86, Standard Consumer Safety Specification on Toy Safety. This voluntary standard has provisions intended to address a variety of hazards presented by a wide range of toys, some of which are intended for children as old as 14 years of age. However, at this time, the voluntary standard does not contain any provisions specifically intended to address choking hazards associated with small balls.

E. Regulatory Alternatives Under Consideration

In the proceeding initiated by publication of this ANPR, the Commission is considering the possibility of issuing one or more rules to address risks of choking deaths and injuries associated with small balls. The Commission is considering the following approaches:

- Requiring labeling on packages of games of skill intended for children three years of age and older which contain or consist of small balls to warn of choking hazards the small balls may present to children.
- Establishing a minimum diameter for all children's balls which are not part of a game of skill for which a ball is required, and for balls which are part of a toy or other article intended for children younger than three years of age.

Small balls were involved in 32 of the 146 fatal choking incidents (approximately 22 per cent) reported to the Commission from 1980 through 1989 (6). (Only balloons were involved in a greater number of choking fatalities reported during the same period. Elsewhere in this issue of the **Federal Register**, the Commission has published another advance notice of proposed rulemaking to initiate a rulemaking proceeding to address choking hazards to children associated with balloons.)

In 1979, the Commission issued regulations which ban toys and other articles intended for children younger than three years of age which present choking, aspiration, or ingestion hazards because of small parts (2). Of the 32 choking deaths to children involving small balls which were reported to the Commission from 1980 through 1989, the size of the ball was known in ten cases. Six choking fatalities involved balls which were large enough to comply with the existing small parts regulations. These six balls had diameters ranging from 1.38 inches to 1.73 inches (6).

Of the 32 choking fatalities associated with small balls, 19 involved children younger than three years of age; 13 involved children three years of age and older (6). Balls are used by children of all ages, and many have play value for children younger than three years of age. A requirement that balls must have a minimum diameter of at least 1.75 inches would have prohibited all of the balls involved in the choking fatalities reported to the Commission from 1980 through 1989 in which the size of the ball is known. A physiological analysis of choking incidents involving children prepared by the Commission's Directorate for Health Sciences provides support for a requirement of a minimum diameter for children's balls ranging from 1.68 inches to 1.75 inches (7).

The Commission is considering issuance of a requirement which would prohibit the sale of any children's ball having a diameter smaller than approximately 1.68 to 1.75 inches which is not part of a game of skill, or which is part of a toy or other article intended for children younger than three years of age. The specific minimum size for the diameter of such balls would be established after further evaluation of available information by the Commission. Balls subject to such a requirement would include high-bounce balls as well as conventional rubber balls, hollow rubber balls, sponge rubber balls, and rigid balls made of plastic, wood, or other materials (1).

The Commission recognizes that some games of skill, such as "jacks," require a ball with a diameter smaller than 1.75 inches. The Commission is considering the issuance of requirements for labeling on packages of all games of skill intended for children three years old and older which contain or consist of balls with diameters less than 1.68 to 1.75 inches to warn of the choking hazard associated with small balls (1).

In addition to the regulatory alternatives described above, the Commission also is considering the possibility that the voluntary standard for toys, ASTM F 963–86, could be revised to add provisions to specifically address risks of choking deaths and injuries to children associated with small balls. The Commission also is considering the possibility that a new voluntary standard might be developed to address the risks of choking deaths and injuries to children which are associated with small balls.

F. Solicitation of Information and Comments

This advance notice of proposed rulemaking is the first step of a proceeding which could result in the issuance of regulations to eliminate or reduce risks of choking deaths and injuries to children associated with small balls. All interested persons are invited to submit to the Commission:

(1) Written comments concerning the risks of injury described in this notice; the regulatory alternatives being

considered by the Commission to address those risks; and other possible alternatives to address those risks.

(2) Information and data on the potential effectiveness of labeling as a means of reducing the risks of death and injury described in this notice.

(3) Estimates of the potential effects of these regulatory alternatives on the cost, price, and utility of affected products, and any other economic effects such as those on trade and distribution of these products.

(4) Any existing standard or portion of an existing standard which could be published as a proposed regulation to address the risks of injury described in this notice.

(5) A statement of intent to modify or develop a voluntary standard to address the risks of injury discussed in this notice, together with a description of the plan for modification or development of that standard.

Any plan submitted with a statement of intent to modify or develop a voluntary standard should include, to the extent possible, a description of how interested groups and persons will be notified that a proceeding to modify or develop a voluntary standard is under way; a description of how the views of interested groups and persons will be addressed in the modification or development of the standard; a detailed discussion of how the modification or development of the standard will proceed; a realistic estimate of the length of time that will be required to modify or develop the standard; a list of persons expected to participate in the modification or development of the standard, together with information about backgrounds and experience; and a description of any facilities or equipment that will be used during the project.

All comments and submissions should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and received not later than September 10, 1990.

Dated: June 21, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Memorandum to the Commission from David W. Thome, OPMB, concerning choking hazards, 16 pages, January 26, 1990.

2. Text of small parts regulations applicable to toys and articles intended for children younger than three years of age codified at 16 CFR 1500.18(a)(9) and part 1501, 2 pages.

3. Summary of provisions of mandatory regulations and voluntary standard which address choking hazards associated with toys and children's articles, 2 pages.

4. **Federal Register** notice "Toys and Articles Intended for Children Under Three Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Request for Comments and Information," published by the Consumer Product Safety Commission, 5 pages, June 7, 1988 (53 FR 20865).

5. Memorandum to the Commission from Elaine A. Tyrrell, OPMB, concerning comments received in response to advance notice of proposed rulemaking published on June 7, 1988, 10 pages, September 21, 1988.

6. "Analysis of Choking Related Hazards Associated with Children's Products," by Deborah Kale Tinsworth, Directorate for Epidemiology, 34 pages, September 1989.

7. "A Physiological Review of Toys Causing Choking in Children," by Sharee Pepper, Ph.D., Directorate for Health Sciences, 19 pages, September 1989.

8. Federal Register notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54 FR 2198).

9. Memorandum from Terrence R. Karels, ECPA, to David W. Thome, OPMB, concerning focus project on choking hazards, 4 pages, November 15, 1989

10. Description of new test procedure to determine choking hazards presented by toys and articles intended for children younger than three years of age, 1 page.

11. Draft of Advance Notice of Proposed Rulemaking to address choking hazards associated with toys and children's articles.

12. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 10, 1990, entitled "Rationale for Labeling Requirements for Toys and Other Articles Intended for Use by Children Age 3 to 6 Years," 3 pages.

13. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

[FR Doc. 90-14722 Filed 6-25-90; 8:45 am]

BILLING CODE 6355-01-M

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16 CFR Ch. II

Choking Hazards Associated With Toys and Articles Intended for Children Three Years of Age and Older; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission is beginning a rulemaking proceeding which may result in the issuance of labeling requirements applicable to toys and other articles intended for children from three to about six years of age which contain or consist of small parts to warn of choking hazards to children younger than three years of age associated with those products.[1]

In 1979, the Commission issued regulations banning certain toys and other articles intended for use by children younger than three years of age which present choking, aspiration, or ingestion hazards because of small parts. Research conducted by the Commission discloses that during the years 1980 through 1989, 146 children younger than 10 years of age died from choking on toys and other children's products. Although manufacturers' age recommendations for the products involved were not available in the majority of these cases, a large portion of these products appear to have been developmentally appropriate for children three years of age and older. Consequently, many of the toys and other children's products involved in the choking fatalities reported to the Commission during the years 1980 through 1989 may have been outside the scope of existing regulations banning certain toys which contain or consist of small parts.

In the proceeding initiated by this notice the Commission particularly desires to receive technical and medical data and other information relevant to the possible need for and potential effectiveness of labeling of toys and articles intended for use by children three to approximately six years of age to warn of the potential choking hazards they may present to children younger than three years of age because of small parts. The Commission also solicits information about the economic impact of the regulatory options discussed in this notice. The Commission invites all interested persons to submit an existing standard or a statement of intent to modify or develop a voluntary standard to address risks of choking deaths and injuries to children associated with the products described in this notice.

DATES: Written comments and submission in response to this notice must be received by September 10, 1990.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, room 528,

[1] The Commission decided to begin this proceeding by a 2-1 vote, with Commissioner Carol G. Dawson dissenting. Copies of the Commissioners' separate statements are available upon request from the Office of the Secretary, Consumer Product Safety Commission, Washington DC 20207; telephone (301) 492-6800.

5401 Westbard Avenue, Bethesda, Maryland; telephone (301) 492–6800.

FOR FURTHER INFORMATION CONTACT: David W. Thome, Program Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Background

Regulations codified at 16 CFR 1500.18(a)(9) and Part 1501 ban certain toys and articles intended for children younger than three years of age which present a choking, aspiration, or ingestion hazard because of small parts if they are introduced into interstate commerce after January 1, 1980.

In the **Federal Register** of June 7, 1988 (53 FR 20865), the Commission published an advance notice of proposed rulemaking (ANPR) with a view toward the possibility of amending the small parts regulations (4).[2] On March 21, 1990, the Commission voted to terminate this proceeding. Elsewhere in this issue of the **Federal Register** the Commission has published a notice to withdraw the ANPR of June 7, 1988, and to explain its reasons for terminating that proceeding.

In 1989, the Commission's Directorate for Epidemiology completed an analysis of reports of choking-related deaths and injuries to children younger than 10 years of age associated with children's products (6). This analysis examined reports of 146 choking-related deaths received by the Commission from January 1980 through April 1989, and found that a large portion may have been developmentally appropriate for children three years of age and older, although manufacturers' age recommendations were not available in the majority of cases. The Commission staff was able to determine the appropriate age of the intended user for 42 of the products involved in the choking fatalities analyzed by the staff (6). (These 42 products did not include balloons or small balls, but did include marbles. The Commission has initiated separate rulemaking proceedings to address choking hazards to children associated with balloons, small balls, and marbles by publishing advance notices of proposed rulemaking elsewhere in this issue of the **Federal Register**.)

Of the 42 products for which a determination of appropriate user age could be made, 18 (more than 40 per cent) appeared to be toys or articles often appropriate for children three years of age and older. Of the 18 articles suitable for children three years of age and older, 15 were involved in choking fatalities to children younger than three (6).

The Commission recognizes that elimination of all small parts from children's toys is not feasible. Older children are not generally prone to choking on small objects, such as game parts, that are often necessary components of products intended for older children (1). However, toys intended for older children, or small pieces from such toys, often are accessible to younger siblings. Additionally, parents sometimes give a toy which is appropriate for older children to a younger child because the parents believe that the child is sufficiently advanced to be able to use the toy (12). A warning label to advise parents of the presence of small parts in toys or other articles intended for use by children three to six years of age could alert them to choking hazards associated with the use of such toys by children younger than three (12).

For this reason, the Commission is beginning a rulemaking proceeding which may result in the issuance of requirements for labeling of toys and children's articles which contain or consist of small parts and which are intended for use by children three to about six years of age to warn of risks of choking deaths and injuries to children younger than three years of age which may be associated with those products.

B. Statutory Authority

This proceeding is conducted under provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*). Section 2(f)1(D) of the FHSA (15 U.S.C. 1261 (f)1(D)) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present "an electrical, mechanical, or thermal hazard." Section 2(s) of the FHSA provides that an article may be determined to present a "mechanical hazard" if in normal use or reasonably foreseeable use or abuse it presents an unreasonable risk of personal injury or illness because the article or any of its parts may be aspirated or ingested. The Commission may make its determination that a toy or children's article presents a mechanical hazard by issuance of a regulation in accordance with provisions of sections 3 (e) through (i) of the FHSA (15 U.S.C. 1262 (e) through (i)). The first step in a proceeding under provisions of sections 3 (e) through (i) of the FHSA for issuance of a rule to declare that a toy or children's article presents a mechanical hazard is the publication of an advance notice of proposed rulemaking (ANPR) in accordance with provisions of section 3(f) of the FHSA. If, after considering comments received in response to the ANPR, the Commission decides to continue the proceeding, section 3(h) of the FHSA requires publication of the text of the proposed rule and a preliminary regulatory analysis of the proposal including a description of potential benefits and potential costs of the proposal. If the Commission issues a final rule, it must publish a third notice which sets forth the text of the final rule, a summary of significant issues raised by comments on the proposal, a final regulatory analysis including a description of potential benefits and potential costs, as well as specified findings about voluntary standards and the relationship of the costs and the benefits of the rule.

C. The Products and Risks of Injury

This proceeding is concerned with toys and other articles intended for children three to about six years of age containing or consisting of small parts which may present a choking hazard to children younger than three years of age. This proceeding is concerned with risks of death and serious injuries to children younger than three years of age which may result from choking on such toys or children's articles, or parts of those products.

D. Voluntary Standard

The Commission is aware of only one voluntary standard which is applicable to toys and other articles intended for children from three to six years of age and which might address the risks of injury with which this proceeding is concerned. This standard is published by the American Society for Testing and Materials and is designated F 963–86, Standard Consumer Safety Specification on Toy Safety. This voluntary standard has provisions intended to address a variety of hazards presented by a wide range of toys, some of which are intended for children as old as 14 years of age. However, this voluntary standard does not currently include provisions which are specifically intended to address the choking hazards described in this notice.

[2] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading Room 5401 Westbard Avenue, room 528, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 492–6800.

E. Regulatory Alternatives Under Consideration

In the proceeding initiated by publication of this ANPR, the Commission is considering the possibility of issuing a labeling rule applicable to toys or other articles intended for use by children from three to approximately six years which contain or consist of small parts. The contemplated rule would require that such products must be labeled to warn of choking hazards which they may present to children younger than three years of age because of the presence of small parts. The upper age limit for this labeling requirement would be determined on the basis of (a) developmental information about children's interests and abilities; and (b) marketing information about how products intended for children three years old and older are currently labeled (1, 12).

In addition to issuing a mandatory labeling rule of the type described above, the Commission also is considering the possibility that the voluntary standard for toys, ASTM F 963–86, could be revised to reduce even further risks of choking deaths and injuries to children younger than three years of age associated with toys and other articles intended for children three to about six years old which contain or consist of small parts. The Commission also is considering the possibility that a new voluntary standard might be developed to address the risks of choking deaths and injuries to children younger than three years of age which are associated with toys or other articles intended for children from three to approximately six years of age that contain or consist of small parts.

F. Solicitation of Information and Comments

This advance notice of proposed rulemaking is the first step of a proceeding which could result in the issuance of a mandatory rule for toys and other articles intended for use by children from three to about six years of age containing or consisting of small parts. The rule would require labeling to warn of choking hazards which those products may present to children younger than three years of age because of small parts. All interested persons are invited to submit to the Commission:

(1) Written comments concerning the risks of injury described in this notice; the regulatory alternatives being considered by the Commission to address those risks; and other possible alternatives to address those risks.

(2) Information and data on the potential effectiveness of labeling as a means of reducing the risks of death and injury described in this notice.

(3) Estimates of the potential effects of these regulatory alternatives on the cost, price, and utility of affected products, and any other economic effects such as those on trade and distribution of these products.

(4) Child development and marketing information indicating an appropriate product range for this labeling requirement.

(5) Any existing standard or portion of an existing standard which could be published as a proposed regulation to address the risks of injury described in this notice.

(6) A statement of intent to modify or develop a voluntary standard to address the risks of injury discussed in this notice, together with a description of the plan for modification or development of that standard.

Any plan submitted with a statement of intent to modify or develop a voluntary standard should include, to the extent possible, a description of how interested groups and persons will be notified that a proceeding to modify or develop a voluntary standard is under way; a description of how the views of interested groups and persons will be addressed in the modification or development of the standard; a detailed discussion of how the modification or development of the standard will proceed; a realistic estimate of the length of time that will be required to modify or develop the standard; a list of persons expected to participate in the modification or development of the standard, together with information about backgrounds and experience; and a description of any facilities or equipment that will be used during the project.

All comments and submissions should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and received not later than September 10, 1990.

Dated: June 21, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Memorandum to the Commission from David W. Thome, OPMB, concerning choking hazards, 16 pages, January 26, 1990.

2. Text of small parts regulations applicable to toys and articles intended for children younger than three years of age codified at 16 CFR 1500.18(a)(9) and part 1501, 2 pages.

3. Summary of provisions of mandatory regulations and voluntary standard which address choking hazards associated with toys and children's articles, 2 pages.

4. **Federal Register** notice "Toys and Articles Intended for Children Under Three Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Request for Comments and Information," published by the Consumer Product Safety Commission, 5 pages, June 7, 1988 (53 FR 20865).

5. Memorandum to the Commission from Elaine A. Tyrrell, OPMB, concerning comments received in response to advance notice of proposed rulemaking published on June 7, 1988, 10 pages, September 21, 1988.

6. "Analysis of Choking Related Hazards Associated with Children's Products," by Deborah Kale Tinsworth, Directorate for Epidemiology, 34 pages, September 1989.

7. "A Physiological Review of Toys Causing Choking in Children," by Sharee Pepper, Ph.D., Directorate for Health Sciences, 19 pages, September 1989.

8. **Federal Register** notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54 FR 2198).

9. Memorandum from Terrence R. Karels, ECPA, to David W. Thome, OPMB, concerning focus project on choking hazards, 4 pages, November 15, 1989.

10. Description of new test procedure to determine choking hazards presented by toys and articles intended for children younger than three years of age, 1 page.

11. Draft of Advance Notice of Proposed Rulemaking to address choking hazards associated with toys and children's articles.

12. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated Janaury 10, 1990, entitled "Rationale for Labeling Requirements for Toys and Other Articles Intended for Use by Children Age 3 to 6 Years," 3 pages.

13. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

[FR Doc. 90–14723 Filed 6–25–90; 8:45 am]

BILLING CODE 6355–01–M

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16 CFR Ch. II

Choking Hazards Associated With Marbles; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission is beginning a rulemaking proceeding which may result in the issuance of requirements for labeling packages of marbles to warn of choking

hazards marbles may present to children younger than three years of age.[1]

In 1979, the Commission issued regulations banning certain toys and other articles intended for use by children younger than three years of age which present choking, aspiration, or ingestion hazards because of small parts. However, in the enforcement of the small parts regulations, the Commission staff has always considered marbles to be articles which are intended for children older than three years of age, except those marbles which are components of a toy intended for children younger than three. For that reason most marbles are not subject to the existing small parts requirements.

Research conducted by the Commission discloses that during the years 1980 through 1989, 146 children younger than 10 years of age died from choking on toys and other children's products. Eight of these fatalities involved marbles. All of the children who died from choking on marbles were younger than three years of age.

In the proceeding initiated by this notice the Commission particularly desires to receive technical and medical data and other information relevant to the possible need for and potential effectiveness of labeling packages of marbles to warn of the potential choking hazards they may present to children younger than three years of age because of small parts. The Commission also solicits information about the economic impact of the regulatory options discussed in this notice. The Commission invites all interested persons to submit an existing standard or a statement of intent to modify or develop a voluntary standard to address risks of choking deaths and injuries to children associated with marbles.

DATES: Written comments and submission in response to this notice must be received by September 10, 1990.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, room 528, 5401 Westbard Avenue, Bethesda, Maryland; telephone (301) 492–6800.

FOR FURTHER INFORMATION CONTACT: David W. Thome, Program Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Background

Regulations codified at 16 CFR 1500.18(a)(9) and part 1501 ban certain toys and articles intended for children younger than three years of age which present a choking, aspiration, or ingestion hazard because of small parts if they are introduced into interstate commerce after January 1, 1980. However, in the enforcement of the small parts regulations, the Commission staff has always considered marbles to be intended for children older than three years of age, unless they are part of a toy intended for children younger than three. For that reason, most marbles are not subject to the existing small parts requirements.

In the **Federal Register** of June 7, 1988 (53 FR 20865), the Commission published an advance notice of proposed rulemaking (ANPR) with a view toward the possibility of amending the small parts regulations (4).[2] On March 21, 1990, the Commission voted to terminate this proceeding. Elsewhere in this issue of the **Federal Register** the Commission has published a notice to withdraw the ANPR of June 7, 1988, and to explain its reasons for terminating that proceeding.

In 1989, the Commission's Directorate for Epidemiology completed an analysis of reports of choking-related deaths and injuries to children younger than 10 years of age associated with children's products (6). This analysis examined reports of 146 choking-related deaths received by the Commission from January 1980 through April 1989, and found that eight of these deaths involved children who choked on marbles. All of the children who died from choking on marbles were younger than three years of age (6).

For this reason, the Commission is beginning a rulemaking proceeding which may result in the issuance of requirements for labeling of packages of marbles to warn of risks of choking deaths and injuries to children younger than three years of age which may be associated with those products.

(The analysis of choking deaths also disclosed 63 deaths associated with balloons, 32 deaths associated with small balls, and 10 deaths associated with other products (not including marbles) which were developmentally appropriate for children three years of age and older (6). Elsewhere in this issue of the **Federal Register**, the Commission has published separate advance notices of proposed rulemaking to begin proceedings which may result in the issuance of labeling or other requirements for balloons, small balls, and toys and other articles intended for children older than three years of age.)

B. Statutory Authority

This proceeding is conducted under provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*). Section 2(f)1(D) of the FHSA (15 U.S.C. 1261(f)1(D)) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present "an electrical, mechanical, or thermal hazard." Section 2(s) of the FHSA provides that an article may be determined to present a "mechanical hazard" if in normal use or reasonably foreseeable use or abuse it presents an unreasonable risk of personal injury or illness because the article or any of its parts may be aspirated or ingested. The Commission may make its determination that a toy or children's article presents a mechanical hazard by issuance of a regulation in accordance with provisions of sections 3(e) through (i) of the FHSA (15 U.S.C. 1262 (e) through (i)). The first step in a proceeding under provisions of sections 3 (e) through (i) of the FHSA for issuance of a rule to declare that a toy or children's article presents a mechanical hazard is the publication of an advance notice of proposed rulemaking (ANPR) in accordance with provisions of section 3(f) of the FHSA. If, after considering comments received in response to the ANPR, the Commission decides to continue the proceeding, section 3(h) of the FHSA requires publication of the text of the proposed rule and a preliminary regulatory analysis of the proposal including a description of potential benefits and potential costs of the proposal. If the Commission issues a final rule, it must publish a third notice which sets forth the text of the final rule, a summary of significant issues raised by comments on the proposal, a final regulatory analysis including a description of potential benefits and potential costs, as well as specified findings about voluntary standards and the relationship of the costs and the benefits of the rule.

[1] The Commission decided to begin this proceeding by a 2–1 vote, with Commissioner Carol G. Dawson dissenting. Copies of the Commissioners' separate statements are available upon request from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6800.

[2] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspections of any of these documents should be made at the Commission's Public Reading Room, 5401 Westbard Avenue, room 528, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 492–6980.

C. The Products and Risks of Injury

This proceeding is concerned with marbles which are sold in packages, and risks of death and serious injuries to children younger than three years of age which may result from choking on marbles.

D. Voluntary Standard

The Commission is aware of only one voluntary standard which might be applicable to the risks of injury with which this proceeding is concerned. This standard is published by the American Society for Testing and Materials and is designated F 963–86, Standard Consumer Safety Specification on Toy Safety. This voluntary standard has provisions intended to address a variety of hazards presented by a wide range of toys, some of which are intended for children as old as 14 years of age. However, this voluntary standard does not currently include provisions which are specifically intended to address choking hazards associated with marbles.

E. Regulatory Alternatives Under Consideration

In the proceeding initiated by publication of this ANPR, the Commission is considering the possibility of issuing a labeling rule applicable to marbles sold in packages to warn of choking hazards which they may present to children younger than three years of age.

In addition to issuing a mandatory labeling rule of the type described above, the Commission also is considering the possibility that the voluntary standard for toys, ASTM F 963–86, could be revised to reduce even further risks of choking deaths and injuries to children younger than three years of age associated with marbles sold in packages. The Commission also is considering the possibility that a new voluntary standard might be developed to address the risks of choking deaths and injuries to children younger than three years of age which are associated with marbles sold in packages.

F. Solicitation of Information and Comments

This advance notice of proposed rulemaking is the first step of a proceeding which could result in the issuance of a mandatory rule applicable to marbles sold in packages to warn of choking hazards which those products may present to children younger than three years of age. All interested persons are invited to submit to the Commission:

(1) Written comments concerning the risks of injury described in this notice; the regulatory alternatives being considered by the Commission to address those risks; and other possible alternatives to address those risks.

(2) Information and data about the potential effectiveness of labeling as a means of reducing the risks of death and injury described in this notice.

(3) Estimates of the potential effects of these regulatory alternatives on the cost, price, and utility of affected products, and any other economic effects such as those on trade and distribution of these products.

(4) Any existing standard or portion of an existing standard which could be published as a proposed regulation to address the risks of injury described in this notice.

(5) A statement of intent to modify or develop a voluntary standard to address the risks of injury discussed in this notice, together with a description of the plan for modification or development of that standard.

Any plan submitted with a statement of intent to modify or develop a voluntary standard should include, to the extent possible, a description of how interested groups and persons will be notified that a proceeding to modify or develop a voluntary standard is under way; a description of how the views of interested groups and persons will be addressed in the modification or development of the standard; a detailed discussion of how the modification or development of the standard will proceed; a realistic estimate of the length of time that will be required to modify or develop the standard; a list of persons expected to participate in the modification or development of the standard, together with information about backgrounds and experience; and a description of any facilities or equipment that will be used during the project.

All comments and submissions should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and received not later than September 10, 1990.

Dated: June 21, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Memorandum to the Commission from David W. Thome, OPMB, concerning choking hazards, 16 pages, January 26, 1990.

2. Text of small parts regulations applicable to toys and articles intended for children younger than three years of age codified at 16 CFR 1500.18(a)(9) and part 1501, 2 pages.

3. Summary of provisions of mandatory regulations and voluntary standard which address choking hazards associated with toys and children's articles, 2 pages.

4. Federal Register notice "Toys and Articles Intended for Children Under Three Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Request for Comments and Information," published by the Consumer Product Safety Commission, 5 pages, June 7, 1988 (53 FR 20865).

5. Memorandum to the Commission from Elaine A. Tyrrell, OPMB, concerning comments received in response to advance notice of proposed rulemaking published on June 7, 1988, 10 pages, September 21, 1988.

6. "Analysis of Choking Related Hazards Associated with Children's Products," by Deborah Kale Tinsworth, Directorate for Epidemiology, 34 pages, September 1989.

7. "A Physiological Review of Toys Causing Choking in Children," by Sharee Pepper, Ph.D., Directorate for Health Sciences, 19 pages, September 1989.

8. Federal Register notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54. FR 2198).

9. Memorandum from Terrence R. Karels, ECPA, to David W. Thome, OPMB, concerning focus project on choking hazards, 4 pages, November 15, 1989.

10. Description of new test procedure to determine choking hazards presented by toys and articles intended for children younger than three years of age, 1 page.

11. Draft of Advance Notice of Proposed Rulemaking to address choking hazards associated with toys and children's articles.

12. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 10, 1990, entitled "Rationale for Labeling Requirements for Toys and Other Articles Intended for Use by Children Age 3 to 6 Years," 3 pages.

13. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

[FR Doc. 90–14724 Filed 6–25–90; 8:45 am]

BILLING CODE 6355–01–M

federal register

Tuesday
June 26, 1990

Part IV

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for April 1990

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53130; FRL 3771-4]

Premanufacture Notices; Monthly Status Report for April 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for April 1990.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "(OPTS-53130)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC 20460 (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during April; (b) PMNs received previous and still under review at the end of April; (c) PMNs for which the notice review period has ended during April; (d) chemical substances for which EPA has received a notice of commencement to manufacture during April; and (e) PMNs for which the review period has been suspended. Therefore, the April 1990 PMN Status Report is being published.

Dated: June 20, 1990.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report for April 1990

I. 425 Premanufacture notices and exemption requests received during the month:

PMN No.

P 90-0614	P 90-0624	P 90-0625	P 90-0627
P 90-0628	P 90-0629	P 90-0630	P 90-0631
P 90-0632	P 90-0633	P 90-0634	P 90-0635
P 90-0636	P 90-0637	P 90-0638	P 90-0639
P 90-0640	P 90-0641	P 90-0642	P 90-0643
P 90-0644	P 90-0645	P 90-0646	P 90-0647
P 90-0648	P 90-0649	P 90-0650	P 90-0651
P 90-0652	P 90-0653	P 90-0654	P 90-0655
P 90-0656	P 90-0657	P 90-0658	P 90-0659
P 90-0660	P 90-0661	P 90-0662	P 90-0663
P 90-0664	P 90-0665	P 90-0666	P 90-0667
P 90-0668	P 90-0669	P 90-0670	P 90-0671
P 90-0672	P 90-0673	P 90-0674	P 90-0675
P 90-0676	P 90-0677	P 90-0678	P 90-0679
P 90-0680	P 90-0681	P 90-0682	P 90-0683
P 90-0684	P 90-0685	P 90-0686	P 90-0687
P 90-0688	P 90-0689	P 90-0690	P 90-0691
P 90-0692	P 90-0693	P 90-0694	P 90-0695
P 90-0696	P 90-0697	P 90-0698	P 90-0699
P 90-0700	P 90-0701	P 90-0702	P 90-0703
P 90-0704	P 90-0705	P 90-0706	P 90-0707
P 90-0708	P 90-0709	P 90-0710	P 90-0711
P 90-0712	P 90-0713	P 90-0714	P 90-0715
P 90-0716	P 90-0717	P 90-0789	P 90-0800
P 90-0803	P 90-0804	P 90-0848	P 90-0859
P 90-0868	P 90-0888	P 90-0927	P 90-0928
P 90-0929	P 90-0930	P 90-0948	P 90-0949
P 90-0950	P 90-0951	P 90-0952	P 90-0953
P 90-0954	P 90-0955	P 90-0958	P 90-0959
P 90-0960	P 90-0961	P 90-0962	P 90-0964
P 90-0965	P 90-0966	P 90-0967	P 90-0968
P 90-0969	P 90-0970	P 90-0971	P 90-0972
P 90-0973	P 90-0974	P 90-0975	P 90-0976
P 90-0977	P 90-0978	P 90-0979	P 90-0980
P 90-0981	P 90-0983	P 90-0984	P 90-0986
P 90-0987	P 90-0989	P 90-0990	P 90-0991
P 90-0992	P 90-0993	P 90-0994	P 90-0995
P 90-0996	P 90-0997	P 90-0998	P 90-0999
P 90-1000	P 90-1001	P 90-1002	P 90-1003
P 90-1004	P 90-1005	P 90-1006	P 90-1007
P 90-1008	P 90-1009	P 90-1010	P 90-1011
P 90-1012	P 90-1013	P 90-1014	P 90-1015
P 90-1016	P 90-1017	P 90-1018	P 90-1019
P 90-1020	P 90-1021	P 90-1022	P 90-1023
P 90-1024	P 90-1025	P 90-1026	P 90-1027
P 90-1028	P 90-1029	P 90-1030	P 90-1031
P 90-1032	P 90-1033	P 90-1034	P 90-1035
P 90-1036	P 90-1037	P 90-1038	P 90-1039
P 90-1040	P 90-1041	P 90-1042	P 90-1043
P 90-1044	P 90-1045	P 90-1046	P 90-1047
P 90-1048	P 90-1049	P 90-1050	P 90-1051
P 90-1052	P 90-1053	P 90-1054	P 90-1055
P 90-1056	P 90-1057	P 90-1058	P 90-1059
P 90-1060	P 90-1061	P 90-1062	P 90-1063
P 90-1064	P 90-1065	P 90-1066	P 90-1067
P 90-1068	P 90-1069	P 90-1070	P 90-1071
P 90-1072	P 90-1073	P 90-1074	P 90-1075
P 90-1076	P 90-1077	P 90-1078	P 90-1079
P 90-1080	P 90-1081	P 90-1082	P 90-1083
P 90-1084	P 90-1085	P 90-1086	P 90-1087
P 90-1088	P 90-1089	P 90-1090	P 90-1091
P 90-1092	P 90-1093	P 90-1094	P 90-1095
P 90-1096	P 90-1097	P 90-1098	P 90-1099
P 90-1100	P 90-1101	P 90-1102	P 90-1103
P 90-1104	P 90-1105	P 90-1106	P 90-1107
P 90-1108	P 90-1109	P 90-1110	P 90-1111
P 90-1112	P 90-1113	P 90-1114	P 90-1115
P 90-1116	P 90-1117	P 90-1118	P 90-1119
P 90-1120	P 90-1121	P 90-1122	P 90-1123
P 90-1124	P 90-1125	P 90-1126	P 90-1127
P 90-1128	P 90-1129	P 90-1130	P 90-1131
P 90-1132	P 90-1133	P 90-1135	P 90-1136
P 90-1137	P 90-1138	P 90-1139	P 90-1140
P 90-1141	P 90-1142	P 90-1143	P 90-1144
P 90-1145	P 90-1146	P 90-1147	P 90-1149
P 90-1150	P 90-1151	P 90-1152	P 90-1153
P 90-1154	P 90-1155	P 90-1156	P 90-1157
P 90-1158	P 90-1159	P 90-1160	P 90-1161
P 90-1162	P 90-1163	P 90-1164	P 90-1165
P 90-1166	P 90-1167	P 90-1168	P 90-1169
P 90-1170	P 90-1171	P 90-1172	P 90-1173
P 90-1174	P 90-1175	P 90-1176	P 90-1177
P 90-1179	P 90-1180	P 90-1181	P 90-1182
P 90-1183	P 90-1184	P 90-1185	P 90-1186
P 90-1187	P 90-1188	P 90-1189	P 90-1190
P 90-1191	P 90-1192	P 90-1193	P 90-1194
P 90-1197	P 90-1198	P 90-1199	P 90-1200
P 90-1236	P 90-1237	P 90-1238	P 90-1239
P 90-1240	P 90-1241	P 90-1242	P 90-1243
P 90-1244	P 90-1245	P 90-1246	P 90-1247
P 90-1248	P 90-1249	P 90-1250	P 90-1251
P 90-1252	P 90-1253	P 90-1254	P 90-1255
P 90-1256	P 90-1257	P 90-1258	P 90-1259
P 90-1260	P 90-1261	P 90-1262	P 90-1263
P 90-1264	P 90-1265	P 90-1266	P 90-1267
P 90-1268	P 90-1269	P 90-1270	P 90-1271
P 90-1272	P 90-1273	P 90-1274	P 90-1275
P 90-1276	P 90-1277	P 90-1279	P 90-1280
P 90-1281	P 90-1282	P 90-1283	P 90-1284
P 90-1285	P 90-1286	P 90-1287	P 90-1288
P 90-1289	P 90-1290	P 90-1323	Y 90-0184
Y 90-0186	Y 90-0187	Y 90-0188	Y 90-0189
Y 90-0190	Y 90-0191	Y 90-0192	Y 90-0193
Y 90-0194	Y 90-0195	Y 90-0196	Y 90-0197
Y 90-0198	Y 90-0199	Y 90-0200	Y 90-0201
Y 90-0202	Y 90-0203	Y 90-0204	Y 90-0205
Y 90-0207			

II. 246 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 85-0216	P 85-0433	P 85-0535	P 85-0536
P 85-0619	P 85-0718	P 85-0730	P 86-1602
P 86-1603	P 86-1604	P 86-1607	P 87-0105
P 87-0197	P 87-0198	P 87-0199	P 87-0200
P 87-0201	P 87-0323	P 87-0502	P 87-0723
P 87-1192	P 87-1555	P 87-1760	P 87-1872
P 87-1881	P 87-1882	P 88-0083	P 88-0217
P 88-0319	P 88-0320	P 88-0353	P 88-0468
P 88-0515	P 88-0522	P 88-0576	P 88-0671
P 88-0831	P 88-0836	P 88-0837	P 88-0894
P 88-0918	P 88-1020	P 88-1021	P 88-1035
P 88-1211	P 88-1212	P 88-1271	P 88-1272
P 88-1273	P 88-1274	P 88-1303	P 88-1460
P 88-1473	P 88-1540	P 88-1567	P 88-1568
P 88-1618	P 88-1619	P 88-1620	P 88-1621
P 88-1622	P 88-1630	P 88-1631	P 88-1632
P 88-1690	P 88-1691	P 88-1761	P 88-1763
P 88-1783	P 88-1807	P 88-1809	P 88-1811
P 88-1844	P 88-1856	P 88-1937	P 88-1938
P 88-1980	P 88-1982	P 88-1984	P 88-1985
P 88-1995	P 88-1999	P 88-2000	P 88-2001
P 88-2100	P 88-2169	P 88-2177	P 88-2179
P 88-2180	P 88-2181	P 88-2188	P 88-2196
P 88-2210	P 88-2212	P 88-2213	P 88-2228
P 88-2229	P 88-2230	P 88-2231	P 88-2236
P 88-2237	P 88-2271	P 88-2275	P 88-2389

P 88-2469 P 88-2473 P 88-2484 P 88-2518
P 88-2529 P 88-2530 P 88-2568 P 89-0030
P 89-0031 P 89-0073 P 89-0089 P 89-0090
P 89-0091 P 89-0225 P 89-0254 P 89-0321
P 89-0326 P 89-0336 P 89-0365 P 89-0386
P 89-0387 P 89-0388 P 89-0448 P 89-0538
P 89-0539 P 89-0589 P 89-0701 P 89-0711
P 89-0721 P 89-0750 P 89-0760 P 89-0764
P 89-0775 P 89-0776 P 89-0810 P 89-0867
P 89-0878 P 89-0906 P 89-0918 P 89-0924
P 89-0942 P 89-0957 P 89-0958 P 89-0959
P 89-0963 P 89-0977 P 89-0978 P 89-0979
P 89-0980 P 89-0998 P 89-1010 P 89-1038
P 89-1058 P 89-1072 P 89-1082 P 89-1093
P 89-1104 P 89-1125 P 89-1148 P 90-0002
P 90-0009 P 90-0013 P 90-0113 P 90-0142
P 90-0145 P 90-0158 P 90-0159 P 90-0169
P 90-0187 P 90-0211 P 90-0212 P 90-0220
P 90-0226 P 90-0231 P 90-0237 P 90-0244
P 90-0245 P 90-0248 P 90-0249 P 90-0260
P 90-0261 P 90-0262 P 90-0263 P 90-0274
P 90-0299 P 90-0313 P 90-0314 P 90-0315
P 90-0316 P 90-0317 P 90-0318 P 90-0319
P 90-0321 P 90-0331 P 90-0333 P 90-0335
P 90-0347 P 9090349 P 90-0350 P 90-0359
P 90-0360 P 90-0361 P 90-0364 P 90-0372
P 90-0383 P 90-0385 P 90-0404 P 90-0405
P 90-0406 P 90-0440 P 90-0441 P 90-0456
P 90-0473 P 90-0474 P 90-0475 P 90-0476
P 90-0477 P 90-0480 P 90-0481 P 90-0489
P 90-0496 P 90-0498 P 90-0512 P 90-0528
P 90-0533 P 90-0549 P 90-0550 P 90-0558
P 90-0559 P 90-0560 P 90-0564 P 90-0578
P 90-0581 P 90-0583 P 90-0586 P 90-0587
P 90-0594 P 90-0603 P 90-0608 P 90-0616
P 90-0617 P 90-0946
P 90-0341 P 90-0342 P 90-0343 P 90-0344
P 90-0345 P 90-0346 P 90-0348 P 90-0351
P 90-0352 P 90-0353 P 90-0354 P 90-0355
P 90-0356 P 90-0357 P 90-0358 P 90-0362
P 90-0363 P 90-0365 P 90-0366 P 90-0367
P 90-0368 P 90-0369 P 90-0370 P 90-0371
P 90-0373 P 90-0374 P 90-0375 P 90-0376
P 90-0377 P 90-0378 P 90-0379 P 90-0380
P 90-0381 P 90-0382 P 90-0386 P 90-0387
P 90-0388 P 90-0389 P 90-0390 P 90-0391
P 90-0392 P 90-0393 P 90-0394 P 90-0395
P 90-0396 P 90-0397 P 90-0398 P 90-0399
P 90-0400 P 90-0401 P 90-0402 P 90-0403
P 90-0407 P 90-0408 P 90-0409 P 90-0410
P 90-0411 P 90-0432 Y 90-0153 Y 90-0154
Y 90-0155 Y 90-0156 Y 90-0157 Y 90-0158
Y 90-0159 Y 90-0160 Y 90-0161 Y 90-0162
Y 90-0163 Y 90-0164 Y 90-0165 Y 90-0166
Y 90-0167 Y 90-0168 Y 90-0169 Y 90-0170
Y 90-0171 Y 90-0172 Y 90-0173 Y 90-0174
Y 90-0175 Y 90-0176 Y 90-0177 Y 90-0178
Y 90-0179 Y 90-0180 Y 90-0181 Y 90-0182
Y 90-0183 Y 90-0184 Y 90-0186 Y 90-0187
Y 90-0188 Y 90-0189 Y 90-0190

III. 115 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration or the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

P 88-1529 P 88-1850 P 88-2575 P 89-0626
P 89-0739 P 89-0769 P 89-1009 P 89-1036
P 89-1062 P 89-1135 P 90-0123 P 90-0284
P 90-0304 P 90-0332 P 90-0334 P 90-0336
P 90-0337 P 90-0338 P 90-0339 P 90-0340

IV. 78 Chemical substances for which EPA has received notices of commencement to manufacture.

PMN No.	Identity/Generic Name	Date of Commencement
P 83-0455	G Alkenoyl disubstituted cycloalkane	July 10, 1985.
P 83-1224	G Flourocarbon	March 13, 1990.
P 84-0698	G 9,10-Anthracenedione sulfonic acid, sodium salt	March 8, 1990.
P 86-0001	G Polyester of unsaturated dicarboxylic acid, diglycol, bisbenzoic acid	July 25, 1989.
P 86-1689	G Copolymer of acrylic and methacrylic esters	March 12, 1990.
P 86-1771	G Benzotriazole derivative	August 29, 1988.
P 87-0930	G 1,2-Epoxybutane, 2-propenoic acid, dibutylene glycol mono-2-propenoic acid esters dibutylene glycol 1,2-butanediol, 2-hydroxybutyl acetylate..	March 23, 1990.
P 87-0931	G 1,2-Epoxybutane, 2-propenoic acid, dibutylene glycol mono-2-propenoic acid esters dibutylene glycol 1,2-butanediol, 2-hydroxybuty acetate..	March 23, 1990.
P 87-1176	G Dimethyl, alkoxy functional fluid	March 21, 1990.
P 87-1205	G Acrylic polymer	March 13, 1990.
P 87-1223	G Bis(substituted phenyl)cycloalkane	March 30, 1990.
P 87-1515	G Fluorinated copolymers	February 23, 1990.
P 87-1600	G Styrene-acrylate methacrylate polymer	February 20, 1988.
P 88-0014	G Substituted benzotriazole	March 28, 1990.
P 88-0364	Alkylammonium chloride	April 6, 1990.
P 88-1772	G Graft copolymer on polyvinyl alcohol	March 22, 1990.
P 88-1890	G Polycaprolactone ester	March 20, 1990.
P 88-2301	G Toluene diisocyanate terminated polyether urethane	March 8, 1990.
P 88-2566	G Aromatic methacrylate	March 14, 1990.
P 89-0001	G Peroxy-initiated acrylate ester/ether nitrile polymer	January 20, 1989.
P 89-0175	G Hydroxy functional acrylic copolymer	March 21, 1990.
P 89-0211	2-Methyl-1,3-propanediol	March 2, 1990.
P 89-0215	G Intaglio Varnish	March 20, 1990.
P 89-0301	G Disubstituted glycine potassium complex	March 9, 1990.
P 89-0399	G Amine functional epoxy salted with an organic acid	March 21, 1990.
P 89-0402	G Substituted aminobenzoic acid	March 19, 1990.
P 89-0421	Sodium sulfonisophthalic acid; isophthalic acid; sebacic acid; 5-t-butyl isophthalic acid; neopentyl glycol; ethylene	February 27, 1990.
P 89-0440	Ethanol, 2-(2-hydroxypropyl)amine	February 23, 1990.
P 89-0484	Isophoronediisocyanate; 2-hydroxy ethyl acrylate carbonic acid polymer accession	March 16, 1990.
P 89-0502	G Polyurethane-polyvinyl chloride complex	February 21, 1990.
P 89-0608	G Substituted polyhydroxy aromatic compound	March 2, 1990.
P 89-0618	G Polyoxyalkene polyester urethane block polymer	November 4, 1989.
P 89-0628	G Polymer modified acrylated epoxide	January 15, 1990.
P 89-0657	G Acrylate terpolymer	March 20, 1990.
P 89-0658	G Acrylate terpolymer	March 19, 1990.
P 89-0659	G Acrylate terpolymer	March 22, 1990.
P 89-0660	G Acrylate terpolymer	March 13, 1990.
P 89-0778	G High solids polyester	September 14, 1989.
P 89-0799	G Fluoro-substituted urethane	March 21, 1990.
P 89-0857	G Adduct of an aromatic polyisocyanote and a substituted phenol	February 25, 1990.
P 89-0859	G Polyether-modified polyurethane	April 7, 1990.
P 89-0890	G Halo-aliphatic oxy-substituted saturated pyran	October 13, 1989.
P 89-0923	G Partially fluorinated polyamic acid	April 5, 1990.
P 89-0964	G Polyester resin (alkyd resin)	February 15, 1990.
P 89-1039	Emsulion of blocked iso-cyanate product	March 21, 1990.
P 89-1063	G Polyester resin of alkyl and aryl dicarboxylic acids and esters and alkyl diols	March 16, 1990.

IV. 78 Chemical substances for which EPA has received notices of commencement to manufacture.—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 89-1069	G Substited phenol, 1,3,-(bis(2-carboxybenzyl)azo)-,mixed ester.	March 21, 1990.
P 90-0036	G Cyclohexyl substituted silicic acid ester	April 3, 1990.
P 90-0037	G Amino resin	March 26, 1990.
P 90-0046	Random copolymer of 1,3-butadiene with 2-propenen-itrile alpha-(4-cyano-4-methylbutyricacid)-omega-2,2-dimethylenenitrile.	February 15, 1990.
P 90-0047	Random copolymer of 1,3-butadiene with 2-propenen-itrile-alpha-(4-cyano-4-methylbutyricacid)-omega-2,2-dimethylbutyronitrile.	March 21, 1990.
P 90-0053	G Polymeric alpha, omega-dicarboxylic acid.	April 4, 1990.
P 90-0081	G Thiadizole derivative.	February 27, 1990.
P 90-0084	G Quaternary ammonium compounds.	March 2, 1990.
P 90-0122	G Polyether polyol.	March 27, 1990.
P 90-0152	G Acrylate copolymer.	February 26, 1990.
P 90-0172	G Aromatic polyester polyol.	March 20, 1990.
P 90-0174	G Polyurethane based on polyisocyanates, polyols and polyamines.	March 20, 1990.
P 90-0188	G Fatty acid polymer with (alkylamino) diamine dilyl diamine.	March 23, 1990.
P 90-0213	G Ketoxine-blocked aromatic isocyanate.	March 21, 1990.
P 90-0215	G Metal treatment compound.	March 20, 1990.
P 90-0229	G Quaternary phosphonium/ polyphenol.	March 20, 1990.
P 90-0230	G Halogenated aliphatic halo-silane.	March 24, 1990.
P 90-0238	G Perfluoroalkylsulfonamide salt.	March 20, 1990.
P 90-0247	G Disubstituted cyclopentanone.	April 6, 1990.
P 90-0254	G Amine functional epoxy resin salted with organic acid.	March 28, 1990.
P 90-0268	G Fluorinated substituted urethane.	March 26, 1990.
P 90-0276	G 1,4-Benzenediamine, N,N,N,N-tetrakis (4-(dipropylamino)phenyl)-	March 21, 1990.
P 90-0277	G Antimonate (1-), hexaflouro-, (oc-6-110-,salt with N,N,N,N-tetrakis (4- (dipropyl-amino)phenyl)-1,4-benzenediamine (1:1)	March 21, 1990.
Y 89-0117	G Saturated, oil-free polyester resin.	January 3, 1990.
Y 89-0140	G Copolymer of butadiene and methacryic monomers.	February 23, 1990.
Y 90-0018	Epsilon-caprolactone-tere-phthalic acid-tetramethy-lene glycol copolymer.	April 22, 1990.
Y 90-0020	G Styrene-acrylic acid polymer.	January 11, 1990.
Y 90-0093	G Polyester.	March 15, 1990.
Y 90-0100	G Long oil sunflower alkyd resin solution.	March 19, 1990.
Y 90-0103	G Copolymer of styrene and acrylic esters.	March 28, 1990.
Y 90-0116	G Epoxy ester polymer.	March 27, 1990.
Y 90-0155	G Acrylic resin.	April 5, 1990.

V. 19 Premanufacture notices for which the period has been suspended.

PMN No.

P 88-0515 P 90-0331 P 90-0333 P 90-0335
P 90-0347 P 90-0349 P 90-0350 P 90-0359
P 90-0360 P 90-0361 P 90-0364 P 90-0372
P 90-0383 P 90-0384 P 90-0385 P 90-0404
P 90-0405 P 90-0406 Y 90-0137

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BILLING CODE 6560-50-D

federal register

Tuesday
June 26, 1990

Part V

Environmental Protection Agency

40 CFR Part 721

Significant New Uses of Certain Chemical Substances; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50580; FRL-3737-1]
RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs), and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

DATES: The effective date of this rule is August 27, 1990. If EPA receives notice before July 26, 1990, that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the chemical for which the notice of intent to comment is received, and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPTS-50580 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. The SUPPLEMENTARY INFORMATION section of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs at 55 FR 17376. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemicalsubstance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under sections 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action. Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28, and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the importation certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name, CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order for the substance, toxicities of concern, any tests identified in the section 5(e) order, and the CFR citation assigned in the regulatory text section of this rule. The preamble identifies recommended testing for each substance, and in cases where the section 5(e) order establishes a production limit, describes the tests that must be completed by the PMN submitter prior to exceeding the limit. If the specific chemical name is claimed as CBI, the citation includes a generic chemical name. The specific uses (including the production limit) which are designated as significant new uses are cited in the regulatory text section of this rule. The requirements specified by these citations are set out at 40 CFR part 721 subpart B. Certain new uses, including production limits (and other uses designated in the rule) are also claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

The SNURs for the following PMN substances, P-84-482, P-88-1658, P-89-279, P-89-292, P-89-303, P-89-506, P-89-596, and P-89-770 regulate chemical substances subject to section 5(e) orders where the finding under TSCA is based solely on substantial production volume and substantial human or environmental exposure. In each of these cases there was limited or no toxicity data available for the PMN substance, a potentially substantial production volume, and a potentially substantial human or environmental exposure. In such cases EPA regulates new chemicals under section 5(e) by requiring certain toxicity tests. For instance, chemicals with

potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects.

Some of the earlier section 5(e) orders contain provisions that required wording changes to be converted into SNURs. In some instances, the SNUR text is merely more detailed (e.g., the provision for a written hazard communication program in § 721.72(a) is more detailed than the hazard communication provisions in some earlier orders or the provision for dermal protection in § 721.63(a)(1) and (a)(3) is worded differently than dermal protection provisions in some earlier orders). In such cases, EPA considers the SNUR and section 5(e) provisions to be generally equivalent. Moreover, the companies which entered into the more limited hazard communication provisions of the earlier 5(e) orders as well as those companies covered by the SNURs, are now generally subject to the requirements of OSHA's hazard communication standard at 29 CFR 1910.1200. Therefore EPA believes it equitable and minimally burdensome to include in the SNUR those requirements of the hazard communication standard that are generally considered to be acceptable in informing workers of potential chemical hazards. In some instances, a particular requirement may be so differently worded from the corresponding SNUR provision that the basis of the SNUR provision is not evident. Where this occurs, the preamble below explains why the SNUR provision was chosen.

Some of the SNURs that contain worker protection or hazard communication provisions, the substances designated P–84–824, P–84–913, P–84–1007, P–84–954, P–84–963, P–85–730, P–85–932, P–85–933, P–86–500, P–86–502, P–86–562, and P–87–502, provide an exemption from such provisions if the substances are present at low levels and are not expected to reconcentrate in mixtures. The exemptions are provided in § 721.63(b) and § 721.72(e) and will make these SNURs consistent with those based on more recent section 5(e) orders. If a substance was determined to pose a cancer concern by structure-activity analysis or actual data (as described in this manner in the preamble that follows), it is exempt only if the level of the substance in the mixture is 0.1 percent or less. All other substances must not exceed a 1.0 percent level in a mixture in order to qualify for the exemption. EPA's decision to allow exemptions at these levels was based on the Occupational Safety and Health Administration's Hazard Communication Standard exemption of MSDS requirements § 1910.1200(g)(2)(i)(C)(1) and (2) when substances are present at such low levels in mixtures. In addition, a number of section 5(e) orders restrict manufacturing, processing, or use to a specific site or sites based on a determination that the substance may present ecotoxicity or human health concerns if released at concentrations above a certain concern level, and that use at alternative sites could result in releases above such level. In these cases, EPA has not included the site restriction in the SNUR, but instead has defined a new use for the substance to include any release that exceeds the identified concern level, as provided in § 721.90.

PMN Number P–84–482

Chemical Name: (specific) Urea, condensate with poly[oxy(methyl-1,2-ethanediyl)]-α-(2-aminomethylethyl)-μ-(2-aminoethylethoxy).
CAS number: Not available.
Effective date of section 5(e) consent order: January 17, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial human exposures.
Recommended testing: A 28-day dermal subchronic toxicity test with rats as the test species on the lowest molecular weight product (Jeffamine DU-700) of the PMN substance as identified by the PMN submitter. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR Number: 40 CFR 721.2480.

PMN Number P–84–591

Chemical Name: (generic) Sodium salt of an alkylated, sulfonated aromatic.
CAS number: Not available.
Effective date of section 5(e) consent order: April 28, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
Toxicity concerns: Toxicity tests have shown this chemical to be acutely toxic to aquatic organisms.
Recommended testing: A daphnid chronic toxicity test and a fish early life stage study would help characterize possible effects of this substance on aquatic organisms. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.445.

PMN Number P–84–824

Chemical Name: (generic) Brominated aromatic compound.
CAS number: Not available.
Effective date of section 5(e) consent order: June 20, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and this substance is expected to be produced in substantial quantities and there may be substantial human exposures.
Toxicity concerns: Similar chemicals have been shown to cause cancer, and chronic liver, lung, and kidney effects in test animals.
Recommended testing: A 2–year oral rodent bioassay to help characterize possible carcinogenicity of the substance and a 90–day subchronic study to assess potential chronic liver, lung, and kidney effects. The PMN submitter has agreed not to exceed the production volume limit without performing the 90–day study.
CFR citation: 40 CFR 721.523.

PMN Number P–84–913

Chemical Name: (generic) *N,N'*-Bis[2-(2-(3-alkyl)thiazoline)vinyl]-1,4-phenylenediamine methyl sulfate, double salt.
CAS number: Not available.
Effective date of section 5(e) consent order: April 8, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have caused acute neurotoxicity effects and death.
Recommended testing: Acute toxicity tests including multiple dosing by the oral, dermal, inhalation, and ocular routes.
CFR citation: 40 CFR 721.612.

PMN Number P–84–954

Chemical Name: (generic) Substituted aromatic.
CAS number: Not available.
Effective date of section 5(e) consent order: December 24, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA

based on a finding that this substance may present an unreasonable risk of injury to health and the environment and this substance is expected to be produced in substantial quantities and there may be substantial environmental and human exposures.
Toxicity concerns: Similar chemicals have been shown to cause cancer in test animals. Toxicity tests of this chemical have shown it to be acutely toxic to aquatic organisms.
Recommended testing: A 2-year dermal rodent bioassay to help characterize possible cancer effects.
CFR citation: 40 CFR 721.450.

PMN Number P-84-1007

Chemical Name: (generic) 3-Alkyl-2-(2-anilino)vinylthiazolinium salt.
CAS number: Not available.
Effective date of section 5(e) consent order: April 8, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have caused acute neurotoxicity effects and death.
Recommended testing: Acute toxicity tests including multiple dosing by the oral, dermal, inhalation, and ocular routes.
CFR citation: 40 CFR 721.2585.

PMN Number P-84-963

Chemical Name: 6-Nitro-2*(3H)*-benzooxazolone.
CAS number: Not available.
Effective date of section 5(e) consent order: March 13, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause cancer in laboratory animals.
Recommended testing: A 2-year two-species rodent bioassay to help characterize potential carcinogenicity.
CFR Citation: 40 CFR 721.1483.

PMN Number P-85-730

Chemical Name: (generic) Substituted phosphate ester.
CAS number: Not available.
Effective date of section 5(e) consent order: November 20, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause cancer in test animals. Toxicity tests of this chemical have shown it to cause kidney and liver effects.
Recommended testing: A 2-year two-species rodent bioassay to help characterize possible cancer effects of the substance.
CFR citation: 40 CFR 721.1585.

PMN Number P-85-932 and P-85-933

Chemical Name: (generic) Disubstituted alkyl triazines.
CAS number: Not available.
Effective date of section 5(e) consent order: January 24, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause cancer in test animals. Toxicity tests of this chemical have shown it to cause heart, kidney, liver, and immunotoxic effects.
Recommended testing: A 2-year two-species rodent bioassay to help characterize possible cancer effects of the substance.
CFR citation: 40 CFR 721.2192.

PMN Number P-86-500 and P-86-502

Chemical Name: (generic) Tetraglycidylamines.
CAS number: Not available.
Effective date of section 5(e) consent order: March 2, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause cancer in test animals.
Recommended testing: A 2-year two-species rodent bioassay to help characterize possible carcinogenicity of the substance.
CFR citation: 40 CFR 721.2132.

PMN Number P-86-562

Chemical Name: (generic) Perfluoroalkyl epoxide.
CAS number: Not available.
Effective date of section 5(e) consent order: November 13, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause cancer and reproductive effects in test animals.
Recommended testing: A 2-year two-species rodent bioassay to help characterize possible carcinogenicity of the substance and a 90-day subchronic assay to assess potential reproductive effects.
CFR citation: 40 CFR 721.976.

PMN Number P-86-1489

Chemical Name: (generic) Alkylphenoxypolyalkoxyamine.
CAS number: Not available.
Effective date of section 5(e) consent order: February 2, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
Toxicity concerns: Toxicity tests have shown this substance to be acutely toxic to aquatic organisms.
Recommended testing: A chronic aquatic toxicity test in daphnids and an early life stage toxicity study in fish.
Explanation of SNUR terms: The preamble to the 5(e) consent order states that EPA is concerned if the PMN substance is released to surface waters and that the order will restrict use and disposal of the PMN substance so that there are no significant environmental releases of the PMN substance. The best translation of the 5(e) consent order restrictions for use and disposal is to designate any release to surface waters a significant new use.
CFR citation: 40 CFR 721.296.

PMN Number P-87-502

Chemical Name: (generic) Dialkenylamide.
CAS number: Not available.
Effective date of section 5(e) consent order: January 19, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and this substance is expected to be produced in substantial quantities and there may be substantial human exposures.
Toxicity concerns: Similar chemicals have been shown to cause cancer, developmental toxicity, reproductive effects, and chronic toxicity in test animals.
Recommended testing: A 2-year two-species rodent bioassay to help characterize possible carcinogenicity of the substance, an oral developmental toxicity test in rabbits to assess

potential developmental effects, and a 90–day dermal rodent subchronic test with functional observational battery to characterize possible reproductive and chronic effects. The PMN submitter has agreed not to exceed the production volume limits without performing the developmental toxicity test and the 90–day dermal rodentsubchronic test.
CFR citation: 40 CFR 721.783.

PMN Number P–88–854

Chemical Name: (generic) Polymer of alkenoic acid, substituted alkylacrylate, sodium salt.
CAS number: Not available.
Effective date of section 5(e) consent order: October 20, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause respiratory complications in test animals.
Recommended testing: A 90–day subchronic inhalation study in rats (40 CFR 798.2450) to help characterize possible respiratory complications of the substance.
CFR citation: 40 CFR 721.1634.

PMN Number P–88–1658

Chemical Name: (generic) Polymer of alkanepolyol and polyalkylpolyisocyanatocarbomonocycle, acetone oxime-blocked.
CAS number: Not available.
Effective date of section 5(e) consent order: October 27, 1989.
Basis for section 5(e) order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant and substantial human exposure.
Recommended testing: EPA has determined that the results of a 28–day oral (OECD Guideline No. 407), acute oral (40 CFR 798.1175), Ames assay (40 CFR 798.5265), and mouse micronucleus by the intraperitoneal route (40 CFR 798.5395) studies would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.1630.

PMN Number P–89–279

Chemical Name: (generic) Formaldehyde, polymer with bisphenol A and substituted phenol.
CAS number: Not available.
Effective date of section 5(e) consent order: September 20, 1989.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial environmental exposures.
Recommended testing: EPA has determined that the results of an early life stage toxicity test in fish (40 CFR 797.1600) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.1060.

PMN Number P–89–292

Chemical Name: (generic) Carboxy alkyl silyl, salt.
CAS number: Not available.
Effective date of section 5(e) consent order: December 13, 1989.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial environmental exposures.
Recommended testing: EPA has determined that the results of an acute algal study (40 CFR 797.1050), acute daphnid study (40 CFR 797.1300), and acute fish study (40 CFR 797.1400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.1890.

PMN Number P–89–303

Chemical Name: Urea, (hexahydro-6-methyl-2-oxo-4-pyrimidinyl)-.
CAS number: 1129–42–6.
Effective date of section 5(e) consent order: October 20, 1989.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial environmental and human exposures.
Recommended testing: EPA has determined that the results of an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), a 28–day repeated dose oral study in rats (OECD Guideline No. 407), with the following modifications: (a) for all test doses, a neurotoxicity functional observational battery (40 CFR 798.6050), and (b) for the highest test dose group only, histopathologic examination extended to include the testes/ovaries and lungs, plus neuropathology (40 CFR 798.6400), an acute algal study (40 CFR 797.1050), an acute daphnid study (40 CFR 797.1300), and an acute fish study (40 CFR 797.1400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.2490.

PMN Number P–89–506

Chemical Name: (generic) Alkylated diarylamine, sulfurized.
CAS number: Not available.
Effective date of section 5(e) consent order: November 20, 1989.
Basis for section 5(e) order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant and substantial human exposure.
Recommended testing: EPA has determined that the results of a 28–day oral (OECD Guideline No. 407), acute oral (40 CFR 798.1175), Ames assay (40 CFR 798.5265), and mouse micronucleus by the intraperitoneal route (40 CFR 798.5395) studies would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.792.

PMN Number P–89–596

Chemical Name: (generic) Alkylene glycol terephthalate and substituted benzoate esters.
CAS number: Not available.
Effective date of section 5(e) consent order: October 13, 1989.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial environmental exposures.
Recommended testing: EPA has determined that the results of an acute algal study (40 CFR 797.1050), acute daphnid study (40 CFR 797.1300), and acute fish study (40 CFR 797.1400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.2070

PMN Number P-89-770

Chemical Name: (generic) Coconut oil, reaction products with tetrahydroxy branched alkane esters of trisubstituted benzene propanoic acid.
CAS number: Not available.
Effective date of 5(e) consent order: December 13, 1989.
Basis for section 5(e)consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial human exposures.
Recommended testing: EPA has determined that the results of an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395) and a 28-day repeated dose oral study in rats (OECD Guideline No. 407), with the following modifications: (a) For all test doses, a neurotoxicity functional observational battery (40 CFR 798.6050), and (b) for the highest test dose group only, histopathologic examination extended to include the testes/ovaries and lungs, plus neuropathology (40 CFR 798.6400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.770

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for certain of the substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, a section 5(e) consent order requiring the use of appropriate controls was negotiated with the PMN submitter, and the SNUR provisions for such substances are consistent with the provisions of the section 5(e) orders. In the case of chemical substances for which the designated uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective August 27, 1990, unless EPA receives a written notice by July 26, 1990, that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30-day comment period. This action establishes SNURs for several chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order recommends certain testing, Unit III. of this preamble lists those recommended tests. The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUR notice submitters contact EPA early enough so that they will be able to conduct the appropriate tests. SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.575(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. A section 5(e) order has been issued in all cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement and the

substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which NOCs have not been submitted, at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 19 out of the 23 substances contained in this rule have CBI chemical identities, and since EPA has received no corresponding post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing. EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance in § 721.45 (h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPTS-50580).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50580). The record includes information considered by EPA in developing this rule. A public version of this record containing nonconfidential materials is available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, located at Rm. NE-G004, 401 M St., SW., Washington, DC.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070-0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: June 13, 1990

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.296 to subpart E to read as follows:

§ 721.296 Alkylphenoxypolyalkoxyamine (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as akylphenoxypolyalkoxyamine (PMN P-88-1489) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (f), and (g)(3)(ii), (g)(4)(iii), and (g)(5).

(ii) *Release to water.* Section 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(f), (g), (h), and (k).

(2) *Limitations or revocation of certain requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

3. By adding new § 721.445 to subpart E to read as follows:

§ 721.445 Sodium salt of an alkylated, sulfonated aromatic (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as a sodium salt of an alkylated, sulfonated aromatic (PMN P–84–591) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (use as a dye leveler) and (q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirments.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

4. By adding new § 721.450 to subpart E to read as follows:

§ 721.450 Substituted aromatic (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted aromatic (PMN P–84–954) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (level set at 0.25 ppm).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i), and (k).

(2) *Limitations or revocation of certain notification requirments.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

5. By adding new § 721.523 to subpart E to read as follows:

§ 721.523 Brominated aromatic compound (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as a brominated aromatic compound (PMN P–84–824) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(1), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS in not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (j) (use as an additive flame retardant for plastics) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (g), (i), and (k).

(2) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(3) *Limitations or revocation of certain notification requirments.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

6. By adding new § 721.612 to subpart E to read as follows:

§ 721.612 N,N'-Bis(2-(2-(3-alkyl)thiazoline) vinyl)-1,4-phenylenediamine methyl sulfate double salt (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as *N,N'*-Bis(2-(2-(3-alkyl)thiazoline)vinyl)-1,4-phenylenediamine methyl sulfate double salt (PMN P–84–913) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(iv),(a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e), (f) (concentration set at 1 percent), (g)(1)(iii), (g)(1), (may be lethal if inhaled or in contact with eyes), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g)

requiring placement of specific information on an MSDS does not apply when an MSDS in not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (j).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

7. By adding new § 721.770 to subpart E to read as follows:

§ 721.770 Coconut oil, reaction products with tetrahydroxy branched alkane esters of trisubstituted benzenepropanoic acid. (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as coconut oil reaction products with tetrahydroxy branched alkane esters of trisubstituted benzenepropanoic acid (PMN P–89–770) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q)

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

8. By adding new § 721.783 to subpart E to read as follows:

§ 721.783 Dialkenylamide (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a dialkenylamide (P–87–502) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(5)(xv), (a)(6)(v), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g) and (q).

(iv) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2) and (c)(1), (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

9. By adding new § 721.792 to subpart E to read as follows:

§ 721.792 Alkylated diarylamine, sulfurized (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylated diarylamine, sulfurized (PMN P–89–506) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q)

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

10. By adding new § 721.976 to subpart E to read as follows:

§ 721.976 Perfluoroalkyl epoxide (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as perfluoroalkyl epoxide (PMN P–86–562) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(2)(i) and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (q).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(v) *Release to water.* § 721.90(a)(3), (b)(3), and (c)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (g), (i), (j), and (k).

(2) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(3) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

11.By adding new § 721.1060 to subpart E to read as follows:

§ 721.1060 Formaldehyde, polymer with bisphenol A and substituted phenol (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as formaldehyde, polymer with bisphenol A and substituted phenol (PMN P–89–279) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (volume set at 161,000 kg).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

12. By adding new § 721.1483 to subpart E to read as follows:

§ 721.1483 6-Nitro-2(3H)-benzoxazolone.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance 6-nitro-2(3*H*)-benzoxazolone (PMN P–84–963) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), and (g)(2)(v). The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (w)(1), (x)(1), and (y)(2).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(d), (e), (f), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

13. By adding new § 721.1585 to subpart E to read as follows:

§ 721.1585 Substituted phosphate ester (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted phosphate ester (PMN P–85–730) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k).

(iv) *Release to water.* Section 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) Determining whether a specific use is subject to this section. The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

14. By adding new § 721.1630 to subpart E to read as follows:

§ 721.1630 Polymer of alkanepolyol and polyalkylpolyisocyanatocarbomonocycle, acetone oxime-blocked (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polymer of alkanepolyol and polyalkylpolyisocyanatocarbomonocycle, acetone oxime-blocked (PMN P–88–1658) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

15. By adding new § 721.1634 to subpart E to read as follows:

§ 721.1634 Polymer of alkenoic acid, substituted alkylacrylate sodium salt (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identifed generically as polymer of alkenoic acid, substituted alkylacrylate sodium salt (PMN P-88-854) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (l), (v)(1), (v)(2), (w)(1), (w)(2), (x)(1), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

16. By adding new § 721.1890 to subpart E to read as follows:

§ 721.1890 Carboxy alkyl silyl salt (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carboxy alkyl silyl salt (PMN P–89–292) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c) and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) Determining whether a specific use is subject to this section. The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

17. By adding new § 721.2070 to subpart E to read as follows:

§ 721.2070 Alkylene glycol terephthalate and substituted benzoate esters (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylene glycol terephthalate and substituted benzoate esters (PMN P–89–596) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q)

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c) and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

18. By adding new § 721.2132 to subpart E to read as follows:

§ 721.2132 Tetraglycidalamines (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as tetraglycidalamines (PMN P–86–500 and P–86–502) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(iv), (a)(5)(v), (a)(5) (vi), (a)(6)(i), (a)(5)(xi) and (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c). The respirator required under § 721.63 (a)(5)(vi) is applicable only when the PMN substance is in the form of a dust. The respirator required under § 721.63 (a)(5)(xi) is applicable only when the PMN substance is in the form of a mist.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (o).

(iv) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2) and (c)(1), (c)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(2)(vi), (b)(2)(vi) and (c)(2)(vi).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

19. By adding new § 721.2192 to subpart E to read as follows:

§ 721.2192 Disubstituted alkyl triazines (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as disubstituted alkyl triazines (PMNs P–85–932 and P–85–933) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(1), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(iv) *Release to water.* § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i) and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

20. By adding new § 721.2480 to subpart E to read as follows:

§ 721.2480 Urea, condensate with poly[oxy(methyl-1,2ethanediyl)]-α-(2-aminomethylethyl)-μ-(2-aminoethylethoxy) (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance urea, condensate with poly[oxy(methyl-1,2-ethanediyl)]-α-(2-aminomethylethyl)-μ-(2-aminoethylethoxy) (PMN P–84–482) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

21. By adding new § 721.2490 to subpart E to read as follows:

§ 721.2490 Urea, (hexahydro-6-methyl-2-oxopyrimidinyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance urea, (hexahydro-6-methyl-2oxopyrimidinyl)-. (PMN P–89–303) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (level set at 1,975,000 and 2,200,000 kg).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

22. By adding new § 721.2585 to subpart E to read as follows:

§ 721.2585 3-Alkyl-2-(2-anilino)vinyl thiazolinium salt (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as 3-alkyl-2-(2-anilino)vinylthiazolinium salt (PMN P–84–1007) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e), (f) [concentration set at 1 percent], (g)(1)(iii), (g)(1) (may be lethal if inhaled or in contact with eyes), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS in not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (j).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

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40 CFR Part 721

[OPTS–50577; FRL–3710–5]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

DATES: This rule is effective August 27, 1990.

If EPA receives notice before July 26, 1990, that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the chemical for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30–day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPTS–50577 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M St., SW., Washington, DC 20460.

Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. Unit VI of this preamble contains additional information on inquiries involving CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28 and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name, CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order for the substance, toxicities of concern, any tests identified in the section 5(e) order, and the CFR citation assigned in the regulatory text section of this rule. The preamble identifies recommended testing for each substance, and in cases where the section 5(e) order establishes a production limit, describes the tests that must be completed by the PMN submitter prior to exceeding the limit. If the specific chemical name is claimed as CBI, the citation includes a generic chemical name. The specific uses (including the production limit) which are designated as significant new uses are cited in the regulatory text section of this rule. The requirements specified by these citations are set out at 40 CFR part 721 subpart B. Certain new uses, including production limits and other uses designated in the rule are also claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Some of the earlier section 5(e) orders contain provisions that required wording changes to be converted into SNURs. In some instances, the SNUR text is merely more detailed (e.g., the provision for a written hazard communication program in § 721.72(a) is more detailed than the hazard communication provisions in some earlier orders). In such cases, EPA considers the SNUR and section 5(e) provisions to be generally equivalent. In some instances, a particular requirement may be so differently worded from the corresponding SNUR provision that the basis of the SNUR provision is not evident. Where this occurs, the preamble below explains why the SNUR provision was chosen.

The SNURs that contain worker protection or hazard communication (all nineteen of these substances except P-87-304 and P-87-1456) provide an exemption from such provisions if the substances are present at low levels in mixtures and are not expected to reconcentrate. The exemptions are provided in §§ 721.63(b) and 721.72(e) and will make these SNURs consistent with SNURs based on more recent section 5(e) consent orders that contain this exemption. If a substance was determined to pose a cancer concern, whether by structural-activity analysis or actual data (as described in the preamble that follows), it is exempt only if the level of the substance in the mixture is 0.1 percent or less. Other substances must be at a level not to exceed 1.0 percent in order to qualify for the exemption. In addition, a number of section 5(e) orders restrict manufacturing, processing, or use to a specific site or sites based on a determination that the substance may present ecotoxicity or human health concerns if released at concentrations above a certain concern level, and that use at alternative sites could result in releases above such level. In these cases, EPA has not included the site restriction in the SNUR, but instead has defined a new use for the substance to include any release that exceeds the identified concern level, as provided in § 721.90.

PMN Number P-84-820

Chemical name: Phosphonium salt (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: December 10, 1984.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: This substance may be neurotoxic.
Recommended testing: A 28-day repeated exposure study to characterize neurotoxicity of the substance. The duration of recommended testing should not be less than 28 days. A 90-day test is preferred.
CFR citation: 40 CFR 721.1608.

PMN Number P-84-1079

Chemical name: Alkylated diphenyl oxide (generic name).
CAS number: Not assigned.

Effective date of section 5(e) consent order: April 17, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause developmental and reproductive effects in test animals. In addition, analog data support a concern for acute and chronic toxicity to aquatic organisms, and for bioconcentration.
Recommended testing: A Chernoff Screening Test to help characterize possible developmental and reproductive effects of the substance. Ecotoxicity tests have not been specified.
Rationale for using SNUR reporting triggers not matched in 5(e): The section 5(e) order restricts the PMN submitter to disposal as described in the PMN only. The PMN specifies release to industrial waste treatment where primary and secondary treatment occur. The release to water reporting provision merely extends the pre-release treatment as a requirement to others.
CFR citation: 40 CFR 721.853.

PMN Number P-85-367

Chemical name: Haloalkyl substituted cyclic ethers (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 17, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Animal tests have shown this substance to cause damage to the central nervous system. Also a similar substance is linked to carcinogenicity and liver toxicity.
Recommended testing: An acute and 90-day subchronic inhalation studies using motor activity and including liver pathology on P-85-367. A 2-year bioassay in rodents would be necessary to address the cancer concern.
CFR citation: 40 CFR 721.1078.

PMN Number P-85-368

Chemical name: Haloalkyl substituted cyclic ethers (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 17, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Animal tests have shown this substance to cause damage to the central nervous system.
Recommended testing: The 90-day subchronic inhalation study on P-85-367 is sufficient to evaluate the potential neurotoxicity to this substance due to analogous structure.
CFR citation: 40 CFR 721.1078.

PMN Number P-85-369

Chemical name: Haloalkyl substituted cyclic ethers (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 17, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Animal tests have shown this substance to cause damage to the central nervous system.
Recommended testing: The 90-day subchronic inhalation study on P-85-367 is sufficient to evaluate the potential neurotoxicity to this substance due to analogous structure.
CFR citation: 40 CFR 721.1078.

PMN Number P-85-605

Chemical name: Trisubstituted phenol (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: July 25, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer in test animals.
Recommended testing: A 2-year rodent bioassay to help characterize possible carcinogenicity of the substance.
CFR citation: 40 CFR 721.1542.

PMN Number P-85-680

Chemical name: 1,1-Dimethylpropyl peroxyester (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 30, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer in test animals.
Recommended testing: A 2-year rodent bioassay to help characterize possible carcinogenicity of the substance.
CFR citation: 40 CFR 721.1560.

PMN Number P-85-1331

Chemical name: Naphthalene,1,2,3,4-tetrahydro(1-phenylethyl) (specific name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: April 15, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
Toxicity concerns: Similar substances have been shown to be toxic to aquatic organisms.
Recommended testing: A daphnid test and fish early life stage study would help characterize possible effects of this substance on aquatic organisms.
CFR citation: 40 CFR 721.1460.

PMN Number P-86-501

Chemical name: Aromatic diamines (generic name).
CAS number: Not available.
Effective date of section 5(e) consent order: March 2, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer, hepatotoxicity, and retinopathy in test animals.
Recommended testing: A 2-year bioassay would help characterize the possible carcinogenic effects of the substance.
CFR citation: 40 CFR 721.782.

PMN Number P-86-503

Chemical name: Aromatic diamines (generic name).
CAS number: Not available.
Effective date of section 5(e) consent order: March 2, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause cancer, hepatotoxicity, and retinopathy in test animals.
Recommended testing: A 2-year bioassay would help characterize the

possible carcinogenic effects of the substance.
CFR citation: 40 CFR 721.782.

PMN Number P-86-628

Chemical name: Dimer acids, polymer with polyalkylene glycol, bisphenol A-diglycerylether and alkylenepolyols polyglycidylethers (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: November 13, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer and reproductive effects in test animals.
Recommended testing: A 2-year rodent bioassay and a 90-day rat subchronic study to help characterize possible carcinogenicity and reproductive (testicular) effects of the substance.
CFR citation: 40 CFR 721.818.

PMN Number P-86-1043

Chemical name: Monosubstituted alkoxyaminotrizines (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 9, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer, heart, kidney, liver, and immunotoxic effects in test animals. Specific release concerns are based on suspected carcinogenicity of the substance and the concern that it could reach drinking water. In addition, based on similar substances, this substance is expected to cause phytotoxicity. The Agency has concluded that levels of this substance above 10 ppb raise concerns for effects on aquatic organisms.
Rationale for using SNUR reporting triggers not matched in 5(e): The section 5(e) order contains a provision that the company can manufacture the PMN substance only at approved locations. The specified locations were assessed and found not to meet or exceed the concern level. Release of the substance from other sites at a level of 10 ppb could be a concern. Therefore, a significant new use notice is required if the concern level could be exceeded.
Recommended testing: A 2-year rodent bioassay of P-86-1044 would help characterize possible carcinogenicity of this substance as well.
CFR citation: 40 CFR 721.291.

PMN Number P-86-1044

Chemical name: Monosubstituted alkoxyaminotrizines (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 9, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer, heart, kidney, liver, and immunotoxic effects in test animals. Specific release concerns are based on suspected carcinogenicity of the substance and that it could reach drinking water. In addition, based on similar substances, this substance is expected to cause ecotoxicity. The Agency has determined that levels of this substance above 1 ppb raise concerns for carcinogenicity and ecotoxicity.
Recommended testing: A 2-year rodent bioassay of this substance would help characterize possible carcinogenicity of P-86-1043 as well.
Rationale for using SNUR reporting triggers not matched in 5(e): The section 5(e) order contains a provision that the company can manufacture the PMN substance only at approved locations. The specified locations were sites at which the PMN submitter intended to release the substance. EPA allowed the release because it estimated that the proposed releases would cause aquatic concentrations below the 1 ppb concern level. A significant new use notice is required if the concern level could be exceeded.

PMN Number P-86-1252

Chemical name: Boric acid, alkyl and substituted alkyl esters (generic name).
CAS number: Not assigned.
Effective date of 5(e) consent order: May 11, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer, developmental, hematological, and immune system effects in test animals.
Recommended testing: A 2-year bioassay, developmental toxicity test, and a 90-day subchronic test in rats to help characterize possible carcinogenicity, developmental, hematological, and immune system effects of the substance.
Rationale for using SNUR reporting triggers not matched in 5(e): The Consent Order provided for a disposal option of releasing hydrolyzed liquid wastes containing the substance from an on-site treatment facility. Although this method of disposal may be approved for others, the approved release to water is specified in the regulatory text.
CFR citation: 40 CFR 721.617.

PMN Number P-86-1493

Chemical name: Substituted alkyl peroxyhexane carboxylate (mixed isomers) (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 21, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer in test animals. Specific release concerns are based on suspected carcinogenicity of the substance and that it could reach drinking water. In addition, based on test data this substance showed a LC_{50} effect at 7.3 ppm in fish. The Agency has determined that levels of this substance above 5 ppb raise carcinogenicity and ecotoxicity concerns.
Recommended testing: A 2-year rodent bioassay to help characterize possible carcinogenicity of the substance.
Rationale for using SNUR reporting triggers not matched in 5(e): The section 5(e) order allowed as a method of disposal the release to an on-site waste water treatment facility. These conditions of disposal did not result in release levels at or above 5 ppb. EPA would be concerned with levels that met or exceeded the 5 ppb.
CFR citation: 40 CFR 721.1565.

PMN Number P-87-304

Chemical name: Nitrothiophene carboxylic acid, ethyl ester, bis[[[[(substituted)]amino]alkylphenyl]azo] (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: July 1, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer in test animals.

Recommended testing: A 2-year rodent bioassay to help characterize possible carcinogenicity of the substance.
CFR citation: 40 CFR 721.1488.

PMN Number P-87-1265

Chemical name: 2-Naphthalenecarboxamide-N-aryl-3-hydroxy-4-arylazo (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: February 1, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer and mutagenicity in test animals.
Recommended testing: A 2-year rodent bioassay and chromosomal aberration study to help characterize possible carcinogenicity and mutagenicity of the substance.
CFR citation: 40 CFR 721.1465.

PMN Number P-87-1456

Chemical name: Polyamine ureaformaldehyde condensate (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: May 4, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
Toxicity concerns: Similar substances have been shown to cause toxicity to aquatic organisms. Analog data from substances with similar chemical structures show this substance to have a potential EC_{50} at 0.04 ppm for algae. EPA has determined that levels of this substance above 1 ppb raise concern for ecotoxicity.
Recommended testing: An acute ecotoxicity test for algae, daphnia and fish to help characterize possible toxicity to aquatic organisms.
Rationale for using SNUR reporting triggers not matched in 5(e): Although the section 5(e) order allows for effluent of wastes containing this substance to Publicly Owned Treatment Works which discharge into oceans and the Gulf of Mexico, the established concern level of 1 ppb may not be exceeded.
CFR citation: 40 CFR 721.2500.

PMN Number P-88-63

Chemical name: Substituted thiazino hydrazine salt (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: April 22, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer and systemic effects in test animals.
Recommended testing: A 2-year rodent bioassay and a 90-day subchronic study to help characterize possible carcinogenicity and systemic effects of the substance.
CFR citation: 40 CFR 721.2180.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for certain of the substances regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance. The basis for such findings is outlined in Unit III of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitter, and the SNUR provisions for such substances are consistent with the provisions of the section 5(e) orders. In the case of chemical substances for which the designated uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure the following objectives: that EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), the rules will be effective August 27, 1990, unless EPA receives a written notice by July 26, 1990, that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30-day comment period.

This action establishes SNURs for several chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order recommends certain testing, Unit III of this preamble lists those recommended tests.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUR notice submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it

is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is incorporated by reference into each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.575(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. A section 5(e) order has been issued in all these cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. EPA has received a Notice of Commencement (NOC) on all nineteen of these substances and each one has been added to the Inventory. EPA recognizes when chemical substances identified in these SNURs are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, all but one of these nineteen substances have CBI chemical identities, and since EPA has received only one corresponding post-PMN *bona fide* submission, the Agency believes that it is highly unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing.

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through these SNURs will have to cease any such activity before the effective date of these rules. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with these SNURs before the effective date. If a person were to meet the conditions of advance compliance in § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPTS–50577).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50577). The record includes information considered by EPA in developing this rule.

A public version of this record containing nonconfidential materials is available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, located at Rm. NE–G004, 401 M St., SW., Washington, DC.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC

20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: June 13, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.291 to subpart E to read as follows:

§ 721.291 Monosubstituted alkoxyaminotrazines (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance monosubstituted alkoxyaminotrazines (PMN P–86–1043) is subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3), (b) [concentration set at 0.1 percent], and (c).

(B) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(iv), (g)(1)(vii), and (g)(1)(viii), (g)(2)(i) and (g)(2)(v), (g)(4)(xi), and (g)(5). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on a MSDS does not apply when a MSDS in not required under § 721.72(c).

(C) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(D) *Disposal.* Requirements as specified in § 721.85(a)(1) and (a)(2) and (b)(1) and (b)(2).

(E) *Release to water.* Requirements as specified in § 721.90(a)(4) [concern level of 10 ppb], (b)(4) [concern level of 10 ppb], and (c)(4)[concern level of 10 ppb].

(ii) [Reserved]

(2) The chemical substance monosubstituted alkoxyaminotrazines (PMN P–86–1044) is subject to reporting under this section for the significant new uses described in paragraph (a)(2)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii) through (a)(5)(vii), and (a)(6)(i), (b) [concentration set at 0.1 percent], and (c).

(B) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(iv), (g)(1)(vii), and (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v), (g)(4)(xi), and (5). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on a MSDS does not apply when a MSDS in not required under § 721.72(c).

(C) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(D) *Disposal.* Requirements as specified in § 721.85 (a)(1) and (a)(2) and (b)(1) and (b)(2).

(E) *Release to water.* Requirements as specified in § 721.90(a)(4) [concern level of 1 ppb], (b)(4)[concern level of 1 ppb], and (c)(4)[concern level of 1 ppb].

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

3. By adding new § 721.617 to subpart E to read as follows:

§ 721.617 Boric acid, alkyl and substituted alkyl esters (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance boric acid, alkyl and substituted alkyl esters (PMN P–86–1252) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(i), (g)(1)(iv), (g)(1)(vii), (g)(1)(viii), and (g)(1)(ix), (g)(2)(i) and (g)(2)(v), (g)(4)(i) and (g)(4)(iii), and (g)(5). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on a MSDS does not apply when a MSDS was not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1) and (b)(1).

(v) *Release to water.* Requirements as specified in § 721.90(a)(3), (b)(3), and (c)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

4. By adding new § 721.782 to subpart E to read as follows:

§ 721.782 Aromatic diamines (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances aromatic diamines (PMN P–86–501 and P–86–503) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv) through (a)(5)(xv), (a)(6)(i) and (a)(6)(ii), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) [concentration set at 0.1 percent], (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v) and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85 (a)(1) and (a)(2), (b)(1) and (b)(2), and (c)(1) and (c)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(2)(vi), (b)(2)(vi), and (c)(2)(vi).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

5. By adding new § 721.818 to subpart E to read as follows:

§ 721.818 Dimer acids, polymer with polyalkylene glycol, bisphenol A-diglycidyl ether, and alkylenepolyols polyglycidyl ethers (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance dimer acids, polymer with polyalkylene glycol, bisphenol A-diglycidyl ether, and alkylenepolyols polyglycidyl ethers (PMN P–86–628) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(vi) and (g)(1)(vii), (g)(2)(i) and (g)(2)(v), (g)(4)(i), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when a MSDS was not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (y).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1) and (a)(2) and (b)(1) and (b)(2).

(b) Specific requirements. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

6. By adding new § 721.853 to subpart E to read as follows:

§ 721.853 Alkylated diphenyl oxide (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance alkylated diphenyl oxide (PMN P–84–1079) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3), (b) [concentration set at 1.0 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) [concentration set at 1.0 percent], (f), and (g)(1)(vi) and (g)(1)(ix), (g)(2)(i) and (g)(2)(v), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when a MSDS was not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g). The term intermediate as used in § 721.80(g) is defined as intermediate for a sulfonated product to be used on site to manufacture sulfonated surfactants or as a product sold to others as a raw material to make sulfonated surfactants.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(3), (b)(3), and (c)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

7. By adding new § 721.1078 to subpart E to read as follows:

§ 721.1078 Haloalkyl substituted cyclic ethers.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances haloalkyl substituted cyclic ethers (PMN P–85–368 and P–85–369) are subject to reporting under this section for the significant new uses described in this paragraph.

(i) The significant new uses are:

(A) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii) and (a)(6)(v) and (a)(6)(vi), (b) [concentration set at 1.0 percent], and (c).

(B) *Hazard communication program.* Requirements as specified in § 721.72(a), (d), (e) [concentration set at 1.0 percent], (f), and (g)(1)(iii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv) and (g)(2)(v), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when a MSDS was not required under § 721.72(c). The provisions of § 721.72(g) requiring

placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(C) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(D) *Disposal.* Requirements as specified in § 721.85(a)(1) and (a)(2), (b)(1) and (b)(2), and (c)(1) and (c)(2).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of the substances, as specified in § 721.125(a) through (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(C) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(2) The chemical substance haloalkyl substituted cyclic ether (PMN P–85–367) is subject to reporting under this section for the significant new uses described in this paragraph.

(i) The significant new uses are:

(A) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), and (a)(6)(v) and (a)(6)(vi), (b) [concentration set at 0.1 percent], and (c).

(B) *Hazard communication program.* Requirements as specified in § 721.72(a), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(iii), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv) and (g)(2)(v), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when a MSDS was not required under § 721.72(c). The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(C) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(D) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1) and (b)(2), and (c)(1) and (c)(2).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(C) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(b) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

8. By adding new § 721.1460 to subpart E to read as follows:

§ 721.1460 Naphthalene,1,2,3,4-tetrahydro(1-phenylethyl) (specific name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance naphthalene,1,2,3,4-tetrahydro(1-phenylethyl) (PMN P–85–1331) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (e) [concentration set at 1.0 percent], (f), and (g)(3)(i) and (g)(3)(ii), (g)(4)(i) and (g)(4)(iii), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1) and (2), (b)(1) and (b)(2), and (c)(1) and (c)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

9. By adding new § 721.1465 to subpart E to read as follows:

§ 721.1465 2-Napthalenecarboxamide-N-aryl-3-hydroxy-4-arylazo (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-naphthalenecarboxamide-N-aryl-3-hydroxy-4-arylazo (PMN P–87–1265) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(iii) through (a)(5)(vii), and (a)(6)(i), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(i), (g)(1)(v), and (g)(1)(vii), and (g)(2)(ii) and (g)(2)(iv).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

10. By adding new § 721.1488 to subpart E to read as follows:

§ 721.1488 Nitrothiophenecarboxylic acid, ethyl ester, bis[[[[(substituted)]amino]alkylphenyl]azo] (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance nitrothiophenecarboxylic acid, ethyl ester, bis[[[[(substituted)]amino]alkylphenyl]azo] (PMN P–87–304) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

11. By adding new § 721.1542 to subpart E to read as follows:

§ 721.1542 Trisubstituted phenol (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance trisubstituted phenol (PMN P–85–605) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii) through (a)(5)(vii) and (a)(6)(i), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (d), (e) [concentration set at 0.1 percent], (f), (g)(1)(vii), and (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when a MSDS was not required under § 721.72(c). The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

12. By adding new § 721.1560 to subpart E to read as follows:

§ 721.1560 1,1-Dimethylpropyl peroxyester (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 1,1-dimethylpropyl peroxyester (PMN P–85–680) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), and (a)(6)(v), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v), and (g)(4)(i).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(3) and (b)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

13. By adding new § 721.1565 to subpart E to read as follows:

§ 721.1565 Substituted alkyl peroxyhexane carboxylate (mixed isomers) (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance substituted alkyl peroxyhexane carboxylate (mixed isomers) (PMN–86–1493) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(i) and (g)(1)(vii), (g)(2)(i) and (g)(2)(v), and (g)(4)(i).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1) and (a)(2) and (b)(1) and (b)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(4) [concern level of 5 ppb], (b)(4) [concern level of 5 ppb], and (c)(4) [concern level of 5 ppb].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

14. By adding new § 721.1608 to subpart E to read as follows:

§ 721.1608 Phosphonium salt (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance phosphonium salt (PMN Number P–84–820) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3), (b) [concentration set at 1.0 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (d), (e) [concentration set at 1.0 percent],

(f), and (g)(1)(iii) and (g)(2)(i) and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when a MSDS was not required under § 721.72(c). The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

15. By adding new § 721.2180 to subpart E to read as follows:

§ 721.2180 Substituted thiazino hydrazine salt (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance substituted thiazino hydrazine salt (PMN P–88–63) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii) through (a)(5)(vii), and (a)(6)(i), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(iv) and (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v), (g)(4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1) and (a)(2) and (b)(1) and (b)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

16. By adding new § 721.2500 to subpart E to read as follows:

§ 721.2500 Polyamine ureaformaldehyde condensate (specific name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance polyamine ureaformaldehyde condensate (PMN P–87–1456) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4) [concern level of 1 ppb], (b)(4) [concern level of 1 ppb], and (c)(4) [concern level of 1 ppb].

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

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June 26, 1990

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Northern Spotted Owl; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB32

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Northern Spotted Owl

AGENCY: U.S. Fish and Wildlife, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the northern spotted owl (*Strix occidentalis caurina*) to be a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). The present range of the subspecies is from southwestern British Columbia through western Washington, western Oregon, and the coast range area of northwestern California south to San Francisco Bay. The northern spotted owl is threatened throughout its range by the loss and adverse modification of suitable habitat as the result of timber harvesting and exacerbated by catastrophic events such as fire, volcanic eruption, and wind storms. Northern spotted owls primarily occur in old-growth and mature forest habitats, but may also be found in younger forests that possess the appropriate structural and vegetational attributes, with attendant prey populations. The rule extends the Act's protection to the northern spotted owl.

EFFECTIVE DATE: The effective date of this rule is July 23, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 1002 NE Holladay Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Smith, Assistant Regional Director for Fish and Wildlife Enhancement at the above address (503/231-6159 or FTS 429-6159).

SUPPLEMENTARY INFORMATION:

Background

The spotted owl (*Strix occidentalis*), consisting of three subspecies (northern, California, and Mexican), is a medium-sized owl with dark eyes, dark-to-chestnut brown coloring, with whitish spots on the head and neck and white mottling on the abdomen and breast. The adult female is slightly larger than the male. The first record of the spotted owl was made in 1858 in the western portion of the Tehachapi Mountains in southern California (Xantus 1859) and it was first documented in the Pacific Northwest in 1892 (Bent 1938). Though observed only occasionally prior to the 1970s, the northern spotted owl since that time has been found to be more common in certain types of forested habitat throughout its range (USDA 1986).

Although a secretive and mostly nocturnal bird, the northern spotted owl is relatively unafraid of human beings (Bent 1938, Forsman *et al.* 1984, USDA 1986). The adult spotted owl maintains a territory year-round; however, individuals may shift their home ranges between the breeding and nonbreeding season. A "floater" population is comprised of subadults and adult owls who have not secured territories. Monogamous and long-lived, spotted owls tend to mate for life, although it is not known if pair-bonding or site fidelity is the determining factor.

Spotted owls are perch-and-dive predators and over 50 percent of their prey items are arboreal or semiarboreal species. Spotted owls subsist on a variety of mammals, birds, reptiles, and insects, with small mammals such as flying squirrels (*Glaucomys sabrinus*), red tree voles (*Arborimus longicaudus*) and dusky-footed woodrats (*Neotoma fuscipes*) making up the bulk of the food items throughout the range of the species (Solis and Gutierrez 1982, Forsman *et al.* 1984, Barrows 1985).

Three subspecies of the spotted owl currently are recognized by the American Ornithologists' Union (1957): the northern spotted owl (*Strix occidentalis caurina*), the California spotted owl (*S. o. occidentalis*), and the Mexican spotted owl (*S. o. lucida*). Northern spotted owls are distinguished from the other subspecies by their darker brown color and smaller white spots and markings (Merriam 1898, Nelson 1903, Bent 1938). Juvenile plumage is similar to adult plumage except for ragged white downy tips on the tail feathers of the juvenile which are retained until the bird is about 27 months old. Oberholser (1915) reported that there was considerable overlap in color of plumage between the northern and California spotted owl subspecies in California. Presumably the geographic separation between these two subspecies occurs within a 12-to-15 mile gap of forested habitat between southeastern Shasta and northwestern Lassen National Forests, where the Sierra Nevada contacts the Klamath physiographic province; the Pit River is generally accepted as the boundary between the two subspecies in California (USDA 1986; G. Gould, California Dept. of Fish and Game, Sacramento, CA., pers. comm.). The width of the geographic separation between the northern and California subspecies is within the dispersal capabilities of the owl (E.C. Meslow, U.S. Fish and Wildlife Service Cooperative Wildlife Research Unit, Oregon State Univ., Corvallis, OR., pers. comm.).

Barrowclough (1985) examined available museum specimens of all three spotted owl subspecies to investigate geographic variation within and between these taxa. In his unpublished findings, he reported clinal variation over the range of the northern and California subspecies and questioned the validity of considering these two taxa as distinct subspecies. Recent electrophoretic work did not detect any variation between the northern and California spotted owl subspecies, at least for the blood proteins examined (Barrowclough and Gutierrez 1987). After reviewing these reports, however, the American Ornithologists' Union (AOU) informed the Service that it continues to recognize the northern spotted owl as a distinct subspecies (the AOU is the recognized authority for taxonomic issues pertaining to North American birds). In addressing the subspecific distinction between the California and northern spotted owls, the AOU notes, "* * * the lack of genetic variation as determined by starch gel electrophoresis among the California and Oregon populations is not grounds for taxonomic merger of those populations." The present techniques for exposing genetic variation examine only a minute fraction of the genome and a lack of differentiation in this small fraction in the genome is without significance (N. Johnson, American Ornithologists' Union, letter dated December 12, 1989).

Secific spotted owl pairs usually do not nest every year nor are nesting pairs successful every year. Nesting behavior begins in February to March with nesting occurring from March to June; however, the timing of nesting and fledging varies with latitude and elevation (Forsman *et al.* 1984). The modal clutch size is 2 eggs, with a range of 1 to 4. Fledging occurs from mid-May to late June, with parental care continuing into September. Females are capable of breeding in their second year, but most probably do not breed until they are in their third year (Barrows 1985, Miller and Meslow 1985b, Franklin *et al.* 1986). A few males in juvenile plumage have been observed paired with adult females (Miller and Meslow 1985, Wagner and Meslow 1986). Males

do most of the foraging during incubation and assist with foraging during the fledging period.

Both the proportion of pairs occupying territories that attempt to breed and the proportion of pairs attempting to breed that are successful (i.e., fledge young) vary from year to year (Forsman *et al.* 1984, Gutierrez *et al.* 1984, Barrows 1985, Miller and Meslow 1985, Meslow *et al.* 1986, Allen *et al.* 1987, Franklin *et al.* 1987, Washington Department of Wildlife 1987, Thomas *et al.* 1990, Miller 1989).

However, in one study reproduction was relatively stable, at least for the years studied (Franklin *et al.* au). Average reproductive rates for Oregon and California (Marcot 1986) range from 0.49 to 0.67 juveniles per pair (Forsman *et al.* 1984, Gutierrez *et al.* 1985a, Barrowclough and Coats 1985, Franklin *et al.* 1987, Marcot and Holthausen 1987, Thomas *et al.* 1990). In some years most pairs may nest, whereas in other years very few pairs even attempt to breed. For example, Gutierrez *et al.* (1984) noted a broad failure in reproduction from northern California through Washington in 1982. It has been suggested that fluctuations in reproduction and numbers of pairs breeding may be related to fluctuations in prey availability (Forsman *et al.* 1984, Barrows 1985, Gutierrez 1985).

Mortality rates of juveniles are significantly higher than adult rates (Forsman *et al.* 1984, Gutierrez *et al.* 1985 a and b, Miller 1989). Recent studies of juvenile dispersal in Oregon and California indicate that few of the juvenile spotted owls survived to reproduce (Miller 1989, Gutierrez *et al.* 1985 a and b). These research studies all report very high mortality during pre-dispersal and the first months of dispersal. Using these data, Marcot and Holthausen (1987) estimated that about 60 percent of juveniles live until they disperse from their nesting areas, but only about 18 percent of those fledged survive for 1 year. In one study, only 7 out of 48 juveniles radio-tracked during a 3-year study (1982–1985), were known to be alive after 1 year (the fate of 4 was unknown because transmitter signals were lost) (Miller 1989). Survival of first year birds was estimated at 19 percent; predation by great horned owls and starvation were the two main causes of mortality (Miller 1989). Twelve of 23 juveniles in a 2-year study in California died during the dispersal period; the fate of the other 11 was unknown (Gutierrez *et al.* 1985b). It is not known whether the use of radio transmitters attached to juveniles for tracking purposes contribute to juvenile mortality (Irwin 1987; Dawson *et al.* 1986); researchers using this technique believe it should not measurably influence juvenile survival if done properly (Foster *et al.*, unpub. ms.).

The current range of the northern spotted owl is from southwestern British Columbia, through western Washington, western Oregon, and northern California south to San Francisco Bay. The southeastern boundary of its range, separating this subspecies from the California spotted owl, is the Pit River area of Shasta County, California. Populations are not evenly distributed throughout its present range. The majority of individuals is found in the Cascades of Oregon and the Klamath Mountains in southwestern Oregon and northwestern California (USDA 1988; Gould, pers. comm.; USDI 1989). Evidently, northern spotted owls reach their highest population densities and may have their best reproductive success in suitable habitat in this part of their range (USDI 1987, 1989; Franklin and Gutierrez 1988; Miller and Meslow 1988; Franklin *et al.* 1989; Robertson 1989). Habitat in southwestern Oregon south of Roseburg begins to change to a drier Douglas-fir/mixed conifer habitat with a corresponding change in prey base (from flying squirrels to woodrats (Meslow, pers. comm.). In addition, historical logging practices in the mixed conifer zone consisted of more selective timber harvesting than in other areas, leaving remnant patches of old growth or stands of varying ages with old-growth characteristics. This situation is also present along the east side of the Cascades in Washington.

The northern spotted owl is known from most of the major types of coniferous forests in the Pacific Northwest (Gould 1974, 1975, 1979; Forsman *et al.* 1977, 1984; Garcia 1979; Marcot and Gardetto 1980; Solis 1983; Sisco and Gutierrez 1984; Gutierrez *et al.* 1984, Forsman and Meslow 1985). The historical range of the northern spotted owl extended throughout the coniferous forest region from southwestern British Columbia south through western Washington, western Oregon, and the Coast Ranges of California to San Francisco Bay (USDA 1986). The current range and distribution of the northern subspecies is similar to the historical range where forested habitat still exists. The owl has been extirpated or is uncommon in certain areas (in intermingled private and State lands in southwestern Washington and intermingled Federal, State, and private lands in portions of Oregon and California) as the result of a decline or modification of old-growth and mature forest habitat and, thus, its distribution is now discontinuous over its range (Dawson *et al.* 1986, Forsman 1986). Specific areas of concern are discussed in detail in the Status Review Supplement (USDI 1989, 3.6).

Population densities and numbers are lowest in northern Washington, southern British Columbia, and the eastern portion of its range in California. Few pairs have been located in British Columbia; all have been located near the United States border. Few owls (pairs or singles) are presently found in the Coast Ranges in southwestern Washington or in the northwestern Oregon Coast Ranges (north from the southern portion of the Siuslaw National Forest). The population also decreases in density toward its southern extreme along the Coast Range in Marin, Napa, and Sonoma Counties, California and the Mendocino National Forest.

In California, northern spotted owls most commonly use the Douglas-fir (*Pseudotsuga menziesii*) and mixed conifer forest types (Marcot and Gardetto 1980, Solis 1983, and Gutierrez 1985). Gould (1974) reported finding spotted owls in northwestern California in coast redwood, Douglas-fir and Bishop pine (*Pinus muricata*) forests, and also in stands dominated by ponderosa pine (*Pinus ponderosa*). In Washington's coastal forest, the spotted owl is found in forests dominated by Douglas-fir and western hemlock (*Tsuga heterophylla*). At higher elevations in western Washington, Pacific silver fir (*Abies amabilis*) is commonly used by owls whereas on the east side of the Cascades Douglas-fir and grand fir (*Abies grandis*) are used (Postovit 1977). Availability of forest types within a region may be responsible for the observed differences in use among types (Gutierrez 1985; Meslow *et al.* 1986). Gould (pers. comm.) observed that preferred habitat, particularly in California, is not continuous, but occurs naturally in a mosaic pattern, especially in the southern portions of range of the bird.

Spotted owls have been observed over a wide range of elevations, although they seem to avoid higher elevation, subalpine forests (USDA 1986). Garcia (1979) reports that spotted owl densities in Washington were greatest below 4,100 feet elevation. Postovit (1977) found owls on the Olympic Peninsula at elevations ranging from 70 to 3,200 feet and an elevation range of 1,600 to 4,200 feet in the Cascade Mountains of Washington. On the east side of Washington's Cascades, J. Casson (USDA Forest Service, Wenatchee National Forest, WA., pers.

comm.) found owls up to 5,000 feet elevation and almost always in association with Douglas-fir. Northern spotted owls have been observed occasionally at elevations up to 6,000 feet or more in California (Gould, pers. comm.).

The age of forests is not as important a factor in determining habitat suitability as are vegetational and structural components. Suitable owl habitat has moderate to high canopy closure (60 to 80 percent); a multi-layered, multi-species canopy dominated by large (> 30 inches in diameter at breast height (dbh)) overstory trees; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, dwarf-mistletoe infections, and other evidence of decadence); numerous large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly (Thomas *et al.* 1990). Usually the features characteristic of owl habitat are most commonly associated with old-growth forests (a widely used definition of old growth is provided in the "PNW–447 Old Growth Task Force Definition" (Franklin *et al.* 1986) or mixed stands of old-growth and mature trees, which do not assimilate these attributes until from 150 to 200 years of age (Thomas *et al.* 1990). The Interagency Scientific Committee (Thomas *et al.*1990) reports that its members have seen sites used by owls throughout the range of the owl where the attributes of suitable owl habitat are present in relatively young forests (60+ years). Attributes of owl habitat are sometimes found in younger forests, especially those with significant remnants of earlier stands that were influenced by fire, wind storms, inefficient logging, or highgrading (removal of the most economically valuable trees). However, nests and major roost sites were located, in almost all instances, in the portions of the stand containing the oldest components (Thomas *et al.*1990).

Recent field investigations in northern California documented the presence of northern spotted owls in 30–80 year-old forests that contain suitable structural characteristics (Diller 1989, Irwin *et al.* 1989d, Pious 1989, Kerns 1989 a and b). In some instances, nesting pairs of northern spotted owls were found in stands that developed 60–80 years after either selective cutting or clearcutting (Richards 1989; Irwin *et al.* 1989a; Pious 1989; Kerns 1988; G. Gould, pers. comm.). At several sites spotted owls nested in predominantly coastal redwood (*Sequoia sempervirens*) stands that had acquired suitable habitat conditions in as little as 40–60 years (Pious 1989). Redwood-dominated forest stands within coastal northwestern California are believed to develop suitable habitat characteristics relatively more rapidly than other types because of unique conditions: a fast growing tree species, good soil conditions, high precipitation, coastal fog, long growing season, understory composed of other conifers and hardwoods, and an abundant prey base (Thomas *et al.* 1990). The coastal redwood zone constitutes only 7 percent of the owl's overall range and caution is urged in assuming that these unique growing conditions will occur elsewhere (Thomas *et al.* 1990).

Northern spotted owl preferences for old-growth forests and forests with old-growth characteristics have been established using different types of information, including relative abundance, proportion of occupied sites containing old growth, and allocation of time by monitored owls. For the coniferous forest within the range of the northern spotted owl, young-growth forest is generally defined as less than 100 years of age, mature forest as stands from 100 to 200 years old, and old growth as forest more than 200 years old. However, habitat characteristics that are typical of suitable owl habitat may not neatly coincide with age classifications that are used primarily for timber purposes.

Forsman *et al.* (1977) computed an index to density of spotted owls based on response rates to simulated calls in Oregon, and estimated that spotted owl pairs were 5 to 12 times more abundant in old growth than in young-growth forests. Of 1,502 owl sites, Forsman *et al.* (1987) found that 1,282 were in old growth, 22 in mature forest, 131 in old-growth/mature forest, and 67 in stands less than 100 years age, demonstrating that the spotted owl is dramatically and disproportionately found in association with old growth (USDI 1989). Pairs were evident at 928 of these 1,502 sites. Other studies by Forsman *et al.* (1984, 1987) analyzed the habitat characteristics of spotted owl sites in Oregon and observed that more than 90 percent of sites occupied by owls contained a major component of old-growth forest. Similar studies conducted by Marcot and Gardetto (1980) in northern California found that 95 percent of spotted owl sites were in old-growth stands. Ninety-seven percent of the spotted owl population in Washington was found in old-growth/mature forest; there were no known reproductive pairs in managed second-growth forest (Allen 1988). The Interagency Scientific Committee (Thomas *et al.* 1990) reports that with the exception of recent work in the coastal redwood zone of California, all studies assessing habitat use suggest that throughout the range spotted owls concentrate their foraging and roosting activities during the entire year in old-growth or mixed-aged stands of mature and old-growth trees. Owls primarily nested either in remnant old-growth patches or in old-growth stands. Although there were exceptions, even these tended to support that owls nest in stands with old growth characteristics (Thomas *et al.* 1990).

There are a number of observations of nest sites in younger growth forests, including mixed-conifer forest in the Wenatchee and Okanogan National Forests in the eastern Cascades (Irwin *et al.* 1989a) and on private land in northern California (Irwin *et al.* 1989b, Pious 1989). Irwin *et al.* (1989c) found 13 of 29 nests in trees within what they describe as younger stands (78 to 120 years old). Marcot and Holthausen (1987) compared percent occurrence of occupancy to amount of area in old growth at each site. The results of their analysis showed probability of use is positively correlated with the percent of area containing old-growth forest types. In a recent study comparing densities of spotted owls in areas dominated by clearcuts and young forest (50–80 years of age) in northern California, Oregon, and Washington, to nearby areas with old growth, Bart and Forsman (unpub. ms.) found that forests regenerating from clearcuts of less than 80 years and containing little remnant older forest patches provided poor owl habitat. Young-growth forest supported a mean density of spotted owl pairs of 0.83 pairs/100 square miles, whereas mean density in old growth was 12.75 pairs/100 square miles. All old-growth areas contained owl pairs in comparison to only 2 of the 12 younger-growth study areas.

Even considering recent data indicating that owls can be found in 30-80 year-old stands in northern California, the vast majority of known successfully reproducing northern spotted owls are resident in old growth or in forested areas containing remnant patches of large trees or scattered individual large older trees. In instances where spotted owls have been found in stands other than old growth, in almost all cases the owls occur in situations that exhibit appropriate structural characteristics. Occurrences of owls in such habitats were known prior to the 1989 survey work conducted in northern California and, therefore, were not

unexpected (Thomas *et al.*, letter dated December 20, 1989).

Although the literature strongly supports the generalization that owls preferentially select old-growth forests over young growth (USDI 1989), there are records of owls using young-growth forests. These data on young-growth forests have led to questions on the importance of old-growth habitat to spotted owl populations (e.g., Irwin 1987). In addition to the studies noted earlier (Irwin *et al.* 1989a), Irwin *et al.* (1989c) examined the immediate vicinity surrounding and including 29 nest sites on the Wenatchee and Okanogan National Forests in the Washington Cascades. Each of these nests apparently had successfully fledged at least one young in 1987 and/or 1988. The authors noted that while characteristics of many of these sites did not completely coincide with the general description of old growth, most of the sites retained dense, multi-layered canopies; no estimates was made of the amount of old growth within the home ranges of the owls whose nest sites were included in the analysis. In the Irwin *et al.* (1989a) study, the average age of 52 nest trees was approximately 194 years and ranged from 67 to 700 years. Surveys in the northern third of the Oregon Coast Ranges (Forsman 1986) and in southwestern Washington (Irwin *et al.* 1989d), revealed a low density of spotted owls and a paucity of old-growth habitat, suggesting that this type of habitat (i.e., 40- to 120-year-old managed forest or predominantly young-growth forest) in this area is not preferred or suitable habitat for northern spotted owls. It is recognized that not all old growth is suitable northern spotted owl habitat because of either forest type, elevation, or stand size. Moreover, some suitable habitat is present in mature forest lacking some old growth characteristics, in young forests with remnant old growth components, and in younger forests where appropriate habitat characteristics were attained relatively early.

Nine studies assessing owl foraging habitat use in relation to forest habitat type and its availability within an individual home range were evaluated (USDI 1990). All nine studies quantitatively determined the amount of habitat and statistically analyzed use of the habitat by owls. Data were from the Oregon Coast, Oregon Cascades, Washington Cascades/Olympic Peninsula, and Klamath Province (E. Forsman, USDA, Forest Service, Pacific Northwest Experiment Station, Olympia, Washington, pers. comm.). Results of these studies clearly indicate that owls use old forest more than expected for foraging (i.e., a "preferred" habitat). Sixty-eight of 81 (84 percent) owls having old forest within their home ranges used old forest more frequently than expected while 13 of 81 owls (16 percent) used old forest in relation to its availability (i.e., "neutral"). No individual owl monitored used old forest less than expected (i.e., "avoided"). The majority of owls (40 of 60; 67 percent) having mature forest in their home ranges were neutral towards mature forest; 9 of 60 (15 percent) avoided mature forest and 11 of 60 (18 percent) exhibited preference for mature forest in their home ranges. In contrast, owls having young forest within their home ranges tended to avoid (31 of 67; 46 percent) or were neutral (33 of 67; 49 percent) towards this habitat type. Owls having pole-sized forest types in their home ranges avoided (39 of 57; 68 percent) or were selectively neutral (18 of 57; 32 percent) with respect to their use of these forest types. Three (4 percent) exhibited preference for pole-sized forest. Note that none of the 57 owls with pole-sized forest and only 3 of 67 (4 percent) owls with young forest in their home ranges preferred these habitats. The clear conclusion is that owls having an array of habitat types within their home ranges select old forest, use mature forest in relation to its availability and tend to avoid or use young forest in relation to its availability (USDI 1990). The preponderance of data suggest that pole-sized forest is avoided (USDI 1990).

Three studies in the Oregon Coast (Thrailkill and Meslow 1989, Carey *et al.* 1990) and Oregon Cascades (Miller and Meslow 1989) were examined to determine the relationship of roost selection to habitat availability within home ranges (USDI 1990). These three studies are the only ones that examined attributes of roost characteristics and statistically compared roost attributes in relation to their availability in the home range. Although data are limited to studies in Oregon, they clearly indicate a strong association of roost sites with old forests. All 27 owls having old forest in the home range selected that forest type (i.e., "preferred") for roosting purposes. Mature stands were used in rough proportion to their availability, while only a few selected for or against mature stands for roosting. Owls having young and pole-sized forests in their home ranges used those habitats for roosting less than expected. These results provide no indication of what attributes associated with old forest owls find important in roost sites, but they do indicate that strong selection for this forest type is occurring within an owl's home range (USDI 1990). Hypotheses such as the need for dense canopy for thermoregulatory balance (Barrows and Barrows 1978, Barrows 1981) will require additional study before they can be evaluated (USDI 1990).

Northern spotted owls have relatively large home ranges as demonstrated through studies using radiotelemetry techniques. In the 1990 Status Review (USDI 1990), home range size estimates are based on the 100 percent minimum polygon method (Southwood 1966) and are the union of annual home range estimates of paired male and female owls only. Because of small sample sizes of paired birds for which an annual home range has been calculated, and because of uncertainty regarding underlying assumptions, the median rather than mean home range size was calculated. Median annual pair home ranges were estimated to be 9,930 acres for the Olympic Peninsula (n=10), 6,308 acres for the Washington Cascades (n=13), 2,955 for the Oregon Cascades (n=11), 4,766 acres for the Oregon Coast Range (n=22), and 3,340 acres for the Klamath Province (n=36) (Thomas *et al.* 1990). Home range size varied from 1,035 acres in the Klamath Province to a high of 30,961 acres in the Washington Cascades (USDI 1990). Mean percent acres of old-growth and mature forest within a home range ranged from 25 percent in the Oregon Coast Range to 74 percent in the Klamath Province (USDI 1990). These data strongly suggest that paired northern spotted owls require large tracts of land containing significant acreage of old forest to meet their biological needs (e.g., foraging and breeding) (USDI 1990). In general, home range sizes are smallest during the spring and summer (reproductive period), largest during the fall and winter (non-reproductive period), increase from south to north, and increase with increasing elevation. Pairs of owls also may occupy overlapping home ranges (Solis 1983, Forsman *et al.* 1984).

Significantly, research indicates that spotted owls on the Olympic Peninsula and Oregon Coast Ranges consistently occupy larger home ranges than owls in the other provinces. These areas also have the fewest pairs of spotted owls and the least remaining old-growth forest (USDI 1989). The large home range sizes reported for owl pairs on the Olympic Peninsula, Oregon Coast Ranges, and on the west side of the Cascade Range in Washington (USDI 1989) may reflect: (1) The adverse influence of forest fragmentation

resulting from timber harvest; (2) difference in prey biomass availability; and (3) the fact that the Washington locations are near the periphery of the subspecies' range. Forests within these provinces are highly fragmented and have the least amount of old-growth forest remaining within the range of the owl. For example, on Bureau of Land Management (Bureau) property and on the Siuslaw National Forest, located within the Coast Ranges of Oregon, remaining old-growth timber occurs in widely separated and relatively small parcels (Harris 1984). In this area, the owls utilize the available old growth in a highly fragmented and patchy environment (Friesen and Meslow 1988). This pattern is probably true for the Olympic Peninsula as well. The above findings and those of Allen and Brewer (1985), Forsman *et al.* (1984), Carey (1985), and Dawson *et al.* (1986), suggest that home range size increases as quality and quantity per unit area of preferred habitat declines (USDI 1989).

There are no estimates of the historical population size and distribution of the northern spotted owl within preferred habitat, although spotted owls are believed to have inhabited most old-growth forests throughout the Pacific Northwest prior to modern settlement (mid-1800s), including northwestern California (USDI 1989). Spotted owls are still found within their historical range in most areas where preferred and suitable habitat exist, although most of the owls are restricted within this range to mature and old-growth forests managed by the Federal government. Approximately 90 percent of the roughly 2,000 known breeding pairs of spotted owls have been located on federally managed lands, 1.4 percent on State lands, and 6.2 percent on private lands; the percent of spotted owls on private lands in northern California would be slightly higher (Forsman *et al.* 1987; USDA 1988; USDI 1989; Thomas *et al.* 1990; Gould, pers. comm.).

Petition Process Background

On January 28, 1987, the Fish and Wildlife Service (Service) received a petition submitted by Greenworld requesting the listing of the northern spotted owl (*Strix occidentalis caurina*) as an endangered species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). On July 23, 1987, the Service accepted the Greenworld petition as presenting substantial information indicating that listing might be warranted and initiated a status review.

On August 4, 1987, the Service received a second petition, submitted by the Sierra Club Legal Defense Fund, Inc. on behalf of 29 conservation organizations, requesting that the populations of northern spotted owls on the Olympic Peninsula in Washington and the Coast Ranges of Oregon be listed as endangered pursuant to the Act, and that the subspecies be listed as threatened throughout the remainder of its range in Washington, Oregon, and northern California. The Sierra Club Legal Defense Fund, Inc. requested that its petition be consolidated with the petition by Greenworld. In accordance with its established policy, the Service treated this second petition as a public comment to be considered in evaluating the original listing petition. As a result, the time frames and schedules required by the first petition remained the same. Both petitions sought the designation of critical habitat.

Section 4(b)(3) of the Act requires the Secretary of the Interior to reach a final decision on any petition accepted for review within 12 months of its receipt. In conducting its review, the Service published a notice in the **Federal Register** (52 FR 34396) on September 11, 1987, requesting public comments and biological data on the status of the northern spotted owl. In addition, a status review team of three Service biologists was established. This team reviewed and evaluated all comments and information received in response to the September 11 notice as well as all other information in the Service's files or gathered in the effort to review the status of the subspecies. Two sequential drafts of the status review were prepared by the Service team and submitted for review by scientists, researchers, and others knowledgeable about the spotted owl in the Pacific Northwest.

On December 14, 1987, the Service team completed its status review on the northern spotted owl. On December 17, 1987, the Service's Regional Director for Region 1 made a finding, based on the review, that listing the northern spotted owl pursuant to Section 4(b)(3)(B)(i) of the Act was not warranted at that time. The Regional Director noted that because of the need for population trend information and other biological data, high priority would be given to this subspecies for continued monitoring and further research. Notice of this finding was published in the **Federal Register** on December 23, 1987 (52 FR 48552).

On May 5, 1988, the Sierra Club Legal Defense Fund, Inc. filed suit on behalf of 23 environmental organizations in the U.S. District Court for the Western District of Washington (*Northern Spotted Owl* v. *Hodel*, No. C88–573Z, W.D., Wash. 1988) challenging the Service's finding on the listing petitions. In an order issued on November 17, 1988, the Court concluded that the Service's finding was arbitrary and capricious or contrary to law, and remanded the matter to the Service for further review. The Service was specifically ordered to: provide an analysis and explanation for its finding; explain the reasoning for not listing the owl as threatened; and to supplement its status review and petition finding.

On December 5, 1988, the Director of the Service established a new status review team, consisting of 12 Service biologists, to conduct an in-depth review and interpretation of all data and other information that had been made available to the Service in 1987 on the issue. After reviewing the 1987 administrative record, the Service concluded that there was considerable new information available that had not been present in the original record and that such information was needed to respond sufficiently to the Court's request and to meet the Act's requirement to evaluate the best available biological information. In an order issued on January 12, 1989, the Court granted the Service's request to reopen the administrative record for the status review and petition finding for a period not to extend beyond February 28, 1989. In a notice published in the **Federal Register** (54 FR 4049; January 27, 1989), the Service reopened the comment period for 30 days and solicited comments, data, and other information. In its order of January 12, the Court gave the Service until May 1, 1989, to complete the additional status review, supplement the status review report, and submit to the court a new analysis and finding on the petition to list the northern spotted owl as endangered or threatened. On April 21, 1989, the team completed the review and submitted a supplemental status review report to the Regional Director, Region 1, Fish and Wildlife Service. On April 25, 1989, the Regional Director issued a revised petition finding indicating that listing the northern spotted owl as a threatened species throughout its entire range was warranted and that the Service would promptly pursue the listing process for the species.

The entire spotted owl species (*Strix occidentalis*) is listed on the Service's Notice of Review for vertebrate wildlife as a candidate species for listing, category 2. A category 2 species is one for which listing may be appropriate but for which additional information is needed. The information submitted and reviewed as part of the status review

process for the northern spotted owl contributed to the supplemental information needed on which to base a decision to propose this subspecies for listing. On June 23, 1989 (54 FR 26666), the Service published a proposal to list the northern spotted owl as a threatened species.

Summary of Comments and Recommendations

In the June 23, 1989, proposed rule (54 FR 26666) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period originally closed September 21, 1989. On September 15, 1989, the Service published in the Federal Register (54 FR 38256) a notice extending the comment period to December 20, 1989. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Numerous newspaper notices were published which invited general public comment. In the proposed rule, the Service published notice of four public hearings to obtain comments from interested parties on the proposal. Public hearings were conducted as follows: August 14, 1989, at the Columbia River Red Lion Inn, Portland, Oregon; August 17, 1989, at the Redding Convention Center, Redding, California; August 21, 1989, at the Washington Center for the Performing Arts, Olympia, Washington; and August 28, 1989, at the Lane County Convention Center Auditorium, Eugene, Oregon. Testimony was taken from 1:00–4:30 p.m. and from 6:00–9:00 p.m. or later depending on need. Notice of the proposal and public hearings was published in 66 daily and weekly newspapers in California, Oregon, and Washington. Between July 16 and 23, 1989, a notice of the proposal and public hearings was published in each of the following newspapers: (California) *Del Norte Triplicate* (Crescent City), *Times-Standard* (Eureka), *Redwood Record* (Garberville), *Siskiyou News* (Yreka), *Trinity Journal* (Weaverville), *Record-Searchlight* (Redding), *News* (Red Bluff), *Advocate-News* (Fort Bragg), *Journal* (Ukiah), *Lake County Record Bee* (Lakeport), *Press Democrat* (Santa Rosa), *Advocate* (Novato), *Register* (Napa), *Journal* (Willows), *Sun-Herald* (Colusa), *Modoc County Record* (Alturas), *Lassen County Times* (Susanville), *Bee* (Sacramento), *Union* (Sacramento), *Chronicle/Examiner* (San Francisco); (Oregon) *Astorian* (Astoria), *Headlight-Herald* (Tillamook), *News-Register* (McMinnville), *News-Times* (Newport), *Register-Guard* (Eugene), *News-Review* (Roseburg), *World* (Coos Bay), *Coastal Pilot* (Brookings), *Courier* (Grants Pass), *Mail Tribune* (Medford), *Herald-News* (Klamath Falls), *Democrat Herald* (Albany), *Gazette Times* (Corvallis), *Polk Sun-Enterprise* (Monmouth), *Oregonian* (Portland), *Times* (Beaverton), *Enterprise-Courier* (Oregon City), *Statesman-Journal* (Salem), *Sentinel-Chronicle* (St. Helens), *News* (Hood River), *Chronicle* (The Dalles), *Pioneer* (Madras), *Bulletin* (Bend), *Sherman County Journal* (Moro); (Washington) *Peninsula Daily News* (Port Angeles), *Leader* (Port Townsend), *World* (Aberdeen), *Willapa Harbor Herald* (Raymond), *Wahkiakum County Eagle* (Cathlamet), *Chronicle* (Centralia), *News* (Longview), *Columbian* (Vancouver), *Skamania County Pioneer* (Stevenson), *Sentinel* (Goldendale), *News Tribune* (Tacoma), *Olympian* (Olympia), *Mason County Journal* (Shelton), *Sun* (Bremerton), *Herald-Republic* (Yakima), *North Kittitas County Tribune* (Cle Elum), *Times* (Seattle), *Herald* (Everett), *World* (Wenatchee), *Argus* (Mount Vernon), and *Herald* (Bellingham). On March 29, 1990, the Service published a notice (55 FR 11625) reopening the comment period for 14 days to solicit additional biological information on the status of the spotted owl. In an additional notice, the Service extended the comment period to April 18, 1990 (55 FR 13578).

To review the available biological data on the owl, including the information and data provided during the comment periods, the Service established a Northern Spotted Owl Listing Review Team. This team consisted of the Spotted Owl Listing Coordinator and five Service research scientists. These individuals prepared the 1990 Status Review (USDI 1990) and prepared the final decision document which included responding to the issues raised during the comment periods.

During the comment period, totaling about 6.5 months, 23,255 comments on the proposal were received. Of these, 3,674 (15.8 percent) supported the proposal, 18,718 (80.5 percent) were opposed, and 863 (3.7 percent) stated no opinion. Of the commenters who supported the proposal, 2,301 (9.9 percent) recommended that the northern spotted owl be listed as endangered, rather than threatened. Of the supporting comments, 2,064 (56.2 percent) were form letters. Of the 18,718 letters against the listing, 16,239 (86.8 percent) were form letters. In addition to individual letters and form letters, 5,351 individuals signed petitions urging the Service to list the spotted owl as either an endangered or threatened species. Petitions opposing the listing were signed by 3,953 people. Various companies and organizations, that are directly or indirectly related to the timber industry were opposed, as were local governments in timber-dependent communities and numerous private citizens who rely on a timber-supported economy. The Oregon Department of Fish and Wildlife commented that Federal listing of the northern spotted owl as a threatened species is warranted. Although the Washington Department of Wildlife and California Department of Fish and Game submitted extensive comments and reports outlining their concerns for the continued viability of northern spotted owls, neither stated its position on the proposed Federal listing. Of the main Federal agencies involved, the U.S. Forest Service opposed the listing, the Bureau of Land Management stated no position, and the National Park Service supported protecting the northern spotted owl on the Olympic Peninsula.

Written comments and oral statements obtained during the public hearings and comment periods are combined in the following discussion. Opposing comments and other comments questioning the rule can be placed in a number of general groups, organized around specific issues. These categories of comment, and the Service's response to each are listed below.

Issue 1. Public Hearings/Public Comment Process

Hearings

Comment: A commenter stated that public hearings were inadequate to obtain public input on the proposal and should have been held in towns that are directly affected by the proposal. Another said that public hearings should have been held in "middle ground," where the community represented a more neutral atmosphere. According to one commenter, the purpose of the public hearings seemed to be to allow the timber industry to create a media circus over economic considerations. Several commenters maintained that the hearings were not run fairly because the first speakers were all anti-owl. Other commenters said that the hearings were biased in favor of individuals being paid to present testimony and that other people could not afford to take time off from work to appear or had to wait too long before they were called to speak. Several commenters recommended that the decision-makers in the Service should have been present to hear the testimony given at the hearings.

Service response: Under provisions of the Endangered Species Act, the Service is obligated to hold one public hearing on a listing proposal if requested to do so within 45 days of publication of the proposal (16 U.S.C. 1533(b)(5)(E)). In the case of the northern spotted owl the Service gave notice in the proposal that four public hearings would be conducted in Portland, Oregon; Redding, California; Olympia, Washington, and Eugene, Oregon. One hearing, however, would have met the legally mandated requirement. The locations of meetings were selected because they provided an opportunity for a large number of interested parties to attend. The Service acknowledges that the hearing locations may not be regarded as "middle ground" by some people. However, with a proposal that has generated the level of interest that this one has, it may not have been possible to find four neutral locations within the range of the northern spotted owl in which to hold the hearings. The Service notes that at several of the hearings, individuals with a given viewpoint were present in high numbers. Anyone who felt too uncomfortable to present testimony at the public hearings was free to submit written comments. Such written comments receive the same consideration as oral testimony. The purpose of the public hearings was to obtain pertinent public input on this proposal. While an individual has the latitude to present whatever testimony he/she chooses during the public hearing, the Service is limited to considering only relevant biological information and data in its deliberations. Hence, the Service cannot take the numerous economic comments into account and has repeatedly stated this.

During each public hearing, after elected officials and representatives of Federal, State, and local agencies provided testimony, the next speakers were taken in order according to when they signed up to speak. The Service held the hearings in the afternoons and evenings to accommodate the schedules of most working individuals. Also, the Service limited the amount of time each individual was given to present testimony to minimize the waiting time of subsequent speakers. However, the public hearings were well attended and because of the large number of people desiring to speak, it was not possible for the hearing officer to proceed as quickly as some individuals would have liked. For those not wishing to wait, the address where written comments could be submitted to supplement or substitute for oral testimony was prominently posted and was announced by the hearing officer. Further, during all four public hearings, a court recorder was present who transcribed the proceedings to create a public hearing transcript. These transcripts are part of the official administrative record associated with this proposal and are considered along with written comments by decisionmakers. Each pertinent issue raised during the oral testimony and in the written comments is responded to in this **Federal Register** document.

Comment Procedure

Comment: One respondent said it was unfair that people outside of the impact area have an opportunity to comment and stated that those who are affected should make the decision. Others maintained that there was insufficient notification to the public of the proposal. Another commenter claimed that the Service's Status Review Team drafted the Status Review Supplement and largely reached its conclusions in January 1989 before the Service reopened the public comment period prior to revising the original petition finding. A commenter stated that the Service should have obtained input from industry on the use of second growth by spotted owls even before convening the public hearings.

Service response: The Service does not agree that the opportunity to provide public comments should be limited to only those individuals that believe they may be affected by the proposal. Endangered and threatened species issues are of interest to Americans throughout the Nation. In the Service's view it would be unfair to deny all interested parties an opportunity to comment simply because they do not reside in the Pacific Northwest.

The Service's notification process is extensive and is summarized at the beginning of this section. The Service is required to publish a notice in local newspapers soliciting comments on the proposal and stating the particulars of any public hearing(s) (if any are scheduled), to give notice of the proposal to appropriate scientific organizations, and to hold a public hearing (if requested to do so within 45 days of publication of the proposed rule). The Service has met all requirements pertaining to the notification process as indicated at the beginning of this section.

The Service's Status Review Team developed the initial draft of the 1989 Status Review Supplement in January 1989, after which several revisions were prepared. However, the recommendation of the team was not developed until April when the "finding" was prepared. Prior to developing the finding, the public comment period was opened on January 27, 1989 (54 FR 4049) for 30 days to obtain additional input on the status review supplement and petition finding. Service personnel had the benefit of reviewing all additional information submitted during this comment period prior to reaching a recommended determination. When evaluating a species for listing, the Service must rely upon the best available scientific and commercial data. Had industry conducted its studies earlier and made those results available, the Service would have considered such data in its proposal. Input from industry on the use of younger growth by spotted owls was submitted subsequent to publication of the proposal and is considered in this final decision document.

Issue 2. Evidentiary Hearing

Comment: A number of parties requested that an evidentiary hearing be held on this proposal. One commenter provided an extensive comment outlining the specifics of the requested action including provision for cross-examination of witnesses. This comment included a request to extend the comment period for six months, hold an additional public hearing, and prepare a revised status review supplement concluding that listing is not warranted. The commenter viewed the evidentiary hearing as not being burdensome or unduly time-consuming and believed the hearing could be completed with the six-month extension period for the decision (the Act provides for a six-month extension of the one-year due date to solicit additional data for purposes of resolving a substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination (16 U.S.C. 1533(b)(6)(B)(i)).

Service Response: Congress deliberately made listings under the Endangered Species Act subject to the informal rulemaking procedures of Section 553 of the Administrative Procedure Act and provided for one public hearing to be held if requested within 45 days of a proposal. If Congress had intended a more formal process for proposed listings, it would have used different language. Four public hearings have already been held, more than meeting the hearing requirements of the Endangered Species Act and Administrative Procedure Act. There is no legal requirement that any further hearings or any different type of hearing be conducted. In addition, the Service has conducted three status reviews and

has received over 23,000 written and oral comments, making it unlikely that additional information bearing on the listing will be brought to light through a further hearing procedure. The Service already has convened a pre-proposal evaluation team and a second team to examine the record and recommend final action on the proposal. The second team consists of a group of Service scientists with established research credentials. In addition, the Service participated in the Interagency Scientific Committee (ISC), a group of highly qualified agency biologists responsible for preparing a conservation plan for the northern spotted owl throughout its range. Further, the Service has considered the ISC's comments on the proposal. The Service is not persuaded that another scientific panel convened to assist in the evidentiary hearing, as recommended by the commenter, would improve the decision-making process.

Issue 3. National Environmental Policy Act

Comment: Several commenters suggested that the Service should prepare an Environmental Impact Statement (EIS) on the proposal to list the northern spotted owl. According to a comment, listing violates the National Environmental Policy Act (NEPA), which requires that any effects on the human environment be identified before a decision is made.

Service response: For the reasons set out in the NEPA section of this document, the Service takes the position that rules issued pursuant to Section 4(a) of the Endangered Species Act do not require the preparation of an EIS. The decision in *Pacific Legal Foundation* v. *Andrus*, 657 F.2d 829 (6th Circuit 1981) held that as a matter of law an EIS is not required for listings under the Act. The decision noted that preparing EIS's on listing actions does not further the goals of NEPA or the Endangered Species Act.

Issue 4. General Issues

Comment: A commenter stated that listing has not helped other species until they have been almost eliminated by research studies. Another individual maintained that single-species management is wrong and other species will suffer if the spotted owl's needs are made a priority for management. Another comment indicated that old-growth forest ecosystems should be listed, rather than concentrating on single-species management. Others said that the owl already has sufficient protection. Several individuals expressed the viewpoint that if the owl does not adapt, it should become extinct and speculated whether owls were good for anything. Numerous commenters recommended that the fate of the owl should rest with a divine power, rather then with mortals.

Service response: The Service disagrees with the implication that research studies have contributed significantly to the need to list species. Research has been instrumental in aiding the recovery and conservation of many endangered and threatened species. It is the Service's position that actions taken to conserve the northern spotted owl would benefit a number of species inhabiting the same ecosystems. However, the possibility does exist that an action beneficial to the management of the spotted owl may be deleterious to non-listed sympatric species. Although a purpose of the Act is to conserve ecosystems upon which endangered and threatened species rely, the Act does not specifically authorize listing an ecosystem. Under Factor D, "Inadequacy of Existing Regulatory Mechanisms," the Service outlines its rationale for concluding that existing mechanisms are insufficient to protect the owl. A species may not be able to adapt to modifications in its habitat precipitated by human-related activities. Adaptation is an evolutionary mechanism, that requires considerable time. The view expressed by the commenters that the owl should either adapt to the effects of logging or become extinct is directly contrary to the intent of Congress as stated in the purposes of the Act. Nor does the Service view the remark that a divine power should dictate whether or not the owl survives as having merit, particularly when it is really the power of people, harvesting timber, that is the primary cause for the bird's decline.

Comment: One party wrote that the owl will become another snail darter because the Service is being duped by preservationist groups into listing. The spotted owl issue was viewed by some commenters as a mechanism to reduce public access to public land for recreation. Another stated that the Act was being used to create more parks where Congress has not appropriated funds to acquire land. Others accused the Service of using the owl as an excuse to support its own environmental agenda. Another said the Service is making a biological decision based on a court injunction which was in turn based on a mathematical computer model that is highly questionable. Several commenters maintained that listing the owl is being used to block industry and is an abuse of the Act. Numerous commenters stated that the owl was being used as a political tool. Another suggested that the President should request that Congress exempt the owl from the Act as it did the snail darter.

Service response: By assessing all available information and data, the Service reached a decision on the biological status of the northern spotted owl. The Service does not believe that it was unduly influenced in this decision by any particular group. There also is no evidence to support the contention that listing the northern spotted owl will reduce access to public land for recreational purposes or is being used to create additional parks.

Under provisions of the Act, the Service is required to review the status of species and list those it believes qualify for listing. After the supplemental status review of the northern spotted owl, the Service concluded that the owl should be proposed for listing. No mathematical viability model influenced the Service during the status review, proposal development, or final decision process. The decision on the listing is based on the best available scientific and commercial data and is not determined or influenced by the court injunctions against timber sales. As mentioned, the Service has certain legal obligations under the Act and to fulfill those obligations is not an abuse of the Act. Further, the Service did not propose to list the owl to inhibit the timber industry but rather to provide for the conservation of a threatened species. Whether or not the owl is being used as a "political tool" to further the personal views of certain individuals has no bearing on the Service's decision on this listing proposal. When the Service receives a petition requesting that a species be listed, the information must be objectively evaluated on the basis of biology regardless of the petitioner's motivation for submitting the petition. Whether Congress would be amenable to a proposal to exempt the northern spotted owl from the protection provided by the Act is unknown.

Comment: In one commenter's view, listing would further diminish the rights of private landowners and restrict the use of private property without compensation when the prerequisites of the Act are not met. Another commenter stated it was appropriate to protect wildlife on State and Federal lands but questioned such protection on private lands. A commenter challenged the Service's jurisdiction over the spotted owl, stating that the Federal Constitution gives the Federal Government no power over any place

that it does not own. Another commenter stated that on private land in California, no suitable owl habitat could be harvested without an approved habitat conservation plan (HCP). Further, the commenter wrote that 1.5 to 2 years may be needed to obtain the permit based on the HCP and that during the interim, the California Department of Forestry would not approve any timber harvest plans. Simpson Timber Company stated that if the northern spotted owl is listed, it will be unable to experiment with new approaches to forest management to determine if suitable spotted owl habitat can be retained or created at the same time that harvesting occurs in managed forests. Further, Sierra Pacific stated that listing the owl will cause them to cancel assessments of the impacts of harvesting operations on nesting pairs because a HCP must be in place prior to any such work to ensure that these activities do not result in violating Section 9 of the Act by "taking" a listed species.

Service response: Under Section 9 of the Act the prohibition against "take" of listed species is not based on land ownership. Under Section 10(a) of the Act, a private landowner may develop a conservation plan and apply for a Section 10(a) permit to allow take of a listed species that is incidental during the course of otherwise lawful activities. Such a permit constitutes an exception to the prohibition against taking. Details of the procedures involved in applying for a Section 10(a) permit may be found in 50 CFR 17.32(b). In California, resource agencies and the private sector have established a Habitat Conservation Plan Committee to cooperatively develop a conservation plan for the northern spotted owl. This plan may provide the basis for an incidental take permit under Section 10(a) of the Act. One subcommittee is responsible for preparing draft interim guidelines to clarify situations where logging may occur while the plan is under preparation. These guidelines will be submitted to the California State Board of Forestry, who could accept them and issue emergency regulations implementing the guidelines as early as July 1990. This being the case, the Service does not concur with the commenter's view that all logging in suitable owl habitat on private land in California will cease until a HCP is approved. The Service does not view the listing as a taking of private property without compensation.

Both Sierra Pacific and Simpson have been conducting research on the northern spotted owl on their properties in northern California. Permits for scientific research involving listed species are available for qualified applicants (See 50 CFR 17.32 and Section 10(a)(1)(A) of the Act).

Comment: If the owl is listed, one commenter was concerned that its company's efforts of adaptive management would be constrained by protracted litigation. Sierra Pacific Industries commented that a positive listing decision would cause them to terminate all research on the owl (e.g., fledgling success, etc.), and channel those resources into simply canvassing its extensive ownership for owls. According to another commenter, the Service is required to conduct a takings implications assessment under Executive Order 12630 prior to making a major decision that may involve a taking of private land. In the commenter's opinion, although the Department of the Interior has issued a categorical exemption for certain listing decisions under the Endangered Species Act, the spotted owl proposal does not fall within the exclusion because the involved private land owners have not consented to the proposed listing.

Service response: The Service will prepare a takings implications assessment under Executive Order 12630.

Comment: Another position was that the spotted owl should not be listed until there is a consensus reached by noted authorities from government, business, and the private sector.

Service response: Under the Act, the Service has the responsibility to review the status of species to determine if listing is warranted. While "noted authorities from government, business, and the private sector" may provide information and data through the public comment period during the petition and proposal phases of the process, the decision to list rests with the Service and must be based solely on biological factors.

Comment: Several respondents expressed the opinion that the Service should prove beyond a shadow of a doubt that the northern spotted owl qualifies for listing. Another stated that it was unclear what level of burden of proof was needed for the Service to list. According to another party, the individuals requesting listing, not the taxpayers, should provide the proof. Someone requested that the Service state what criteria were used to propose the owl as a threatened species.

Service response: The Act requires a listing determination to be made on the basis of the five biological factors set forth in Section 4(a)(1). In making the determination, the Service must conduct a status review and use the best scientific and commercial data available. A listing determination will be upheld by the courts unless it is arbitrary and capricious.

Comment: In one person's opinion, once the owl is listed there will be no further research to find solutions for a compromise to accommodate the owl and timber harvesting. Another stated that an unnecessary listing will never be corrected. Another said there should be a mechanism to delist if further research indicates it was listed in error or the need for threatened status no longer exists.

Service response: When a species is listed, the Service is required to prepare a recovery plan, which is intended to conserve the species so that it eventually will qualify for delisting. Research activities are frequently included as necessary tasks in recovery plans. Further, both the Forest Service and the Bureau of Land Management have ongoing research and inventory and/or survey programs for spotted owls, and these are anticipated to continue. The conservation plan developed by the Interagency Spotted Owl Scientific Committee recognizes the need to explore various silvicultural strategies to conserve the spotted owl and its habitat and yet allow for a certain degree of commercial timber harvesting. If a listed species is found to have been listed in error or if the species recovers so that it no longer requires the protection afforded by the Act, it can be delisted. The delisting process requires formal proposal for delisting in the **Federal Register**, soliciting of public comments, analysis of the comments and all available data, other formal notifications, and publication of a final decision.

Comment: Several respondents maintained that the decision to make the proposal final rests with 14 people (the 12 Service biologists on the Status Review Team, Regional Director, and Director).

Service response: A decision to list a species rests with the Secretary of the Interior who has delegated this responsibility to the Assistant Secretary for Fish and Wildlife and Parks. The Service established a listing review team for the northern spotted owl composed of Service scientists who reviewed pertinent data and made a recommendation to the Regional Director, who weighed this information, making a further recommendation to the Director and Assistant Secretary. The 12 Service biologists referred to in the

comment were involved in preparing the 1989 Status Review Supplement.

Comment: One person expressed the opinion that if the Forest Service has spent considerable money researching the northern spotted owl and concluded that listing is unnecessary, then the Service should abide by that recommendation. Another stated that the Forest Service, not the Fish and Wildlife Service, should handle the listing issue.

Service response: While the Service appreciates the efforts of the Forest Service to undertake research on the northern spotted owl, the Act charges the Secretary of the Interior with listing decisions. Decision-making authority within the Department has been delegated to the Assistant Secretary for Fish and Wildlife and Parks, with the Fish and Wildlife Service assuming the role of reviewing and evaluating scientific evidence. Responsibility for reviewing and assessing the available biological data on this proposal rests with the Fish and Wildlife Service and cannot be delegated to another agency.

Comment: One commenter suggested that listing of the northern spotted owl should be precluded because listings of other species are of greater priority.

Service response: Although the Act provides for a petition finding of "warranted but precluded" by work on higher priority species, such a provision does not apply once a species has been proposed for listing. After a proposal has been published, Section 4(b)(6)(A) of the Act permits the Service one year from the date the proposal appeared in the Federal Register to publish a final decision. This one year period may be extended for six months if the Secretary finds that there is substantial disagreement regarding the sufficiency or accuracy of the relevant available data.

Issue 5. Modify Listing Decision

Comment: Numerous commenters requested that the northern spotted owl be designated as an endangered, rather than a threatened, species throughout its range. One commenter stated that endangered status is appropriate because the species already has declined to a few thousand individuals and has specialized habitat needs. Others asked that the owl be listed as endangered in portions of its range (e.g., Coast Ranges, Olympic Peninsula) and as threatened elsewhere. Several others requested that the northern spotted owl be upgraded to endangered if Section 318 of the 1990 House Interior Appropriations Bill (P.L. 101–121), passes (note: Section 318 did pass). Another commenter stated that the Service proposed threatened status rather than endangered because critical habitat is not presently determinable.

Service response: When a species is proposed for threatened status, the final decision can be either to list or not list as threatened within all or a portion of its range. The Service cannot generally make a final determination that is more restrictive than the original proposal. If the Service concludes that a proposal for threatened status is in error and that endangered status would more accurately reflect the status of the species, the Service may re-propose the species as endangered. Section 318 is applicable only through fiscal year 1990 (ending September 30, 1990). It is the Service's belief that passage of this amendment is not justification to propose the northern spotted owl as endangered. To list the northern spotted owl as endangered would require that the Service publish a new proposal. Whether or not critical habitat is being proposed has no bearing on whether a species is proposed for endangered versus threatened status.

Comment: One commenter stated that the proposal was in error because the available data do not demonstrate a "gradual, range-wide decline in the species," but rather a rapid decline throughout the entire range. Further, it noted that the red-cockaded woodpecker (*Picoides borealis*) and the northern spotted owl, while having different life histories, are similar in a number of respects. For example, red-cockaded woodpeckers require large stands of mature coniferous forest for nesting and foraging and the loss of old growth is the most serious threat to their long-term viability. The population of red-cockaded woodpeckers exceeds 3,000 breeding pairs and it is listed as endangered. According to this comment, the northern spotted owl likewise should be classified as an endangered species.

Service response: The Service does not agree that the owl would properly be listed as endangered. Endangered status is warranted in situations where the species is in immediate danger of extinction throughout all or a significant portion of its range. As stated in the proposal and restated in this document at the end of the "Summary of Factors Affecting the Species" section, the Service recognizes that the situation with regard to the owl is most severe in certain portions of the range. However, it is the Service's conclusion that when the status of the entire subspecies is analyzed rangewide, the likelihood of extinction of the subpopulations of owls in these areas is not so immediate as to justify a classification of endangered at this time. This was also the rationale for not proposing endangered status even though the number of known breeding pairs of northern spotted owls is lower than that of some other listed species such as the endangered red-cockaded woodpecker.

Comment: The Service was requested to expand the listing to include the California spotted owl, while others asked that all three subspecies of spotted owl be listed in the final decision. Still others requested that the northern spotted owl not be listed in California even if the Service were to decide to proceed with listing the birds in Oregon and Washington. Someone else requested that the great horned owl be listed.

Service response: Only the northern spotted owl was the subject of the proposed rulemaking and only this subspecies can be considered in the final decision, thus the Service is precluded from expanding the final decision to include the other two subspecies. The Service has received a petition to list the Mexican spotted owl (*Strix occidentalis lucida*) and is now reviewing the status of that subspecies. After reviewing the entire status of the northern spotted owl, it is the Service's decision to promulgate a final decision that includes the entire range of this subspecies. Although there are portions of the range where the status of the northern spotted owl is more perilous than in others, the Service concludes that considered rangewide, threatened status is warranted. For the reasons presented under Factors A and D in the "Summary of Factors Affecting the Species" section, the Service concludes that habitat loss and adverse modification of spotted owl habitat on both Federal and private lands throughout the range is anticipated to continue into the foreseeable future and, if continued as currently planned, will adversely affect the long-term viability of the northern spotted owl. The great horned owl is not considered a candidate for listing by the Service.

Issue 6. Do Not Proceed or Delay the Decision Because More Information Is Needed

Comment: One commenter believed that the northern spotted owl already was listed, and said until more data are available the northern spotted owl should be taken off the Endangered Species List. Others maintained that because the data do not suggest that extinction is an imminent possibility, the owl should not be listed. According to a commenter, it is premature to designate acreage of prime timber growing lands

to be set aside because there is no conclusive proof that the owl needs this vast amount of old growth timber. Another commenter stated that no subspecies of spotted owl should be listed until more data are available on the use by owls of second growth.

Service response: The commenter was incorrect in that prior to today's decision the northern spotted owl was not listed under the Act. According to the Act, an endangered species is one that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)). A threatened species is any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). In its proposal, the Service stated that while it did not believe the evidence justified an immediate threat of extinction, the owl was likely to become endangered in the foreseeable future if suitable protective measures were not successfully undertaken. The proposal did not set aside any specific lands to conserve the owl. From the available data, the Service concludes that spotted owls do have large home ranges and are associated with old-growth timber or stands with old-growth characteristics (USDI 1989, 1990; Thomas *et al.* 1990). This decision only addresses the northern spotted owl, one of three subspecies of spotted owl. The Service believes that sufficient data on the northern spotted owl's use of younger growth are available to reach a decision on the proposal. The Service can postpone a decision on a proposed listing pursuant to Section 4(b)(6)(B)(i) of the Act, but only for six months and only after a finding that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the listing determination.

Comment: Another commenter stated that the Service had not done a comprehensive study to determine whether listing is warranted. A commenter stated that a 20–40 year study is needed on the northern spotted owl before it is listed because the proposal has too many assumptions and presumptions that are unsupported by facts.

Service response: The Service has conducted three status reviews for this taxon and believes the results, including the public comment input, are sufficient to reach a determination on listing the northern spotted owl. In the Service's view there is no justification for a 20–40 year study before a decision is made. If future research and management actions provide for conserving and recovering the spotted owl, it can be considered by the Service for delisting.

Comment: Many commenters requested that the Service take more time, collect more data, or wait and consider data being collected in the summer of 1989 and spring/summer 1990, especially in California, before reaching a decision. The Service received many requests to extend the public comment period, some asking for a 90-day to as much as a three-year extension. Another commenter opposed extending the comment period to December 20, 1989, because it may delay listing. The Service was requested by one commenter to delay the decision until the Meyer *et al*, report on the effects of forest fragmentation on owl habitat is available in the Fall of 1990. Other commenters asked for additional time beyond the last comment period which extended from March 28, 1990 to April 18, 1990.

Service response: The Service granted the request to extend the closing date of the initial public comment periods so that the results of research being conducted on the northern spotted owl during the summer of 1989 could be submitted to the Service. Neither the extension of the comment period to December 20, 1989, nor the reopening of the comment period from March 28–April 18, 1990, prevented the Service from making a timely final decision. In the Service's view, the available biological data are accurate and sufficient upon which to base a decision on this proposal. In the Service's opinion, no such scientific dispute exists. Hence, it is not appropriate to delay the decision to receive additional biological data or information.

Issue 7. Economic Considerations

Comment: Numerous people expressed economic concerns in their comments. Some maintained that a decision of this magnitude should consider the economic impact on the affected communities and individuals. Numerous commenters stated that old growth needs to be harvested to support jobs and the economy. Another commenter asked of what use is public input if economics cannot be considered? Several commenters stated that if the owl is listed, landowners would experience severe hardships. Another commenter said listing is a scam to drive the price of wood up. One commenter stated that bids for Bureau of Land Management and Forest Service timber have at least doubled and they could cut one-half as much and still generate the same amount of money for the counties and Federal treasury. According to another, the preservation of trees for tourism and recreation outweighs the economic value of cutting them.

Service response: Under Section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision states clearly the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions". H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, "economic considerations have no relevance to determinations regarding the status of species . . ." *Id.* at 20. Because the Service is specifically precluded from considering economic impacts in a final decision on a proposed listing, the Service cannot respond to comments concerning possible economic consequences of the listing.

Issue 8. Critical Habitat

Comment: One individual recommended that the Service should designate critical habitat for the northern spotted owl. Another commenter specifically requested that the entire known range of the northern spotted owl be determined to be critical habitat. Another commenter stated that according to Service regulations, the Service should have had a discussion of critical habitat at the time the owl was proposed for listing. Several commenters stated that without taking economic information into consideration, it is not possible to evaluate the economic impacts on surrounding communities of such a designation. The commenter indicated a desire to have a followup public hearing if critical habitat is proposed.

Service response: Under Section 4(a)(3)(A) of the Act, the Secretary must designate critical habitat to the maximum extent prudent and determinable at the time a species is determined to be endangered or threatened. In the proposed rule, the Service detailed its rationale for not proposing critical habitat concurrently with the proposal to list the owl. In the "Critical Habitat" section of this document, the Service states its rationale for not designating critical habitat for the northern spotted owl at this time. The Service concluded that designation of critical habitat is not presently determinable as defined under implementing regulations at 50 CFR 424.12(a)(2). When a finding is made that

critical habitat is not determinable at the time of listing, the regulations (50 CFR 424.17(b)(2)) provide that the designation of critical habitat be completed to the maximum extent prudent within two years from the date of publication of the proposed rule to list the species. Any proposal to designate critical habitat will be published in the Federal Register including maps and legal descriptions of all areas included in the proposal and solicitation of public comments, including oral testimony at one or more public hearings. The potential economic impacts of the critical habitat designation will be evaluated during preparation of the required economic analysis.

Comment: The Service was asked if it could define the difference between preferred and critical habitat and allow peer review by world scientists to be certain of methodology and results. One commenter requested that land within the Quinault Ranger District on the Olympic Peninsula not be designated as critical habitat. Another person said the Service should not list until the true critical habitat needs of the owl are known.

Service response: Critical habitat is a legal term defined in the Act (Section 3(5)(A)) as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species." Under Section 7 of the Act, Federal agencies must ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of an endangered or threatened species or destroy or adversely modify its critical habitat, if any has been designated.

Preferred habitat can have a variety of definitions. For example, it may be defined as the habitat in which an individual bird spends proportionately more of its time than predicted on the basis of availability of that habitat in its home range. In comparison critical habitat is an area demarcated by a legal boundary description that utilizes either permanent structural features such as roads, bridges, rivers, etc., or survey descriptions (township, range, section), etc. Hence, it is not uncommon for critical habitat to include within its boundaries some acreage that is not used by the species in question and may even contain, for example, substantial agricultural, urban, or commercial facilities, which could not be construed as preferred habitat. Should the Service decide to propose critical habitat for the northern spotted owl, public comments would be solicited as they were for the proposal to list. At that time anyone, including scientists, wishing to comment would be free to do so. Further, prior to any proposal for critical habitat, the Service would assess potential areas to be included. At that time a decision on including the Quinault Ranger District on the Olympic Peninsula would be made. As previously stated, the Service believes critical habitat for the northern spotted owl is presently not determinable. However, the Act provides for listing a species, under certain circumstances, without concurrently designating critical habitat.

Issue 9. Mitigation, Section 7 Procedures, Timber Sales

Comment: One commenter maintained that before the owl is listed the Service should notify involved parties of what mitigation will be required for specific projects not related to timber harvesting operations.

Service response: Pursuant to Section 7(a)(2) of the Act, Federal agencies are required to consult formally with the Service if they propose to authorize, fund, or carry out any activity that may affect a listed species. If the Service finds that the action is not likely to jeopardize the spotted owl, then project modifications may not be required by Section 7(a)(2). However, if it is determined that the action is likely to jeopardize the continued existence of the owl, then reasonable and prudent alternatives to the proposal should be considered. Such alternatives, which satisfy the requirements of Section 7(a)(2), may involve significant project modifications if they are economically and technologically feasible and can be implemented in a manner consistent with the intended purpose of the action and the scope of the Federal agency's legal authority and jurisdiction. Section 7 consultations are conducted only with Federal agencies and would involve not just proposed timber harvest on Federal land, but any other projects or activities that a Federal agency authorizes, funds, or carries out which may affect a listed species. Private landowners or other non-Federal entities may choose to prepare conservation plans under Section 10(a) of the Act. The Service will assess these plans during pre-application consultation to determine if the provisions of Section 10(a) have been met so that the Service can consider issuing a Section 10(a) incidental take permit. As part of a conservation plan, a permit applicant must specify, among other things, how the plan will be funded and implemented to minimize and mitigate, to the maximum extent practicable, the impacts of the incidental taking sought to be authorized. Regulations governing incidental take permits were published September 30, 1985, in the Federal Register (50 FR 39681 and are codified at 50 CFR 17.22(b)(1) for endangered species and 50 CFR 17.32(b)(1) for threatened species).

Comment: One commenter questioned how the spotted owl can be threatened if it is found in almost every timber sale and maintained that these sales were being closed down or taken off the market to protect owls within the sale boundary. Another commenter stated that if conferencing pursuant to Section 7 of the Act was taking place, why were timber sales being halted. Another stated he did not agree with the Forest Service testimony at the Redding public hearing to the effect that Section 7 conferencing in California was going well. Someone criticized the Service's Section 7 conferencing guidelines pertaining to the Olympic National Forest because, according to the commenter, the guidelines do not take into consideration that owls live in smaller, fragmented old-growth stands in that area.

Service response: As noted by the commenter, many timber sales on Federal land in the Pacific Northwest contain suitable owl habitat. The juxtaposition of owl habitat and proposed timber sales was one of the major reasons for proposing threatened status for the northern spotted owl. Logging has substantially reduced the quantity, availability, and distribution of spotted owl habitat. Informal conferencing reports have been completed for all timber sales in Oregon for all six spotted owl Bureau of Land Mangement districts in the state and for most of the timber sales for the Forest Service in northern California. The conferencing process addressed the overall impacts of the agencies' timber sale program and the specific impacts of individual sales. These reports recommend measures intended to minimize impacts to nesting, foraging, and dispersal habitat. The Service issued an informal conference report to the Forest Service for its timber sale program in fiscal years 1989 and 1990 for Oregon and Washington that addressed

the overall impacts of that program on spotted owls. Specific impacts of individual sales were not reviewed by the Service. In California, the Service conferred with the Forest Service on 165 timber projects and recommended no modification for 130, some modification for 24, reduction in volume for 9, and deferral on 2.

The Service's interim guidelines to assist in the review of timber sales do recognize that habitat within the Olympic Province is quite fragmented. In the Olympic Peninsula, the Section 7 review includes an evaluation of timber harvesting activities occurring within 2.5 miles of the activity center of a pair of owls, if data regarding use of the habitat by owls are available, otherwise impacts within 2.1 miles are assessed. Reviews are concentrated on timber harvesting activities located between 0.5 miles to 2.5 miles of a nest site or pair activity center unless more than 7,500 acres of suitable spotted owl habitat would remain after harvest.

Comment: Another commenter stated that logging should continue until something is worked out and the Forest Service and Bureau of Land Management should be allowed to do their jobs. According to one commenter, the Service should develop an interim program of owl management designed to allow the Forest Service to maintain its targeted levels of timber production until a final listing for the northern spotted owl is developed. Another commenter suggested that forest management plans be developed to manage the owl as well as the economic aspects of timber production.

Service response: Logging has not been discontinued as the result of the Section 7 conferencing process. Both the Forest Service and Bureau of Land Management are continuing to review and process timber sales. In a sense, the Section 7 conferencing provided an interim program for owl management in the face of timber harvest while the owl was a proposed species.

Issue 10. Adaptability of the Northern Spotted Owl

Comment: Many commenters maintained that spotted owls are adaptable and will relocate to other non-old-growth areas if the old growth they are inhabiting is harvested. Several commenters expressed the opinion that spotted owls can adapt to many environments and are found in residential areas, light industrial areas, new growth, oak timber, abandoned cars, mailboxes, and orchards. A commenter stated that when given the opportunity, northern spotted owls select barn lofts rather than old growth. Another individual stated that wildlife does much better and is more abundant in close proximity to human beings. Another commenter questioned protecting the spotted owl and maintained that it can survive in any habitat from barren desert, to wheat fields, to tropical rain forest. Someone stated that spotted owls also nest in holes in banks and hillsides. Another commenter wrote that the spotted owl is not native to Oregon and Washington which proves it is adaptable to change. Several noted that the oldest trees are only around 1,000 years old and wondered where the owls were when today's old growth was second growth.

Service response: There is no evidence available to prove that northern spotted owls are flexible in their habitat requirements, nor have they been verified to occur in residential areas, mailboxes, junk cars, barn lofts, etc. However, even if a northern spotted owl were to be documented nesting in one of the referenced locations, it would constitute an aberrant nesting situation and not the normal nest site selection. Further, no data were presented to substantiate the claim that wildlife does much better in close proximity to human beings. Although for a limited number of species, such as rats (*Rattus spp.*), *house mice* (*Mus musculus*), starlings (*Sturnus vulgaris*), and house sparrows (*Passer domesticus*), this may be true, there are no data to conclude that this is the case for the northern spotted owl. The distribution of the northern spotted owl does not include barren desert, wheat fields, tropical rain forests, etc. Nesting preferences of the owl are not known to include holes in banks and hillsides. Contrary to the commenter's statement, the northern spotted owl is native to Oregon and Washington. Historically, the landscape consisted of a mosaic of habitat types at any one time. Some areas contained old growth, while others were young, regenerating forest stands resulting from fires, windstorms, disease, etc. Hence, the northern spotted owl evolved in a habitat that consistently had a proportion of the landscape in old-growth forest. Moreover, historically the entire area was not comprised of even-aged forest stands as suggested by the commenter.

Issue 11. No New Data Were Presented, Initial Decision Was Correct, Need for Peer-Review

Comment: A commenter stated he believed the Service did a five-year survey and found that spotted owls were not threatened. What happened to this report?

Service response: The Service has not undertaken a five-year survey of the northern spotted owl. However, as noted in the Petition Process Background section, the Service completed its initial status review on December 17, 1987, and published its finding that the northern spotted owl did not warrant listing under Section 4(b)(3)(B)(i) at that time. In a subsequent legal challenge by the Sierra Club Legal Defense Fund, Inc., the court found that the Service's 1987 decision was arbitrary and capricious or contrary to law, and remanded the matter to the Service for further review.

Comment: Other commenters expressed the belief that the Service's 1987 decision that the listing of the northern spotted owl was not warranted was correct and that the Service had reversed the earlier decision only because of either pressure from the Court of other political pressure. Several commenters expressed the view that the proposal changed the Service's original position without using new data. One commenter reported that the U.S. District Court for the Western District of Washington found that the Service's original petition finding of not warranted was "arbitrary and capricious" and required an explanation between the known facts and the decision, but that the court did not mandate that the northern spotted owl be listed (*Northern Spotted Owl* v. *Hodel*, 716 F. Supp. 481 (W.D. Wash, 1988)). Several commenters stated that although the proposed rule claims that new information supports the conclusion to list, most of the data cited in the proposed rule were available prior to the original finding of not warranted. These commenters maintained that much of the "new" data consists of brief cumulative reports derived from old data on population trends and owl biology. The commenters further stated that about 67 percent of the studies evaluated by the Service (94 of 140 studies) predate the 1987 Status Review; roughly two-thirds of the information dated after December 1987 was oral communication and fails to meet the same standards of data quality. Several individuals said the proposal relies heavily on personal communications and unverified information rather than sound scientific studies. Others noted that many of the reports cited in the Status Review Supplement and proposal were unpublished and maintained, therefore, they had not been subjected to adequate peer-review. Someone requested that all research projects be peer-reviewed. Another commenter stated that the Status Review Supplement dismissed Barrowclough's (unpublished draft 1987) manuscript on

the taxonomic status of the spotted owl because it had not been peer-reviewed and published. The commenter maintained that this dismissal is inconsistent with the Review Team's reliance on other non-peer-reviewed documents in the Status Review Supplement to support listing.

Service response: The Service revised the earlier "not warranted" petition finding after reviewing additional information that became available subsequent to the 1987 petition decision. Of the 140 sources listed in the references section, 46 (about 33 percent) were dated 1988 or later. The commenter is correct in stating that the court did not direct the Service to alter its "not warranted" finding. However, after a review of all the best available data the Service did not adhere to its earlier decision. According to the listing regulations given in 50 CFR 424.13, "Data reviewed by the Secretary may include, but are not limited to scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts on the subject, and comments from interested parties." Cumulative reports dealing with data on population trends and owl biology were certainly of interest to the Service in its review because they represented confirming analyses of biological data pertaining to its status. The Service disagrees that "roughly two-thirds of the information dated after December 1987 was oral communication." Of the 46 references cited above, several were oral communications and several were letters. Personal communications can provide valuable data that may not have been published. As such the Service is obligated to consider this information and sees no rationale to diminish the input from such data sources. Nor does the Service agree that it relied heavily on personal communications or unverified information rather than sound scientific studies. The commenter presented no additional data to indicate that the information obtained from personal communications was incorrect and no examples were presented to support the contention that the Service used data from studies that were not scientifically sound. A number of the reports the Service examined were drafts or had been submitted to scientific journals for consideration of publication. Other agency reports update or summarize results of research studies. Agencies generally have an in-house review process whereby scientists critique each other's study proposals and work prior to initiation of projects and preparation of final reports. Although these reports may not have been peer-reviewed at a level required by a scientific journal, authors routinely obtain input from other researchers prior to submitting their reports. Some of these reports present interim data associated with a long-term research effort whose results would normally not be expected to be submitted to a scientific journal until the entire project was completed. The Service does not believe that these reports should be dismissed because they were not peer-reviewed or published. In addition, the scientific community has neither criticized nor objected to the reports or the information they contain.

When considering taxonomic questions, the Service generally accepts the latest published work on the taxon. However, the Service is under no obligation to do so and may conduct its own evaluation to clarify taxonomic status if necessary. In this case the Service accepted the nomenclature as provided by the "American Ornithologists' Union Check-list of North American Birds" and restated in a letter to the Service from the AOU (Dr. Ned Johnson, letter dated December 12, 1989) rather than Barrowclough's unpublished report. The 1957 edition of the AOU Check-list includes subspecies and recognizes the northern spotted owl. Additional information on the taxonomic questions regarding the owl is given in a later issue entitled, "Taxonomy."

Comment: One commenter asked why the Service did not assume the responsibility to fully analyze and interpret the considerable amount of data that is available on the northern spotted owl prior to formally proposing it for threatened status (ref: Status Review of 1989, p. 7.5. "In addition, except for the various attempts at viability analyses, little effort has been made by any involved parties to fully analyze or interpret the considerable amount of data that is available on this species.") Another commenter wondered what the value of public comments was if the Service knows of data from researchers such as Dr. Larry Irwin (NCASI) refuting the proposal and knows that the population viability model of Dr. Russell Lande "has been discredited." Some data relating to radio-telemetry studies on the owl (Washington Department of Wildlife) are not available to the public and have not been peer-reviewed according to another commenter.

Service response: The Service believes that the individual who asked why the Service did not analyze the available data, misunderstood the sentence that was quoted from page 7.5 of the Status Review Supplement. In fact the Service did analyze the available data to prepare the 1989 Status Review Supplement and to formulate the final decision on this proposal. All biological information provided to the Service, including the information submitted during the public comment period, has been reviewed and considered in this decision. This includes the reports and data from Dr. Irwin. As mentioned previously, the Service did not rely on any population viability model to reach its decision on the proposal.

Issue 12. Data Needs, Gaps, Best Available Data, and Bias

Comment: Several commenters maintained that the information gaps identified in the original finding are not filled by the new information: for example, no new information was forthcoming on habitat needs, how many acres of suitable habitat exist, biological requirements, or population declines of the owl. A number of commenters stated that other information regarding such issues as lack of knowledge on forest characteristics utilized as habitat; whether the northern spotted owl, California spotted owl, and Mexican spotted owl are the same subspecies; the extent of juvenile mortality; current number and location of spotted owls; and whether spotted owl populations are declining. A commenter maintained that the Service's decision must be based on the same information used to justify not listing and is therefore, arbitrary and capricious under the Administrative Procedure Act (5 U.S.C. 701). The commenter further stated that without this information, spotted owl habitat cannot be defined and it cannot be concluded that habitat is being lost.

Service response: USDI (1990) presented new information on habitat needs, acres of suitable habitat, biological requirements of owls and estimates of the rate of population decline. Owl use in various stand classifications was provided in USDI (1990) and the subspecies classification by the American Ornithologists' Union was reviewed and documented. In addition, estimates of juvenile mortality, number and location (e.g., by State) of owls, and the rate of population decline were provided. The Service's decision was based on the best and most current information available. The Service believes that there is more than sufficient information available on the northern spotted owl to warrant making a determination on its status. These additional data became available during

development of the Service's 1989 Status Review Supplement (USDI 1989) and 1990 Status Review (USDI 1990) which included a review of the information submitted during the public comment periods. The Service concluded that substantial amounts of habitat have been and will continue to be lost or modified due to timber harvest.

Comment: According to one commenter, the Service must do independent research to fill any significant information gaps. As stated by the commenter, at a minimum, the Service must resolve the gaps in its logic before proceeding with listing and should at least have the benefit of the data the private industry groups and others will produce in 1990. Several commenters stated that poor or incomplete data, even if it is the best available, will not support a listing, and that gaps in the information require the Service to withdraw the proposal and conduct additional research.

Service response: The Service has completed independent research, and the results were presented in USDI (1990). The Endangered Species Act sets certain deadlines in the Listing process. Under the Act, a final decision on a listing proposal must be made within 12 months after publication of the proposed rule, unless the Secretary finds that there is substantial disagreement regarding the sufficiency or accuracy of available relevant data.

The Service is not required to conduct independent research to fill data gaps pertaining to the status of a species under consideration for listing. However, the Service has conducted and completed independent research on the northern spotted owl and the results were presented in the 1990 Status Review (USDI 1990) as well as being summarized in this Federal Register document. The Service's analysis included reviewing recent research findings provided by the timber industry for private forest lands. From March 29 to April 11, and from April 12 to 18, 1990, the public comment period on this proposal was reopened to accommodate anyone wishing to submit biological information obtained prior to that time but subsequent to the close of the previous comment period (December 20, 1989). Although the Service acknowledges that ongoing and future research efforts are likely to provide additional insight into the biology of spotted owl, it is the Service's conclusion that the information currently available is more than sufficient to reach a determination on the proposed listing. To withdraw the proposal and conduct additional research would not improve the status of the owl and would not be in keeping with the mandates of the Endangered Species Act.

Comment: Numerous individuals stated that surveys are needed in wilderness, parks, set-asides, and other areas where harvesting presumably will never occur. One party questioned whether with 4.2 million acres of unsurveyed wilderness, the Service can say the owl is threatened. A commenter stated that the Service should analyze the 300 California state parks and recreation areas, comprising 1.1 million acres, because many are in timber regions and will provide permanent old growth. According to one commenter, many other acres are protected by conservancy easements instituted by private, non-profit organizations and these should be evaluated to determine if habitat diversity is adequate for the owl. Numerous commenters suggested that all second growth less than 100 years old should be surveyed.

Service response: Results of surveys in wilderness, parks and other areas have been summarized in Thomas *et al.* (1990) and USDI (1990). Although not all wilderness and other set-aside areas have been surveyed, estimates have been made of the number of owls that may occur in some of these areas based upon an assessment of the amount of suitable habitat (Thomas *et al.* 1990). Indications are that for the most part reserved areas do not represent optimal habitat conditions for the owl. Data for owls suggest that the density of reproductive pairs and their reproductive success is significantly less in reserved areas than non-reserved. An accurate count of the number of remaining individuals is not required in order to make a determination regarding the species' status, nor is it necessary to have complete population surveys throughout the entire range to reach that determination. The Service considers convincing evidence that suitable habitat is being lost at a substantial rate, that the habitat is highly fragmented, and that the population of owls is declining, to provide an adequate basis for reaching a conclusion on the owl's status. Estimates of habitat quantity and owl numbers in state parks and other such areas are presented in Thomas *et al.* (1990). New data now exists for stands less than 100 years old, especially in northern California and these results are summarized in Thomas *et al.* (1990).

Comment: According to several commenters, the proposal is vague and replete with assumptions. Several commenters maintain that because the Forest Service was only interested in surveying areas scheduled for timber harvesting, no inventories have been done in wilderness or other set-aside areas. Another commenter stated that to be scientifically valid, studies must include a random sample of all areas, not just old growth that is planned to be logged.

Service response: Considerable new data exist on owl numbers in wilderness and other set-aside areas and these are summarized in Thomas *et al.* (1990). Results of surveys employing a random sample of habitats (Random Sample Areas, RSAs) have been summarized and analyzed in the ISC report. These data have been reviewed by the Service and incorporated into the Summary of Factors Affecting the Species. USDI (1990) provides an analysis of the quality of protected lands, avoids using terms employed in the proposal that could be considered vague, and clearly identifies the assumptions used. The Forest Service had to concentrate owl surveys on areas that were being considered for sales to assess the potential impacts of such sales on the owl. Thus, the survey information in reserved areas was not as complete as that in areas planned for logging. However, the Service considered and reviewed all information available on the distribution and numbers of owls in preparing its proposal.

The proposal contained assumptions, but they were clearly stated as such and not represented as established facts. Many surveys have now been conducted in all types of forest habitat, not just those that were considered for logging. The Service considered all the results of these surveys.

Comment: Several commenters believed there is a need to determine what kinds of silvicultural techniques and harvesting methods can be used to manage for high quality timber and still assure long-term viability of the northern spotted owl.

Service response: The Service agrees that information is needed on silvicultural methods to manage for high quality timber harvest and still assure long-term viability of the owl. Selective cutting may provide a partial solution; however, clearcutting is the method being used on almost all public (>95 percent) and on many private lands.

Comment: According to one commenter, the data on the northern spotted owl are not the best available. Several statements referenced comments that Service biologists made on draft versions of the Status Review Supplement while it was under internal review. For example, one commenter

said that several Service biologists strongly criticized the following statement in the Status Review Supplement. "In our opinion, although there is always a need for more information, more is known about the northern spotted owl than many other wildlife species, and certainly more than for most species considered for listing under the Endangered Species Act." The commenter also wrote that a Service biologist noted in the margin of the February 1989 draft of the Status Review Supplement that he did not agree that sufficient data existed to do a good assessment of the northern spotted owl's status, and stated the Service could not "predict extinction probability for any time frame * * * with any confidence at all". The commenter wrote that the revised finding ignores these and other significant data gaps noted by Service reviewers (who also were members of the Status Review Team). Hence, the commenter maintained that the Service failed to meet its obligation to rely solely on the best available data.

Service response: The Service used the best data available to prepare the proposed rule. A tremendous amount of data have been collected recently by government agencies, private timber groups, and environmental organizations. New demographic data are available since April 1989 on large study areas in northwest California and southwest Oregon. Large scale monitoring data collected by the Bureau of Land Management and U.S. Forest Service during the summer of 1989 are also now available. The Timber Association of California provided extensive survey data on private timber lands for 1989. The current situation is updated and summarized in both Thomas *et al.* (1990) and USDI (1990). Moreover, the Service is not obligated to have data on all aspects of a species' biology prior to reaching a determination on listing. Comments on the draft of the Status Review Supplement by members of the 1989 status review team were considered in preparing the Status Review Supplement, even if all comments were not accepted or incorporated. The Service has reviewed and assessed the new available data pertaining to the status of the owl and incorporated this information into the final decision on the proposal.

Comment: Several commenters were concerned that data furnished from logging interests on owl usage of second growth forest may not be accurate and suggested that such data should be examined carefully as industry may be tempted to falsify or misinterpret data to its advantage. Other persons said studies done under the auspices of the timber industry are biased and that data have been falsified. According to other commenters, data presented by the Wilderness Society on spotted owl habitat distribution and trends are biased and should not be relied on to provide viable scientific input. Another commenter said the Service data are false and demanded the resignation of all those involved in developing the proposal because the proposal was synonymous with the long-term goals of certain environmental groups.

Service response: The Service studied industry data, techniques, and results with industry biologists to understand and assess the data that were collected. In like manner, Service biologists also coordinated with environmental groups to understand and review the data and other information that these groups submitted. The Service found no evidence to support the claim of falsification or misinterpretation of data by any of these parties. The Service's biologists responsible for preparing the proposal followed standard Service guidelines and procedures and, in the Service's opinion, did nothing improper.

Comment: One individual said studies on the spotted owl are inaccurate because owls are only counted at night and not all of them can be seen. Numerous persons stated that owl survey data are biased because surveys were concentrated along roads. Also, according to a commenter, radio tracking near clearcuts was excluded from research findings, thus biasing the results against use by owls of clearcuts. Someone expressed the opinion that research supported by the Timber Association of California is deficient and does not meet the requirements of Forest Service standard scientific protocols.

Service response: The Service agrees that nighttime surveys do not count all owls present. In addition, some bias may occur because many owl surveys are conducted along roads. However, night surveys provide only an index to abundance, thus the bias is not thought to be a major limitation in the use of these data. Radio tracking data collected near clearcuts were not excluded from research findings; rather, research tends to indicate that owls generally avoid clearcut areas. Surveys conducted by the Timber Association of California were an excellent attempt to further understand the situation in California. The first year of its surveys (1989) started late in the season and other "startup" problems were encountered. The Association made every effort to conduct its surveys according to the U.S. Forest Service protocol and the Service considered its findings in the 1990 Status Review (USDI 1990).

Comment: An individual said that he had heard that Bureau of Land Management biologists felt they were finding too many owls and, hence, stopped reporting them. Another person said a Forest Service biologists falsified owl record data to get a particular drainage taken out of a timber sale.

Service response: The Service found no evidence to support the contention that Bureau of Land Management or Forest Service biologists falsified data or failed to report owl locations. The commenter failed to provide any specific evidence that the Service could use to inquire further into these claims.

Comment: One commenter wrote that there was a conflict among the data regarding the survey results on Simpson Timber Company lands in northern California and the Status Review Supplement. Further, the commenter stated that the Service must await completion of or institute comprehensive studies of the entire range in order to explain the direct contradiction between the Service's data and industry's findings and that listing should be deferred until the 1990 studies are completed.

Service response: The Service did not find a substantial "conflict" between the Status Review Supplement and the data collected on Simpson Timber Company lands. Previous to the owl survey work initiated by industry groups, including Simpson Timber Company, little data were available on private industry lands in northern California. These new data and the current situation are summarized in the 1990 Status Review (USDI 1990) and in this document. Unless there is a finding of substantial disagreement regarding the sufficiency or accuracy of available data, the Service is required under Section 4(b)(6) of the Act to reach a decision on a proposal within one year of publication of the proposed rule. Hence, the Service cannot postpone the decision solely to await the results from the 1990 field season. Whereas the proposal suggested that spotted owls may have been eliminated from private commercial forest lands because of lumbering activities, these recent studies document the occurrence of owls on some private land that had been harvested in the early 1990s and on lands that had several entries for selective cut. Lands in the redwood zone represent a small portion (probably less than 7 percent,

Thomas *et al.* 1990) of the overall range of the owl.

Issue 13. Taxonomy

Comment: Several commenters are of the opinion that Oberholser (1915) should be considered the most recently published, peer-reviewed analysis dealing with the taxonomic status of the spotted owl and conclude that the northern and California spotted owls are a single subspecies. One commenter wrote that the northern spotted owl differed from the California spotted owl in means of size and color, but not enough to be distinguishable by a 95 percent rule, and that they barely make a 75 percent rule. This commenter also said that the two subspecies had highly significant differences in plumage pattern, size (several body measurements such as culmen, gonys, tail, middle claw), and color. One commenter stated that Barrowclough (unpublished 1987) concluded that the northern and California spotted owls cannot be distinguished by generally accepted taxonomic standards and that the taxonomic variation is clinal in nature between the birds in British Columbia and those in southern California. The commenter further stated that recent electrophoretic data show that the California and northern spotted owls are not different. According to one commenter, to arbitrarily delineate a geographic boundary among subspecies is improper; hence, the best available data should incorporate the data available for the California spotted owl. Because the Status Review Supplement does not include the California spotted owl, a commenter maintained that it is incomplete and must be reversed to meet the criteria under the Act. Several commenters suggested that the presence of a serious scientific dispute exists regarding the taxonomic validity of the northern spotted owl and that it requires that the Service withdraw the proposal until the dispute is resolved.

Service response: The taxonomic status of birds in North America is under the purview of the American Ornithologists' Union (AOU). The present classification follows the 1957 AOU check-list and formally recognizes the northern spotted owl (*Strix occidentalis caurina*). The taxonomic status of this species was reviewed by the AOU Committee on Classification and Nomenclature in August 1989. The Committee concluded a recent report by Barrowclough and Gutierrez (1989) provided insufficient grounds for a taxonomic merger of the populations because present techniques for exposing genetic variation examine only a tiny fraction of the genome. The formal decision by AOU was to retain the northern spotted owl as a distinct subspecies (Dr. Ned Johnson, AOU, letter dated December 12, 1989). The Service accepts this taxonomic disposition. The report by Oberholser (1915) was not peer-reviewed. The Service does not accept the opinion that Oberholser provides the most recent paper on this issue. The Service has not proposed the California spotted owl for listing, thus information on this subspecies was not incorporated. It is the Service's opinion that there is no dispute regarding the taxonomic status of the northern spotted owl and the suggestion to withdraw the proposal or delay the decision has been considered and rejected.

Comment: One person stated that the Service should define the status of the different subspecies of "northern spotted owls" and the owl habitat area types (area and quality) necessary for each subspecies.

Service response: The American Ornithologists' Union (AOU) gives the range of the three subspecies. Only the northern spotted owl was the subject of the proposal and this final rule. Hence, habitat characteristics of the other two subspecies of spotted owls will not be addressed.

Issue 14. Population Trends and Size

New Information

New information on aspects of the biology of northern spotted owls was provided during the extended comment period and has been incorporated into the Status Review (USDI 1990). Additional information on owl distribution and numbers was provided through research funded by Federal and State agencies, the Timber Association of California (an umbrella organization for industry groups in California), other private companies, and various interested parties. The recent survey work in northern California documented numerous northern spotted owls on private lands; however, surveys of private lands in Oregon and Washington and public lands in California have noted low numbers of northern spotted owls. The significance of northern spotted owls on private lands in California is addressed in greater detail later in this section and also under Factor A in the Summary of Factors Affecting the Species section. Several reports on the California spotted owl were submitted; these are not summarized below because they did not deal with the subspecies that was the subject of the proposed rulemaking.

Comment: One commenter maintained that the Status Review Supplement fails to note that there was no survey work on private lands except Kerns (1988) to support its conclusion of extirpation of spotted owls. The Timber Association of California, however, detected approximately 284 spotted owls including 63 pairs on private forested lands in northern California. However, another commenter stated that according to all available data, spotted owl habitat no longer exists on private forest lands and is rapidly being depleted on public lands. The commenter indicated that Forest Service figures show only 48,000 acres of old growth out of a total of 6.9 million acres on private forest lands in Oregon.

Service response: The Status Review Supplement, in reaching its conclusion that the listing proposal was warranted, stated that the northern spotted owl "* * * may have been nearly extirpated on private land * * * due to the reduction of old-growth habitat." (USDI 1989). The Status Review Supplement incorporated all available information at that time, including data from public and private lands (e.g., Postovit 1977, Irwin *et al.* 1988, 1989b). The present document reflects recent data on the distribution and numbers of northern spotted owls on private lands estimated from studies conducted by the Timber Association of California (1989b) and other private groups (e.g., Kerns 1989a,b; Pious 1989). A total of 332 responses, defined as 1 auditory or visual location of at least 1 northern spotted owl during the period 31 May 1989 to 31 August 1989, was recorded. One hundred eighty-two of these 332 vocal responses were determined to represent sites occupied by at least one northern spotted owl. The number of adult owls was estimated at 247. Sixty-three of 83 sites sampled to determine pair status contained pairs (76 percent). Reproductive success was assessed at 55 of the sites and 28 (51 percent) were recorded as having been successful.

The Service acknowledges that the amount of old growth remaining on private forest land in Oregon is quite small, but does not know the exact amount.

Comment: One commenter cited his research on spotted owls to indicate that night-based estimates during the first year of a study over-estimated the population size by 72 percent, when using a direct count which he believes is within 90 percent of the true estimate based on the amount of habitat present and considering the intensity of conducted searches (Ward *et al.*, 1989).

He urged caution in reviewing data based on night surveys alone.

Service response: The Service accepts the comment.

Comment: In 1989, inventory and monitoring by the Bureau of Land Management indicated the presence of 946 spotted owls (801 adults, 145 young) on Bureau of Land Management land in Oregon. Seventy percent of the sites (461 of 661) visited were occupied and of these, 74 percent (340 of 461 occupied sites) contained pairs. Of the 293 pairs checked for reproduction, 128 displayed evidence of nesting. Of the 128 pairs studied, 100 produced offspring (78 percent reproductive success rate) and fledged 145 young (1.45 young/successful nest).

Service response: The Service accepts the comment provided by the Bureau of Land Management.

Comment: The Bureau of Land Management commented that the increasing numbers of occupied sites reported during the last five years does not imply an increase in population trend, but rather represents expanded surveys on all Bureau of Land Management districts and active banding program. The Bureau of Land Management reported that the level of spotted owl habitat surveys of its lands varies by district office and between resource areas ranging from 50–90 percent. In the past, the Bureau of Land Management had said that 80–90 percent of its habitat had been examined; however, some of these earlier surveys did not use standardized survey protocol and often made only one visit.

Service response: The Service agrees that increases in numbers of northern spotted owls may be a consequence of increased sampling effort rather than increased population numbers.

Comment: During 1989, the Forest Service inventory, monitoring, and survey program in Regions 5 and 6 detected 771 pairs, of which 314 were known to be reproductive. The total number of adults and subadults on Forest Service land in California, Oregon, and Washington was estimated at 2,400 birds. The Forest Service commented that different personnel participated in the inventory, monitoring, and survey efforts, so detection of a single owl in the inventory and monitoring segments also could have been made during a survey. Although every attempt was made to determine if birds had been double-counted, the true overlap is unknown and there is the potential for significant overlap for single birds. The Forest Service stated the numbers for single birds probably are high but has confidence in the estimate for the number of pairs.

Service response: The Service considered the comments provided by the U.S. Forest Service and Thomas *et al.* (1990).

Comment: The Washington Department of Wildlife (WDW) updated the number of owls in Washington with a cumulative total of 326 pairs (144 reproductive) and an additional 173 singles for a total of 825 birds (the data for the Cascade Range for 1989 were not updated). Nineteen new sites, primarily in previously unsurveyed areas, were found on the Olympic Peninsula. This value includes 65 pairs on the Olympic National Forest and 22 pairs on the Olympic National Park.

Service response: The Service accepts the comment provided by the Washington Department of Wildlife but notes that the number of pairs in Olympic National Park has been estimated at 14–20 (Thomas *et al.* 1990).

Comment: WDW divided the State into cells and surveyed a random sample of these cells for spotted owls. The survey included 47 transects, with nine on the Olympic Peninsula, six in southwestern Washington, 18 in the western Cascades, and 14 in the eastern Cascades. The results indicated that the two regions with the highest percent of old growth (Olympic Peninsula and western Cascades) had the highest response rate (0.05 response/mile), 10 times as great as southwestern Washington (0.005 response/mile), where there was no old growth along surveyed transects. Although the results indicate spotted owls may inhabit younger forest, they were found at much lower densities there than in older forests. According to the WDW, the vegetation analyses obtained from data collected within the one-quarter-mile radius circles surrounding the calling stations may have underestimated the percent composition of older forests and overestimated the percentage composition of younger growth. Therefore, it was possible to underestimate the amount of old growth within an area in which spotted owls could be heard.

Service response: The Service accepts the comment.

Comment: The Washington Department of Natural Resources (WDNR) manages 180,000 acres of the Hoh-Clearwater block of state trust lands on the western Olympic Peninsula. Roughly 70 percent of this area has been logged within the last 30 years. About 53,000 acres of mature/old growth forest remains. During a survey of the area in 1988–89 by WDNR, owls were detected at 18 sites (11 pairs, 7 singles). Three of these pairs produced five young. All owl sites were in mature forest, which while not equivalent to classical old growth, is very old (>1000 years of age in some instances) and has never been harvested. Although mature forest in this area looks different (i.e., shorter in height than classical old forest), it is the functional equivalent (Eric Cummins, Washington Department of Wildlife, pers. comm., 1990).

Service response: The Service accepts the comment.

Comment: There were three main studies conducted by the timber industry in northern California pertaining to the status of the spotted owl. The Timber Association of California reported on a survey of spotted owls that it oversaw encompassing nine ownerships in northern California during the summer of 1989 (see Irwin *et al.* 1989b). A number of individual companies that participated in the Timber Association of California survey also submitted separate comments; these will not be reported on in detail here as their findings are incorporated within the Timber Association of California submittal. In the second investigation, the Pacific Lumber Company funded a study (see Kerns 1989 a, b) of its property. In the third study, timberland owned by Louisiana Pacific and Georgia Pacific were inventoried in a joint survey (see Pious 1989). In all, more than 360,000 ha (912,000 acres) of managed young growth forests (30–80 years old) were examined in northern California. During the course of the three studies, a combined total of 284 spotted owl sites were located. Of 136 sites that were checked, 100 were found to be occupied by pairs (74 percent occupancy rate). These industry studies estimated that 458 owls were detected, including fledglings (Timber Association of California 284 owls, Pacific Lumber Company 36, Louisiana Pacific/Georgia Pacific 138).

Service response: The Service accepts, with the minor exception noted, the comments provided by the Timber Association of California. A total of 136 (totals from the Timber Association of California 1989b), not 138, sites were checked by the Timber Association of California, Pacific Lumber Company and Louisiana Pacific/Georgia Pacific. The Service considers the difference in reporting values minor since they represent a <2 percent error.

Comment: Timber Association of California efforts surveyed 40 tracts in coastal and interior northern California covering approximately 182,000 ha (456,000 acres). The Timber Association

of California did not include old growth tracts in its survey. According to the Timber Association of California most of the tracts do not qualify as mature stands under the Status Review Supplement definition because they are less than 100 years old. During the surveys, 332 vocal responses were heard at 182 sites on 36 of the 40 tracts and estimated to represent 247 adults and 37 fledglings (a site is defined as an area occupied by at least one owl). Of these 182 sites, 83 were checked during the daytime and determined to contain 63 pairs (76 percent occupancy rate). Rate of response/km was calculated as 0.20 response/km of transect (0.32/mile). A crude density estimate of adults and subadults was 0.14 owl/sq km (0.35 owl/sq mi). Of 55 pairs that were sampled in more detail, 28 produced 37 fledglings in 1989 (0.67 fledgling/pair; 1.32 fledglings/successful pair).

Service response: The Service accepts the comments provided by the Timber Association of California with one exception. The Service contends that definitions of forest type based strictly on age are inappropriate across broad geographical ranges. For example, redwood forest 60 years of age has many of the characteristics of older forests, including standing snags, dead and down material and a multilayered canopy. Kerns (1988) reported that 78 percent of the redwood vegetative complexes containing owls had characteristics similar to old growth, but none could be considered "old growth" based strictly on age. Application of an age definition based on coniferous forest to redwood forest is incorrect. The Service contends that structure rather than age is more important in defining habitat characteristics that are important to owls.

Comment: Simpson Timber Company owns about 100,000 acres of timberlands that were included in the Timber Association of California study. The company wrote that its property in northwestern California consists of some fragmented old growth, redwood, and Douglas-fir forests and that the timber stands are primarily recently cut to 80-year-old-second-growth. These lands are managed under a 60-year rotation. In the Simpson Timber Company funded study, Diller (1989) located 124 owls of which 29 were believed to be pairs that produced 29 fledglings. Further, he calculated a tentative density estimate of 1 pair/950–1300 acres and stated that these densities are more closely aligned with those reported for old growth than for second growth. Diller (1989) calculated a fledgling success rate of approximately 1.2 owlets/pair in comparison to a crude estimate of all reported studies of about 0.5 owlet/pair (including non-reproductive pairs) (USDA (1988)). He concluded that spotted owls can nest successfully in young growth. Of the nest sites he located; one was found in a residual older redwood, whereas only 6 of the 14 others had older residual trees in the area. Simpson Timber Company submitted initial findings for the beginning of the 1990 field season. During April 1–16, 1990, they rechecked 60 sites that were occupied last year by owls and found that 53 sites were occupied (41 pairs, 19 nests). The company stated that owl densities in coastal redwood sites appear comparable to more xeric inland conditions dominated by Douglas-fir. The age of the 19 nest trees varied from 30 to 150 years. Nest trees generally were relatively large in relation to the average tree in the stand; however, in two instances they were smaller.

Service response: Comparisons of the acreage per pair on land owned by Simpson Timber Company are tentative because in at least one area (Mad River tract) Forest Service protocols were not followed (Diller 1989:4). Thus, the lower limit of the range, 1 pair per 950 acres, may not be a correct estimate. While the Service does not dispute findings of successful reproduction in younger-aged forests, it is important to note that redwood stands exhibit many of the structural characteristics of old-growth forest at younger ages (Kerns 1988). In addition, comparisons of different tree types in markedly different ecosystems (e.g., Douglas-fir in the Cascades versus redwoods in coastal California) may not be valid. The Service accepts the data from the studies, with the one exception noted, but cautions that estimates from coastal redwoods cannot be strictly compared against estimates from Douglas-fir forests. Also, only about 7 percent of the northern spotted owl's range is within the coastal redwood forest (USDI 1990).

The Service accepts the comments provided by the Simpson Timber Company for the beginning of the 1990 field season.

Comment: A consultant for Sierra Pacific Industries stated that four tracts in coastal California were surveyed with a general mosaic of second-growth Douglas-fir or redwood forest with hardwood vegetation and scattered residual old growth and clearcut areas. In these areas, spotted owls were found within a variety of habitats, near or in drainages with some old growth or dense vegetation. Two fledglings were found in a mixed-hardwood habitat. Another consultant for the same company surveyed about 140,000 acres in three interior counties in California. All spotted owls were found in fragmented habitat with only small pockets of old growth. He stated that selective harvesting was practiced over much of northern California and produces a forest that is younger and more open than old growth, but still quite structurally diverse. Most stands with spotted owls had two, sometimes three vertical strata in the overstory because of the way the trees had been removed in the past. Dominant trees were not as large as old growth. It appeared that the number of layers was more important than the size of the layers. Suppression of fire, especially combined with a selective cut, leads to development of a shrub and understory and accumulation of dead and down woody material. Both conditions may be associated with high rodent densities. This consultant did not believe that his findings contradicted or refuted any work that has been done elsewhere in the owl's range. He did not know where owls were nesting.

Service response: Patterns reported in these two studies are consistent with those reported elsewhere on private lands in California (e.g., Kerns 1988, Pious 1989). Northern spotted owls are associated with structurally diverse habitat that contains one or more layers, some older forest providing an overstory and dead and down material. However, the habitats described were created by repeated harvest entries and do not occur under a clearcut harvest regime. Continued use of clearcut prescriptions on public and private land and any additional shift towards an increased use of clearcuts will make it difficult to maintain the structurally diverse conditions used by owls.

The Service accepts the comment that two active nests were located in stands containing residual trees, and that several birds noted as singles in 1989 are paired in early 1990. The Service also considers as reasonable the hypothesis that retaining some amount of older forest in managed younger growth stands provides some of the habitat characteristics needed by northern spotted owls. Data from other studies in California (e.g., Timber Association of California 1989b, Pious 1989) also provide support for the hypothesis. However, under current harvest methods, remnant trees are seldom left after harvest, and the stands will be harvested again before reaching the size at which they would provide suitable habitat for northern spotted owls.

Comment: Sierra Pacific Industries submitted comments on its initial field work for 1990. It noted that two active nests were found in the interior of northern California (non-redwood tracts) and stated this suggests the hypothesis that retention of small amounts of remnant, decadent trees with managed second growth provides all the habitat requirements needed by spotted owls. Several birds noted as singles in 1989 were documented as pairs in 1990.

Service response: The Service has considered the information provided in this comment.

Comment: Tracts for the Timber Association of California study were selected on the basis of continuous private land with a minimum of several thousand hectares. The primary composition was 30- to 80-year-old stands, on average, with less than 10 percent residual forest conditions. In general, these areas had been completely clearcut in the early 1900s, and subsequently burned repeatedly for up to two to three decades in a futile attempt to convert the land to grassland for domestic livestock grazing. The type conversion effort was abandoned in the 1920s and 1930s, after which the areas reforested naturally resulting in the 60- to 80-year-old stands that Timber Association of California surveyed. There was some variation in the above historical management perspective. For example, Simpson Timber Company's Mad River tract, in coastal northern California, is a redwood forest that was clearcut about 1900 and burned. Since 1900 parts have been harvested a second time and the area is being regenerated with a mixture of Douglas-fir and redwood. The Hilt tract, owned by Fruit Growers, is a white fir/ponderosa pine site located along the California-Oregon border. During a railroad logging operation, most of this area was clearcut. Reforestation occurred naturally and subsequent management has been primarily of a selective nature. Sierra Pacific's Wells Mountain tract, 50 km west of Redding, California, also has a history different from the other tracts. It is a mixed forest type with interspersions of prairie grasslands and hardwood stands. It was entered in the early 1960s after a major fire.

Service response: The Service has considered this information.

Comment: Fruit Growers Supply Company submitted additional data on its initial field work for 1990. Of the 11 confirmed sites with pairs in 1989, 10 were observed with owls by mid-April 1990. Two additional sites also have owls. Of these sites, one contains a nesting pair, one a suspected pair, two contain other pairs, and eight have single birds. Also, the company noted the presence of owls in basins that were logged last year. According to the commenter, in one sale area, the birds relocated and re-nested outside the sale area about 0.66 miles away. The commenter noted that the birds are not banded. Fruit Growers Supply Company stated it believes that not all nest sites in the interior of northern California were in remnant old-growth patches.

Service response: The Service has considered the information in the comments.

Comment: A study funded by the Pacific Lumber Company, the second major private study in northern California, indicated that radio-tagged spotted owls used all available habitat roughly in proportion to its availability (except thinned young growth) during the June-September 1989 study period (Kerns 1989 a, b). Approximately 40 individual owls were detected. Of 12 pairs, five were determined to have reproduced in 1989. Birds used thinned young growth 31 percent of the time which was higher than the predicted use based on availability of 25 percent (n=8). Approximately 35,000–45,000 acres of Pacific Lumber Company land were surveyed, during which 40 birds were identified. Only two of eight radio-tagged birds had old growth in their home ranges. Therefore, Kerns (1989 a, b) concluded that the owls are not dependent on old growth. Birds foraged in closed canopy timber types with 75–100 percent canopy closure, and roosted in vegetative types with canopy closures of 25–100 percent.

Service response: The Service believes that the conclusions of this study are premature and, therefore, unwarranted. Unlike other studies evaluating use versus availability and reviewed in the Status Review (USDI 1990), sample sizes (i.e., locations of owls) in this study were not large enough to estimate the annual home range of any of the radio-marked owls (Kerns 1989b:2). Without proper delineation of the home range boundary it is impossible to estimate what is "available" for use by the individual owl. Modification of the home range size as additional location points are added will change the definition of "available" and hence the assessment of "use." As described in the Status Review (USDI 1990), demonstration of selection is a consequence of how "available" is defined. The Service also disagrees with the contention that owls are not dependent on "old growth" or stands containing "old growth" structural characteristics, and argues that the data from this study are not sufficient at this time to either reject or support the hypothesis that northern spotted owls in coastal California redwoods use habitat in relation to its availability.

In addition to inadequate data for determining a home range size, the Service also believes that the definition of "old growth" in this study as only uncut timber (Kerns 1989b: figure 9) is unnecessarily restrictive and one that ignores the importance of structure when defining forest type. For example, a YY2 stand in this study was defined as "young" growth having trees with a dbh >40 inches and 50 percent to 75 percent crown coverage. A Y1 stand consisted of "young" growth with a dbh "up to 28 [inches]" and a crown coverage of 75 percent to 100 percent. Although direct comparisons of dbh of different tree species are questionable, note that the YY2 and Y1 definitions could be reassessed, based on the structural definitions for Douglas-fir (*Pseudotsuga menziesii*) presented in the Status Review (USDI 1990), into old and mature forest, respectively. In the absence of more specific descriptions of the characteristics of each stand type, the Service is reluctant to redefine each stand type and reanalyze Kerns' data, but does caution against interpretation based strictly on the "young" and "old" labels attached to each forest type.

The Service believes that statements regarding selection for or against available habitat types must be statistically sound. In reviewing studies claiming to address use versus availability, the Service excluded from consideration those that concluded selection for or against habitat types but provided no rigorous statistical analysis (USDI 1990). The method employed by Kerns, that of simply subtracting the proportion of observations in each habitat type from the proportion of that habitat type in the owl's "Observed Area of Use" (Kerns 1989a,b), has no statistical basis. He gives no way of statistically ascertaining whether a difference of 1, 5 or 10 percent in any direction represents no selection, or selection for or against habitat types until sample sizes increase. Thus, the Service considers the conclusions of this study of limited use.

Comment: Louisiana Pacific (Pious 1989) reported that 1,382 km of transects of managed second growth coastal redwood timber lands in northern California, Mendocino County, were surveyed and owls were detected at 90 sites, 51 of which contained pairs. Breeding was verified at 31 of the 51 sites and fledged young were produced by 32 percent of the 25 pairs checked

(0.44 young fledged per female and 1.38 young/productive female). Relative abundance was 0.1 owl/km. Most sample plots were dominated by small-sized (28–52 cm dbh) and medium-sized (53–90 cm dbh) trees. Various structural classes or seral stages exist within potential foraging habitat. Within the roosting sites, canopy closure exceeded 85 percent and ground cover consisted of shrubs, logs, coarse woody debris, and litter. Seven nests were found in sites with a total canopy closure of 86 percent. Vegetation structure at nest sites was characterized as a stratified canopy with an overstory dominated by conifers (trees >40 cm dbh), and an understory dominated by hardwoods (trees 13–40 cm dbh). In general, habitats used by spotted owls were vigorous, young, even-aged to uneven-aged stands with sparsely distributed older conifer trees.

Service response: The Service accepts in general the comments by Louisiana Pacific and notes again that presence of owls is strongly associated with structurally diverse habitats. Most of the stands surveyed by Louisiana Pacific had vertical structuring that could be attributed to repeated harvest entries; clearcuts, when mentioned in stand history descriptions, occurred in the late 1800s and early 1900s. Use of the term "young" in describing the stands to which owls were associated may be misleading, and it would be incorrect to conclude that because owls are found in "young" redwood they could be found in "young" Douglas-fir. Twenty-five of the 29 sites described in Pious (1989:appendix H) were dominated by redwoods, a tree species that attains characteristics similar to "old growth" at a relatively young age (see Kerns 1988).

Comment: One representative of Harbor Against Land Take (HALT) used aerial photographs of the Olympic Peninsula to estimate the amount of habitat for spotted owls in 12 major drainages. He speculated that there are 210 potential spotted owl sites.

Service response: The Service does not consider use of 1 pair of owls per 2 to 3 miles of river drainage multiplied by the miles of river drainage to be an accurate estimator of the number of potential owl sites in a given area. Not all habitat on both sides of the drainage can be considered suitable owl habitat. Instead, the amount of suitable habitat divided by the median home range provides a maximum estimate of the number of paired owls if all available habitat was occupied by owls. Under these guidelines the Service estimates up to 30 pairs of owls are present in Olympic National Park at any one time. A total of 12 to 20 pairs have been documented in the park (USDI 1990:table 4.6). Even if the low end of home range size in the Olympic Peninsula rather than the median (data from Thomas *et al.* 1990) was used to estimate the potential number of sites, only a total of 61 potential sites are estimated, well below the suggested value of 210. The Service therefore rejects the estimate of 210 potential spotted owl sites.

Comment: Results were reported for the Willow Creek Study Area on the Six Rivers National Forest (Franklin et al., in press). Surveys during 1985–89 indicated that the population was either stable or slightly increasing in this area. In 1989 there were 138 owls, 66.5 percent of the pairs nested and 41.4 percent fledged young (0.67 young/pair). Annual survival figures were 0.16, 0.83, 0.96, and 0.87 for juveniles, subadults, males, and females, respectively. The increase in population density was attributed to processes such as immigration, rather than internal increases in the sample areas. The population increased either from immigration from other areas rendered unsuitable by logging or to have reflected changes in the composition of the "floating" population. Franklin et al. (in press) state, "Based on our population estimates, current management plans for spotted owls proposed a 60.0–82.5 percent reduction in current populations, assuming that habitat around SOHAs becomes unsuitable for occupancy under planned timber management programs over the next 50 years. Proposed reductions in spotted owl populations will coincide with reduction and fragmentation of suitable habitat: a situation incompatible with density-dependent mechanisms."

Service response: The Service has considered the information provided in this comment.

Comment: Frank Wagner (Oregon Cooperative Wildlife Research Unit [OCWRU], Oregon State University) commented that his research indicates that spotted owls use highly fragmented habitat in southwestern Oregon, and that he found relatively high densities in the Elk Creek watershed (0.117 pairs/sq km in 1988, and 0.128 pairs/sq km in 1989). He noted that although his study area has been referred to by others as dominated by young and partially cut forest with limited fragmentation, this is not the case. His study area consisted of three distinct general landscapes: (1) Relatively large blocks of unentered old-growth and mature forest: (2) stands of moderately fragmented old-growth and mature forest: and (3) a highly fragmented area with limited old growth, but with a matrix of diverse young and partial cuts (part of this last area comprises the Miller Mountain Telemetry Study Area). In 1989, he found that home ranges of 23 pairs of owls averaged 205 acres (range 26–445 acres) of unentered old growth within a 0.5 mile radius of the center of activity and that this contrasts to 70 acres (range 0–225 acres) within a 0.5 mile radius from random points. He stated that in southwestern Oregon owls occupying areas with a low availability of older forest but a high degree of young stands and previously partially cut stands, appear to be operating as a population sink.

Service response: The Service accepts all of the comments except for the specific assertion that the areas mentioned appear to be operating as a population sink. Data from the study are insufficient to adequately determine whether the area is acting as a population sink.

Present Population Estimates

Comment: One commenter stated that the Service admits that estimates of present population estimates are flawed ("few data on numbers and distribution on private, State, and tribal lands * * * are available.") A number of commenters asked if all preserved/reserved and non-reserved lands had been surveyed or whether the generalizations of owl non-occurrences on non-Federal lands such as private, Indian, and State, were based more on speculation than actual inventories. A commenter asked what proportion of owls occur on private lands. Several people stated that because the Forest Service was only interested in surveying areas scheduled for timber harvesting, no inventories have been done in wilderness or other set-aside areas. Someone questioned the finding that northern spotted owls are found primarily below 3,500 feet in elevation. Another stated that wilderness areas in California are not primarily high elevation lands above tree line.

Service response: The Service realizes that not all lands in the range of the northern spotted owl have been surveyed. However, in the past three years, many new surveys have been conducted on private, State and tribal lands. These results are summarized in detail in Thomas *et al.* (1990) and in general in USDI (1990). Approximately 6 percent of known owls occur on private land. It is incorrect to state that no surveys have been conducted in younger stands (details are summarized in USDI

1990 and Thomas *et al.* 1990). Thomas *et al.* (1990) reported that approximately 6 percent of the owls occur on private lands. There have been inventories on Wilderness Areas and other set-aside areas. In fact, most owls are found at elevations below 3,500 feet. Forested Wilderness Areas in California have only 13–18 percent suitable habitat, some of which is at higher elevations. Details are provided in USDI (1990) and Thomas *et al.* (1990).

Comment: A party commented that earlier estimates of a population decline are fraught with methodological, analytical, and factual errors. A commenter maintained that the Status Review Supplement relies on survey work by Forsman to support the assumption of a population decline, yet his survey method suffers from several methodological deficiencies and, therefore, his data are unreliable. The commenter continued that Gould (1974) used a similar monitoring program and recently stated that those estimates are subject to uncertainties. According to this individual, the methodology employed by Forsman and Gould is not adequate because it assumes that an owl that moved slightly or left the study area was dead.

Service response: Past efforts to estimate the rate of population decline have been criticized because of methodological issues and the fact that the rate of decline was not statistically significant. USDI (1990) corrects these issues and presents firm evidence that resident populations are declining at a statistically significant rate (e.g., 5 percent and 14 percent per year). The ISC (Thomas *et al.*, letter dated December 20, 1989) stated to the Service that the population was declining in response to timber harvest of available habitat. Count data on the Willow Creek Study Area do not show a population decline because of significant immigration each year. The Service agrees with the commenter that reproduction and mortality rates were nearly constant over the course of the study (1984–89). The Jolly-Seber model (Pollock *et al.* 1990) for open populations employed in the Status Review (USDI 1990) allows estimates of the entry of "new" owls into the adult population. This total was partitioned into the two components: recruitment of young into the adult population and the immigration of owls from surrounding areas. The Service found that the resident population of adult females was declining 5 percent per year (21.6 percent over the 5 years of study). However, the immigration into the study area kept the population size nearly constant (the "rescue effect").

Thus, in a trivial way, the population has not declined at the Willow Creek Study Area. However, the simple count data from standard surveys do not properly portray the sharply declining population of resident, territorial owls. The Service has strong evidence of significant population declines (USDI 1990). The Service agrees that emigration is a source of bias in the estimates of juvenile survival.

The Service did not follow Franklin's alleged convention of assuming "the owl is dead if he fails to return to the territory in two seasons." USDI (1990) used contemporary analysis theory for capture-recapture surveys to avoid the criticisms noted (i.e., 100 percent site fidelity, owls immediately responding in a single follow-up visit in succeeding years, and movement within the same general territory). Early surveys by Gould were similar to those by Franklin and Forsman. Jolly-Seber type models for the analysis of capture-recapture/resight data incorporate a capture/sighting probability to avoid the criticisms noted by the commenter. In fact, the capture/resight probability can vary be age, sex, and year to properly allow for non-detection of owls, given they are present. Details of these procedures are cited in USDI (1990).

Comment: According to one commenter, a thorough survey of the entire range of the northern spotted owl is needed to determine nesting and foraging habitat. Another asked if the owl is still found in most of its range, why is it thought to be threatened. Several commenters stated that in the proposal, assumptions not yet clearly established are used as evidence that owl numbers are declining.

Service response: It would be ideal if intensive surveys could be conducted over the entire range of the owl. This is not possible or practical. A species can be widespread, but could be "threatened" if the population was thought likely to become in danger of extinction in the foreseeable future due to, for example, drastic loss of habitat. The amount of suitable habitat for the northern spotted owl has decreased substantially over the past 40–100 years. It now seems clear that the population of the northern spotted owl is declining throughout its range.

Has the Owl Population Increased in Size?

Comment: Numerous commenters expressed opinions regarding owl population estimates indicating that owl numbers have increased with an increase in survey efforts and that the number of owls has increased from several hundred 10 years ago to about 5,000 today. Several individuals questioned how the spotted owl can warrant listing if the count in 1989 is higher than in 1985 and is still increasing. Someone stated that studies show there are more owls now than 50 years ago when little or no old growth had been harvested; however, he did not provide or cite references for these studies. Another said that owl numbers on Bureau of Land Management lands have reportedly doubled in three years and that if this rate is typical, there will be serious problems associated with owl over-population in the next few years. Another maintained that owl populations are large and stable.

Service response: The number of owls detected during surveys has increased with survey effort. The Service is not aware of any estimate that there were only a few hundred owls ten years ago. The population is now believed to be decreasing throughout much or all of its range, although counts of owls have increased due to expanded survey efforts. The Service is unable to confirm the abundance of owls 50 years ago. It is very likely that owl population size was larger when larger amounts of old growth existed. The Service cannot confirm that the population of owls on Bureau of Land Management land has doubled or tripled in the past three years. The commenter failed to give a reference for this statement. However, the Service acknowledges that the Bureau of Land Management has increased its efforts to survey for owls and, therefore, the increase in the number of owls encountered is not unexpected.

Comment: One commenter understood that private parties were undertaking their own surveys and had located over 6,000 pairs. One commenter said the data from private land surveys in northern California produced 62 pairs, almost double the previous population estimate for private lands in the State, and show the Status Review Supplement underestimated the number of spotted owls on private land in northern California by almost 100 percent.

Sevice response: The Service is not aware of studies by private parties that have located over 6,000 pairs of owls. It is true that the Service had underestimated the number of owls on private land in California. New information provided, for example, by the Timber Association of California, however, has been considered in USDI (1990) and in this document.

Comment: Someone else stated that there are over 3,000 known pairs in

eastern Oregon where they were not supposed to be. Another wrote that there are thousands, maybe millions of spotted owls. In one person's view, the spotted owl population is healthy throughout at least five of seven western states. Someone commented that because the spotted owl ranges into Arizona, New Mexico, and southern U.S.A., it is difficult to believe that with this large a range the spotted owl is not able to adjust to environmental changes.

Service response: The Service is not aware of any estimate of 3,000 pairs of owls in eastern Oregon. According to the ISC (Thomas *et al.* 1990), there are approximately 2,000 known pairs rangewide of northern spotted owls although they estimate that 3,000–4,000 pairs actually may be present. There is no evidence to support the statement that there may be millions of spotted owls. The northern spotted owl occurs in 3 states and one Canadian Province, not in at least 5 of 7 western states. It is the Mexican spotted owl that occurs in Arizona and New Mexico, not the northern spotted owl. Long-lived birds such as the spotted owl are not considered likely to adjust rapidly to drastic environmental change. Such adaptations ordinarily take place only on an evolutionary time scale of thousands of years.

Comment: A commenter referenced work by Franklin *et al.* (1986, 1987, 1989) that indicates a stable and even increasing population in the Willow Creek study area. Someone stated that the Status Review Supplement erroneously quotes Franklin as stating the northern spotted owl population is declining in northwestern California. Another reported that the Service ignored research data from Franklin in which he found there were 630 owls in the Six Rivers National Forest. Franklin *et al.* (in press) extrapolated the population of the Six Rivers National Forest at 833–912 owls, which was twice the Forest Service estimate of 400 based on suitable owl habitat. However, only about 50 percent of the Six Rivers National Forest has been adequately surveyed. The higher estimate did not account for any effects of habitat fragmentation. In discussing the estimate of 833–912 owls, Mr. Franklin stated in his comments, "I do not know whether our extrapolated estimates of numbers are correct. You need to bear in mind that we extrapolated to an area that was 13.3 times larger than the sampled area. Any errors in our estimates would be magnified by that factor. However, the point in the extrapolation was not to strictly estimate population size for the SRNF but to examine the relationship between potential and managed populations. Intuitively, I believe the Forest Service estimate of 400 may be more accurate than our extrapolations."

Service response: Population change on the Willow Creek Study Area (WCSA) is treated in detail in USDI (1990), including updated estimates of vital rates. Confusion arises over the fact that the resident (territorial) population has experienced a significant decline over the past 6 year study interval, but the population has been maintained by immigration into the area of floaters (non-territorial birds) and territorial birds displaced by timber harvest in surrounding lands. The Service shares the commenter's concern that the extrapolated estimates made by Franklin are likely to be inaccurate.

Comment: According to one party, the Status Review Supplement failed to adequately estimate the effects on the overall population estimate of the spotted owls in reserved areas. This individual maintained that populations living in extensive reserved areas may be expected to be stable and those living in managed forests older than about 50–60 years may even be increasing as habitat grows back (Irwin 1989b).

Service response: Information on owl abundance in reserved areas was treated in the Status Review Supplement and is treated in more detail in Thomas *et al.* (1990) and USDI (1990). The available evidence suggests that the populations in reserved areas may have low viability and may not be replacing themselves. This poor viability is likely due to higher elevation, poorer site quality, and more open canopies typically found on many reserved areas (USDI 1990). Thus, suspected low viability is not due to declining amount of habitat in reserved areas.

The Service believes that the proposal accurately portrayed the loss of habitat. Owls in managed forests are unlikely to be viable. Before a managed forest reaches an age that is fully suitable for owls, it is likely to be cut again. In general, the forest rotation age and the stand age at which owls begin to utilize the stand for foraging, nesting, and roosting are similar.

Comments: One commenter stated that the Forest Service confirmed 640 new owl sites of which 321 have pairs and 141 of these pairs (43.9 percent) successfully reproduced (USDA 1989). One commenter said the Status Review Supplement estimated the owl population on Forest Service lands would vary from 58–81 percent of estimated habitat capability. Further, he believed that in Region 6 of the Forest Service, the habitat capability is estimated at 1,289 pairs. Since confirmed pairs on Forest Service land now total 1,287 pairs, or almost 100 percent of habitat capability, the commenter maintained that this assumption was obviously incorrect. One commenter stated that in only one season, survey work confirmed 537 new pairs (35 percent increase) on Bureau of Land Management, Forest Service, and private lands, and that this number excludes the results from Forest Service lands in Region 5 and from National Parks.

Service response: Table C–1 in the ISC (Thomas *et al.* 1990) report presents the most recent comprehensive compilation of spotted owl habitat and owl pairs located in the last 5 years. On Forest Service lands within the range of the northern spotted owl 1,387 pairs of owls have been confirmed (609 pairs with evidence of reproduction) since 1985. Not all spotted owl sites are occupied by pairs each year. Monitoring of SOHAs by the Forest Service indicated that for 1989 58 percent of the SOHAs had pairs while for 1988 and 1989 combined 78 percent had pairs present in at least one year: 55 percent of the SOHAs had documented reproduction in one of the 2 years (USDA 1989). The habitat capability estimate for Region 6 Forest Service is 1,283 reproductive pairs of spotted owls (USDA 1988, USDA 1989). As of the end of the 1989 field season 525 pairs of owls (sites) have had documented reproduction within the past 10 years (USDA 1989). The greatly increased inventory efforts of federal timber managing agencies in 1989 resulted in the location of many "new" owls. Caution must be exercised in interpreting these new owl locations. For instance, because few of the owls on Forest Service lands were banded it is difficult to assess what proportion are new and which may represent double counting of known owls at adjacent locations. There is no question, however, that the increased survey effort in 1989 disclosed many additional owls.

Comment: One commenter stated that additional population surveys had detected new birds as follows: 537 pairs, 549 singles, and 334 juveniles, for a total of 1,957 new owls, and that these data increase the previous count to about 2,200 pairs and more than 6,000 individuals. The commenter stated that the Forest Service in Oregon and Washington had completed surveys on less than 2 million of its 13.7 million acres of forest.

Service response: The compilation of spotted owl pairs presented in table C–1 of Thomas *et al.* (1990) report represents the most recent comprehensive enumeration of known northern spotted owl pairs. The figure of 2,022 pairs of owls located between 1985 and 1989 does not include any estimate of single birds. The ISC report further offers (Appendix C, p. 67) an estimate of between 3,000 and 4,000 pairs rangewide on all land ownerships. No agency has completed owl surveys on all land holdings; Bureau of Land Management has surveyed a greater proportion of its holdings in Oregon than has the Forest Service. Most survey effort has been in older forests—where owls are most abundant and where timber sales are planned; less effort has been expended in young forests—where owls are absent or at low density. Wilderness Areas, which are mostly at high elevations and have reduced densities of spotted owls, have not been surveyed intensively for owls. Because of the above, densities on unsurveyed lands are not likely to be proportional to densities on already surveyed lands.

Comment: Another individual estimated that lands in California had the capability of supporting about 775 pairs of spotted owls. He emphasized that this is an estimate of pairs, not of pairs that would constitute the breeding core of the population. He noted that in the Willow Creek study area, only about 45 percent of the pairs were found to be consistent breeders over the 5-year period of the study.

Service response: The Service had considered this information. The Timber Association of California surveys found 63 pairs. The Service cannot verify the comment that California lands have the capability of supporting "about 775 pairs of spotted owls." USDI (1990) tabulated 533 observed owls on surveyed lands in northern California during 1985–89. However, these are only the number observed at least once during this 5 year period. Other areas have not yet been surveyed. In addition, the Service notes that many pairs breed only in alternate years or irregularly.

Comment: A biologist stated it is not necessarily true that owl numbers have increased because Forest Service estimates have not dropped out those owls that cease to exist as the result of logging or natural mortality. Another biologist commented that many "new" owls have been known for more than 10 years, but the Forest Service has simply just verified them by the new standard of seeing a male and female in daylight less than 200 yards apart. A minority of the new pairs are actually newly discovered.

Service response: The Service has considered this information.

Comment: Several commenters suggested that there is no empirical information to support the Status Review Supplements' spotted owl population estimate. Another commenter stated that the 1,500-pair estimate is based on the summary in the Status Review Supplement of inventoried sites and projections of estimated habitat capacity, and that no data show that the overall population is decreasing. One commenter referenced the pers. comm. by E.C. Meslow cited in the Status Review Supplement to the effect that the population had declined in many portions of Oregon, and said this statement was not verified with data or citations.

Service response: A complete census of the owl throughout its range would be extremely difficult. However, based upon the latest survey results, there are approximately 2,000 known pairs of northern spotted owls (Thomas *et al.* 1990). The Service presents evidence that the population is decreasing (USDI 1990) and provides estimates of the average annual rate of decline (i.e., 5–14 percent). Field biologists believed the population had declined based on occupancy rates for established territories and based on the drastic declines in suitable habitat. USDI (1990) provides the statistical evidence of sharply declining populations of resident, territorial owls (5 percent per year in northwest California and 14 percent per year in southwest Oregon).

Comment: Another speculated that the spotted owl population may be at carrying capacity and, therefore, the young have a high mortality and the adults a low reproductive rate.

Service response: The Service agrees with this comment and suggests that the current population may in fact be above the current carrying capacity.

Comment: One commenter noted that in 1986, the Audubon Society wrote that a stable population of northern spotted owls would consist of 2,000 pairs and that a minimum of 1,500 pairs were needed to maintain the population. The commenter stated that if the Service says there are 1,500 known pairs, this is quite a difference in population since 2,000 were readily found in California). A commenter asked if 1,500 known breeding pairs are not sufficient to preclude the need to list.

Service response: The Service agrees that the Audubon Report (Dawson *et al.* 1986) suggested a minimum of 1,500 pairs of owls. However, this figure included the California subspecies, and the authors stated that they were "* * * marginally comfortable with this number." Dawson *et al.* (1986) present no mathematical formulation or analysis of demographic data to support their figure. This issue is discussed in detail in Thomas *et al.* (1990:30–31). The Service has no evidence that 2,000 pairs of northern spotted owls have been verified in California. The number of verified pairs in northern California is 533, not 2,000. In fact, the 533 relates to only pairs on sites observed at least once during the 1985–89 period and is, thus, somewhat of an optimistic count for the areas surveyed. The numerical size of the population of owls is not necessarily critical to the species' survival; rather, the critical issue is related to the population dynamics. The Service believes that (1) the population is above carrying capacity due to drastic reductions in habitat and an increase in forest fragmentation, (2) the owl population is declining rapidly, and (3) the population will decline much further, even if all harvest of suitable habitat is halted. Changes in the amount and quality of suitable habitat remaining from past management practices and changes anticipated in the future are more important considerations than total population size alone. The Service's evaluation of the status of the northern spotted owl is presented in the "Summary of Factors Affecting the Species" section of this document. The Service notes that the present population size is not included as one of the factors.

Comment: A number of commenters questioned how is it possible to conclude that loss of habitat represents a significant loss to the owl if there is no reliable estimate of remaining suitable habitat in the Northwest. Further, if there are no estimates of historical owl population numbers, how one can make reasonable assumptions regarding the impacts of timber harvesting on the status of the owl. Numerous commenters stated that before any action on endangered or threatened status can be taken, the total number of owls must be known. One commenter maintained that the Service has withdrawn proposed rules when it has been demonstrated that population numbers are actually greater than had been previously believed. Since survey data show the spotted owl to be more abundant on Federal and private lands than was previously believed, the commenter reommended that the proposal should be withdrawn.

Service response: Good estimates of the amount of remaining suitable habitat

are available (USDI 1990, Thomas *et al.* 1990). However, estimates for Oregon and Washington made by the Forest Service are nearly double those made by The Wilderness Society. By either measure, the amount of suitable habitat remaining is limited and is anticipated to decline further if expected losses from planned timber harvesting and natural perturbations continue. A strong relationship exists between the amount of suitable habitat and the abundance of owls (USDI 1990). The continued cutting of suitable habitat and resulting high fragmentation rates are both detrimental to owls. Although the total number of owls is not known, this is of little importance as the Service has solid evidence of a drastic population decline in owl numbers as a consequence of sharp declines in suitable habitat and increasing habitat fragmentation. The Service believes that the dynamic changes in the population are more important than the size of the population in assessing long-term viability. Although not all estimates of the amount of historical suitable owl habitat agree, it is clear that the net amount has declined dramatically over what was available historically.

Distribution of Owls

Comment: One commenter stated that the assumption that 90 percent of owls are on Federal land must be re-evaluated. The commenter noted that it was assumed that few spotted owls occurred on National Parks and Wilderness Areas, yet surveys during 1988 in Yosemite, Sequoia, and Kings Canyon National Parks for the California spotted owl found relatively high densities (Roberts *et al.* 1988, Roberts 1988). In this commenter's opinion, survey efforts for national forests in Regions 5 and 6 of the Forest Service are woefully behind, and no National Forest in Oregon or Washington has surveyed 100 percent of its suitable owl habitat.

Service response: According to the latest summary of survey results, approximately 90 percent of the known spotted owl pairs occur on Federal land (Thomas *et al.* 1990); the proposal relied on a similar estimate. The National Park Service estimates that fewer than 100 owls exist in its parks within the range of the northern spotted owl. Roberts *et al.* (1988) dealt only with the California spotted owl, not the northern subspecies, and his study is therefore not directly applicable to the Service's decision on this proposal. The Service acknowledges that no National Forest has surveyed 100 percent of its suitable owl habitat. However, complete survey data are not required for the Service to reach a determination on the status of the northern spotted owl.

Comment: One commenter suggested that the California studies reveal that the owl is apparently expanding its range.

Service response: Owls had been assumed to inhabit private lands, however surveys had not been conducted previously. The recent studies in California were within the known range of the species and confirm the presence of owls on private lands. There is no evidence to suggest that the owl is expanding its range.

Correlation of Decline in Old Growth and Spotted Owl Population

Comment: Several parties noted that the Status Review Supplement assumes that the projected decrease in old-growth forests will result in a corresponding reduction in the owl population and that historical numbers were much higher; they considered this to be an incorrect and unproven assumption. Further, if there were 41.2 million acres of suitable owl habitat historically, at the turn of the century there would have been about 8,950 pairs. This population estimate does not add up with the historical estimate presented in Figure 6 of the Status Review Supplement, according to one commenter. As stated by this commenter, the spotted owl population has not been shown to be declining because historical population estimates relied on the incorrect assumption that the number of spotted owls could be directly correlated with the number of acres of old growth. One commenter maintains that the estimates of northern spotted owl historical population numbers are not credible. One person referenced a comment made by a reviewer of a draft of the Status Review Supplement who noted that without historical population numbers, the current population size is meaningless. The commenter stated that the review team realized this and fabricated a linear relationship to obtain an historical population figure. According to one commenter, the Status Review Supplement fabricated historical old-growth estimates to enable the Review Team to claim massive spotted owl population declines without considering that forests are dynamic systems and that they will regenerate once cut. Further, the commenter questioned the assumed linear relation between old growth and spotted owl populations because it does not consider that owls use young-growth forest. Also, the commenter stated that it has been shown that suitable habitat can be maintained through existing timber harvesting methods (Irwin 1989b, Smith 1989, Gould deposition).

Service response: The Service acknowledges the difficulty of estimating how many northern spotted owls existed in historical times, and did not base its determination of the status of the northern spotted owl on estimates on historical numbers. Further, the Status Review Supplement estimated there were 14–19 million acres of old-growth historically in Washington and Oregon, not 41.5 million acres as the commenter suggests. However, ample evidence indicates that the northern spotted owl prefers forest habitat with old-growth characteristics. As there has been a net loss of suitable habitat, the Service believes it is reasonable to conclude that overall owl population numbers have declined. The Service did not fabricate historical old-growth estimates to substantiate a significant decline in the owl population. The Service acknowledges that forests can regenerate after harvesting but notes that rotation ages are such that throughout most of the range of the owl, stands are re-cut before sufficient time has elapsed for them to obtain the structural characteristics of suitable owl habitat.

Comment: Another commenter said that the conclusion that the owl population will continue to decline because of timber harvesting is speculative as the Service has not defined "biologically effective" owl habitat.

Service response: From the substantial data relating habitat use to availability, it is apparent that suitable (or effective) spotted owl habitat contains structural characteristics commonly associated with old-growth forest. These attributes are described in the Background section of this document. The Service has shown that northern spotted owls are rare or absent in regions where stands less than 80 years old cover more than 80 percent of the area, and it has shown that such areas will increase due to timber harvest activities, if current land use trends continue (see Discussion under Factor A).

Comment: A commenter was concerned that the owls seen today reflect the habitat conditions of 5–15 years ago and may say nothing about what will happen to the next generation because there is a time lag between loss of habitat and reduction in owl population size. Hence, the future may be even more bleak according to this commenter than the presence of 1,500 known pairs indicates.

Service response: The Service shares the concern expressed in this comment.

Comment: One commenter noted that because the Status Review Supplement found that many suitable habitats are not occupied every year, he believes that this contradicts the assumption that owl numbers are correlated with the amount of old-growth acreage. According to this commenter, most population experts disagree that the number of spotted owls can be calculated based on the number of old-growth acres.

Service response: The Service believes that convincing evidence exists showing that the abundance of northern spotted owls is correlated with the amount of old growth present in an area (see discussion under Factor A). There is no reason to expect that northern spotted owls will occur in every tract of suitable habitat every year because many patches are now small and isolated. Furthermore, some surveys are not sufficiently intensive to detect every owl present, so some reported cases of suitable habitat being vacant may be due to not detecting birds. The Service agrees that the actual number of northern spotted owls present in an area cannot be calculated from the amount of old growth present, and the listing decision does not rely on any such calculations.

Issue 15. Habitat Use

Habitat Preferences

Comment: A number of commenters indicated that the owl's preference for old growth in northern California has not been demonstrated. One comment reported that studies by industry organizations found northern spotted owls using 40 different vegetative types, 70 percent of which were not old growth. Several commenters said that old-growth Douglas-fir forests have only been present for 200 years because prior to that time, Indians burned the forests on the valleys and mountains. These commenters questioned where the owl had resided. A commenter noted that preservationists did not object in one instance to logging within 60–70 acres around a pair nesting in a second growth area and asked how owls can be considered endangered in old growth and surplus in second growth. Several commenters suggested that the owl's assumed preference for old growth in Northern California also is not shown. A number of individuals questioned why the spotted owl should be entitled to preferred habitat instead of just what it needs.

Service response: After reviewing all available data, the Service has concluded that northern spotted owls are closely associated with old-growth forest or forest with old-growth structural and vegetational characteristics (for details, refer to background section and Factor A). Northern spotted owls in northern California are found in areas having remnant old growth or in situations where site conditions and tree species composition were such that stands attained the characteristics usually associated with old growth at relatively young tree ages (Pious 1989, Kerns 1988, Blakesley *et al.* 1990b).

No evidence was presented to substantiate the claim that old growth was not present prior to 200 years ago. The Service is of the opinion that it would be unreasonable and illogical to conclude that Indians burned all forests approaching or more than 200 years of age.

Whether or not preservationists failed to object to logging activities associated with a particular timber sale has no bearing on the Service's decision on the proposal.

Studies by Sisco and Gutierrez (1984) and Solis (1983) demonstrated selection for old-growth forest by radio-marked northern spotted owls. Results from an additional study (Kerns 1989a,b) examining habitat use of radio-marked owls in coastal redwoods are inconclusive due to small sample sizes at this time. Kerns (1986) noted that 78 percent of the vegetative components in which owls were located in northern California, while not 200+ years of age, had many of the habitat characteristics of old growth. Work by Pious (1989) in coastal redwoods also demonstrated the association of owl roost sites with a multi-layered canopy, a characteristic of old growth forests. The Service maintains that the association of northern spotted owls with forest having old growth characteristics, including multi-layered canopy, large trees of varying species and size, and down logs and snags, is clearly demonstrated in northern California, and that these structural characteristics are similar to those associated with old growth.

It is the Service's opinion that although owls were documented in sites in northern California that did not meet the definition of old growth given in the proposal as to age (generally >200 years), the site did contain the structural characteristics identified in the proposal as constituting suitable habitat. As discussed in the Background section, the Service believes that spotted owl habitat is more appropriately defined by structural and vegetational attributes than by age. Given the preponderance of data indicating that northern spotted owls, when given the opportunity to select from a variety of habitat types within their home range (USDI 1990), spend a disproportionate amount of time in older forests, the Service contends that attributes of old-growth forest are critical to owls. Hence, the Service believes that the northern spotted owl's long-term viability is related to the availability of suitable habitat. Further, the Service maintains that a strong association or preference demonstrates biological needs, particularly in the absence of significant numbers of owls in young forests throughout the range of the owl. In the Service's opinion, preferred habitat is more likely to provide for maintaining owls on a long-term basis because of higher reproductive and survival rates than would lower quality habitat.

Comment: Several commenters objected to the Status Review Supplements' use of data from Oregon and Washington to support conclusions in California, arguing that the climate and prey base are different. One commenter noted that California forests are more complex with respect to plant species composition and tend to have uneven size classes in even-age forests in contrast to Oregon and Washington. Commenters also pointed out that non-Federal clearcuts in California are usually 80 acres, cannot legally exceed 120 acres, and must be separated from adjacent clearcuts by a minimum of 300 feet of forest area. The commenter continued that in Oregon and Washington, clearcuts of hundreds of acres are not uncommon. Several commenters wrote that in California, watercourses and lakeside protection zones, ranging from 50–200 feet, must retain 50 percent of overstory canopy and, therefore, provide corridors through many clearcuts.

Service response: The Service agrees that data from different physiographic provinces in Oregon or Washington, particularly with respect to the use of age only as an indicator of forest stand characteristics, may not be directly applicable to California; the same may be true between Oregon and Washington. The Service likewise agrees that data from California are not entirely applicable to Oregon and Washington. The Service maintains that although there exist differences both in tree species composition and growing conditions across the range of the northern spotted owl, there nonetheless exists strong evidence that owls are associated with structurally diverse habitats with old-growth characteristics.

While the Service recognizes there exist regulatory mechanisms specific to

timber harvest on private and State lands in California (as well as in Oregon and Washington), such as provisions for streamside corridors and restrictions on sizes of clearcuts, these afford only incidental protection to northern spotted owls on private lands. The Forest Practice Act of California [4513(b)] does state that the "goal of maximum sustained production of high-quality timber products is [to be] achieved while giving consideration to values relating to * * * wildlife * * *," but as noted by K. Delfino, California Division of Forestry, "The Department does not have any specific direction for spotted owl management" (letter of December 14, 1989, to Jack Ward Thomas, Chairman, Interagency Spotted Owl Scientific Committee). Although the Service recognizes that watercourse protection zones are an integral part of any habitat protection scheme for northern spotted owls, the protection they afford by themselves is minimal.

Both the Forest Service and Bureau of Land Management have policies regarding the maximum size of clearcuts and the circumstances under which areas adjacent to clearcuts can be harvested. Larger clearcuts are permitted in instances of salvage operations arising from blowdown, fire, or insect infestation. Also, Federal policies provide for streamside protection zones for streams meeting certain criteria. Both Federal agencies maintain that their harvesting policies are at least as stringent as those of the respective states. State and Federal regulations and policies are discussed in greater detail under Factor D in the Summary of Factors Affecting the Species section.

Comment: Comments pertaining to northern spotted owl habitat preferences and usage included statements that owls do not require old-growth forest to survive and that information is inadequate to establish the actual habitat needs of the owl. According to a number of commenters, there are no data showing that owls occur in old growth more frequently than in other forest types. Several commenters stated that reports on use of macro-habitat were employed to support the preference of owls for old growth are incomplete and did not compare owl use in a statistically valid manner. One commenter maintained that the Status Review Supplement asserts that only large patches of old growth are biologically effective habitats and relied on only four reports for this conclusion. Further, the commenter stated that the Service should not have relied on these reports because Allen (1988), Forsman (1986), Forsman *et al.* (1984), and Irwin *et al.* (1989d), do not provide appropriate bases for this conclusion. Another commenter stated that the Status Review Supplement failed to mention the work of Gutierrez and Call (1988) and Gutierrez and Bias (1988) on the California spotted owl and habitat use. A commenter noted that Garcia (1979) found 2, 2, 2, 3 and 21 pairs in 60–80, 81–100, 101–120, 121–200, and 200+ year-old forests, respectively, and that data on preferences for old growth have been taken out of context.

Service response: The Service disagrees with the contention that owls do not use old growth more frequently than other forest types and that the studies used by the Service to conclude owls select old growth are not statistically valid. Data from use versus availability studies clearly demonstrate strong selection by owls for old-growth forest in the Oregon Coast Range, Olympic Cascades, Washington Cascades/Olympic Peninsula and Klamath Provinces (USDI 1990). Further, only studies that evaluated use versus availability in a statistically rigorous fashion were considered by the Service. The studies evaluated all used widely accepted statistical tests (USDI 1990). Excluded were studies that provided no statistical basis for concluding selection for or against habitat types. While providing a rich collection of anecdotes and incidental observations, these latter studies did not evaluate the relation between northern spotted owls and forest types in a statistically rigorous fashion.

The Service agrees that demonstration of true dependency requires a well-designed experiment, but maintains that the evidence overwhelmingly demonstrates strong association between owls and old-growth forest. If owls did not select so strongly for old-growth forest, more evidence indicating non-random use of other forest types might have been evident. Use of large patches of habitat is a consequence of the large home ranges used by owls, which range from a median size of 1,411 acres in the Klamath Province to 9,930 acres in the Olympic Peninsula (Thomas *et al.* 1990).

Work by Gutierrez and Call (1988) was referenced in the Status Review Supplement (USDI 1989). That study, and another by Gutierrez and Bias (1988), were on the California spotted owl, a different subspecies not the subject of the proposed rulemaking.

Data often are amenable to a variety of analyses, including an X^2 test. Under the hypothesis of independence, pairs of northern spotted owls should be randomly distributed among the 5 age categories of trees. Thus, if owls were randomly distributed across the landscape, and exhibited no selection for a particular forest type, the expected number of pairs in each age category would be 30 (the total) divided by 5 (the number of age categories)=6. Using the data provided, an X^2 statistic of 47.0 having 4 degrees of freedom can be completed. Comparison to an X^2 distribution table indicates this value is very unlikely ($P<0.001$) and the hypothesis of independence is rejected. Given that 21 of 30 pairs were found in forest >200 years of age, and that this one category contributed most to the X^2 statistic, a reasonable conclusion would be that the paired owls in this study were associated with forest >200 years of age.

However, such an analysis is not strictly correct because it assumes that the 5 age categories themselves are equally distributed across the landscape (i.e., each age category comprises one fifth of the total forest). When the proportional makeup of the forest types is not equal, pairs of owls cannot be equally distributed across the landscape. Under the hypothesis of independence they would be distributed in proportion to each of the forest types. Consequently, the expected values used to estimate the X^2 statistic must be weighted by the proportional makeup of the habitat types across the landscape. Because Garcia (1979) did not present the proportional makeup of the landscape on which he conducted his study, it is impossible to weight the expected values in the appropriate fashion. Even though the X^2 value indicates that the owls were not using the age categories in a random fashion, the Service would maintain that the study indicates selection but does not evaluate it in a statistically rigorous fashion. Incomplete knowledge regarding the availability of each of the age categories precludes a complete evaluation of the relationship between the owls and the forest types. When evaluating studies pertaining to habitat use by northern spotted owls, the Service relied principally on those that assessed data in a statistically rigorous manner.

Comment: Another commenter stated that there is some evidence indicating that a handful of spotted owls "preferred" forests in the pole/medium timber category (Sisco and Gutierrez 1984), 61–80 year old stands (Forsman *et al.* 1984), and 50–100 year old class (Carey *et al.*, in press).

Service response: Data summarized by the Service and presented in the

Status Review (USDI 1990) indicate that only 3 of 81 owls (4 percent) having young forest in their home range exhibited selection for that forest type. Forty-five of the same 81 birds selected against young forest. The Service considers the numbers exhibiting selection for young forest small and not indicative of the habitat needs of northern spotted owls.

Comment: One commenter stated that the second highest density of spotted owls in 1989 was found on the Miller Mountain study area, near Medford, Oregon; an area with little old growth. The commenter also indicated that no habitat preferences have been demonstrated for forest stands more than 50 years old. Moreover, he stated that earlier studies only compared stands less than 50 years of age to those more than 200 years old; but that new studies document that use of stands 50–200 years old is equal or higher than expected based on availability. Further, according to this opinion, no study documents that spotted owls prefer old growth to these intermediate successional stage forests.

Service response: The Service accepts the density estimate of owls on the Miller Mountain study area in 1989, but notes that Wagner (letter of 18 April 1990) disagreed that the Miller Mountain Study Area can be characterized as an area with little old growth. Wagner estimates that approximately 29 percent of the study area can be considered older forest, a value he considers relatively high for unreserved commercial forest land in that area.

The Service maintains that selection has been demonstrated for stands >50 years of age. Sixty-eight of 81 owls having old-growth forest >200 years of age in their home range selected for that forest type (USDI 1990). Only 3 of 81 owls having forest <70 years of age in their home range selected for that forest type. While data indicate that 41 of 61 owls used mature forest 70 to 200 years of age in proportion to its availability, only 11 of the 61 owls selected from mature forest. This value is offset somewhat by 9 owls that selected against use of mature forest. These studies clearly demonstrate that owls select forest >50 years of age.

Comment: Frank Wagner (OCWRU, Oregon State University) submitted additional data on his research on spotted owls in the Elk Creek watershed near Medford, Oregon. Wagner offers that habitat use data from the Miller Mountain Study Area portion of his study indicates that spotted owls select old growth in excess of availability, avoid regenerating forest, and have various responses to intermediate age forest. He suggests that initial entries of three-stage partial cuts or heavier entries (greater than or equal to about 30 percent basal area removal) diminishes habitat suitability significantly for at least several decades. In contrast, light partial cut entry (less than 20 percent basal area removed around 25 years ago) was used both in excess and in proportion to its availability.

Service response: The Service also believes that conclusions from Wagner (letter of 18 April 1990) suggesting that in his study area northern spotted owls select for old-growth forest, select against regenerating forest and use intermediate-aged forest in a variable fashion are premature and unwarranted. Thus far habitat types within individual owl home ranges in his study area have not been classified, making it impossible to determine availability and hence evaluate use.

Data were not presented supporting the contention that three-stage partial cuts or heavier entries diminished habitat suitability for several decades, and the Service thus is unable to verify its accuracy.

Comment: One commenter indicated that the Bureau of Land Management found 10 pairs of spotted owls in a drainage that is a highly fragmented stand of timber of all age classes with most of the remaining timber second growth Douglas-fir, 80–150 years old. Of these 10 pairs, four successfully reproduced in 1989. One commenter stated that since there are no 2,000-acre tracts of old growth to support the birds, how can they survive in this area?

Service response: The estimate of 2,000 acres per pair of northern spotted owls was used to establish the Spotted Owl Habitat Area network on Forest Service Lands. The intent was not to state that precisely 2,000 acres of old growth was needed before owls could be expected to survive and reproduce. Clearly, there exists variability in the requirements of individual owls, as well as of owls in different physiographic provinces. For example, median home range size varies from 1,411 acres in the Klamath Province to 9,930 acres in the Olympic Peninsula (Thomas *et al.* 1990). While the Service accepts that 4 to 10 pairs successfully bred in areas containing some young growth Douglas-fir, it cautions against the inference that without a 2,000 acre block of old growth owls are not expected to be present. Clearly some owls can live successfully in areas containing <2,000 acres of old-growth forest while others require more than 2,000 acres. Moreover, although highly fragmented, the stand referred to in the commenter's letter contained timber of all age classes, with most of it being young-growth Douglas-fir 80 to 150 years old. It is anticipated that Douglas-fir of that age class would have developed structural characteristics commonly associated with northern spotted owl habitat. Hence, the use of such an area by owls would not be unexpected.

Comment: The Forest Service commented that no reproductive pairs in Region 6 were found in what was considered unsuitable spotted owl habitat; however, seven owls were located in what was deemed unsuitable habitat in seven random sample areas. In six of these cases, the responses were single birds, one of which eventually paired with a bird in suitable habitat. The seventh response was a pair located above what was believed to be the elevational limit for the spotted owl in that area.

Service response: Observation of individual birds in habitat considered "unsuitable" is not unexpected in territorial birds. Such birds are likely "floaters" searching for mates and/or territories.

Comment: One commenter included results of a study by Miller, Speich, and Irwin (1989) on the status of the owl in a managed forest mosaic in the McKenzie Resource Area, Eugene Bureau of Land Management District. These researchers did not observe that the birds foraged more in old growth, but did note that use of 120–139 year old stands was greater than expected on the basis of availability. In this study, trees 80–99, 60–79, and 40–59 years old were used in proportion to their availability, whereas trees 0–19 and 20–39 years old were used less than expected. The study was too brief to provide detailed data on owl reproductive success, although the author noted that little reproduction has been observed during the last three years in this area.

Service response: The Service accepts the comments.

Comment: A radio telemetry study of spotted owls was conducted between 1982 and 1987 on the Olympic, Okanogan, Gifford Pinchot, and Mt. Baker-Snoqualmie National Forests (Hays *et al.*, 1989b). Researchers found that old growth, large saw timber (dominant trees 20–34 in dbh, fewer canopy layers and less dead woody material), and small saw timber (dominant trees 13–20 in dbh, little or no dead woody material) were the only cover types used more than expected by availability by any of the 10 owls studied. Use of small saw timber was variable. There was no significant preference for young growth and recent clearcuts.

Service response: The Service accepts the comments.

Comment: The Bureau of Land Management stated that the number of known sites on Bureau of Land Management land increased from 350 to 461 from 1988 to 1989, largely as the result of an increased survey effort. Further, the Bureau of Land Management commented, "Clarification is required to correct the misconception that most of these new sites are being found in all forest successional stages, including even-aged young stands. The new sites located on Bureau of Land Management lands in western Oregon have been found to be strongly associated with optimum habitat (suitable) 80 year-old or greater forests that have the similar structural components of older forests."

Service response: The Service accepts these comments.

Comment: The Bureau of Land Management commented that its banding studies revealed that a pair of owls may remain in a drainage following a timber sale, but banding often demonstrates that it is a new pair of non-breeding adults. The unmated floaters seem to be numerous, especially in less suitable habitat. The Bureau of Land Management reported that some pairs raised young in habitat that was generally thought to be unsuitable because of partial cutting or low quantities of nearby old growth or mature trees. However, the sample size was said to be too small to generalize as to what proportion of time this occurred.

Service response: The Service accepts the comments.

Comment: A researcher reported on results of a recent study on owl habitat use in the Willamette National Forest in the central Oregon Cascades (Miller and Meslow 1989). All owls used old growth for roosting more than expected on the basis of availability: mature growth stands were used in proportion to availability, and younger growth was either not used or was used significantly less than predicted on the basis of its availability. While foraging, 13 of 14 owls used old growth significantly more than on the basis of proportion of availability, and one used it in proportion to availability; mature growth was used in proportion to its presence, but in several cases at a significantly higher rate. Younger growth was used significantly less than would be predicted on the basis of availability. Some of these areas had up to 69 percent young growth, defined as trees 10 to 79 years of age.

Service response: The Service accepts the comments.

Comment: Results of a nest and roost site selection study in northwest California during 1985–1989 were submitted by Blakesley et al. (1990b). Conifer forest with trees greater than 53.3 cm was selected by owls significantly more than expected based on availability. Hardwood stands and stands dominated by smaller trees were not used or were used in proportion to their availability. Spotted owls preferred the lower third of slopes, used the middle third in proportion to availability, and avoided the upper third for roosting and nesting.

Service response: The Service accepts the comments from Blakesley *et al.* (1990b).

Comment: The Timber Association of California submitted additional comments which were received by the Service on April 19, 1990, shortly after the close of the last comment period. In its letter, the Timber Association of California described what it considers to be suitable nesting, foraging, and roosting habitat for spotted owls in northern California. According to the Timber Association of California, for example, nesting habitat generally includes an average canopy closure around the nest stand of over 80 percent, total conifer and hardwood basal areas within nest stands generally average 330 square feet/acre, and diameter of the nest tree is usually 25–55 inches dbh. Also according to the Timber Association of California, attributes to roosting habitat appear similar to those of nesting habitat, but are more flexible; for instance, canopy closures are usually more than 40 percent and the surrounding area can have a variable canopy closure ranging from 19–100 percent. According to this comment letter, in total basal area of conifers and hardwoods, roost stands average 330 square feet/acre. The Timber Association of California commented that the requirements for foraging habitat seem to be the most variable with canopy closures as low as 10 percent appearing usual and that foraging habitat variability over the area seems to be important.

Service response: The Service accepts the comments from the Timber Association of California about nesting and roosting habitat, but disagrees with the statement by the Timber Association of California that foraging habitat is the most variable of the age classes studied. The Service maintains that data from Kerns (1989 a, b) are insufficient in scope to allow for a statistically rigorous evaluation of habitat use versus availability and rejects as premature his conclusions that northern spotted owls are flexible with respect to habitat use (USDI 1990). The Timber Association of California also maintains that Appendix B to its comments (Timber Association of California 1989b) documents a broader range of habitats used for foraging than had previously been indicated. The Service believes this to be incorrect because Appendix B deals with habitat type descriptions and roosting and nest site descriptions, not foraging habitat. Available range-wide studies of foraging owls clearly demonstrate that owls select old-growth forest for foraging (USDI 1990). The Service therefore does not accept the comment that northern spotted owls in California are highly flexible in the selection of habitat for foraging.

Use of Young Growth

Comment: A number of commenters stated that spotted owls adapt and reproduce in second growth. Another said that it was proven that spotted owls nest anywhere and cannot differentiate between old growth and second growth. One commenter noted that in a study undertaken in northern California by the Pacific Lumber Company, the vegetation components where owls were found comprised 22 percent of true old growth. According to this commenter, the remaining 78 percent of vegetation used by owls may contain some of the characteristics of old growth. Young growth in many of these stands was 60–80 years old, and managed timberlands on the Pacific Lumber Company land that are not true old growth by age are being used by the spotted owl (Kerns 1988; 1989 a, b). One commenter stated that results from studies conducted under the auspices of the Timber Association of California broaden existing young-growth owl data. Further, the commenter maintained that several reports cited in the Status Review Supplement actually show substantial use of young growth by owls (Solis 1983; Forsman 1976; 1986, Irwin et al. 1988, 1989d; Kerns 1988; Meslow et al, 1986). Additional details pertaining to recent studies of the northern spotted owl in young growth are provided in a following section entitled "New Information."

Service response: The Service accepts that northern spotted owls may reproduce in second growth. However, care must be exercised when using phrases like "second growth" and in concluding that owls have adapted to "second growth." This care is necessary primarily because most forests within the owl's range are to some degree young growth. Historically, a variety of natural and man-induced factors have altered forest composition and created a

mixture of older-aged and younger-aged stands. The preponderance of data indicate that northern spotted owls preferentially select old-growth forest for foraging and roosting and have in general higher densities in areas containing high amounts of old-growth forests (USDI 1990). If the owls were equally "adapted" to both "second" and "old" growth, then distribution and use patterns would indicate equivalent usage rather than the strong association with old-growth forests documented in the Status Review (USDI 1990).

Although the Service does not claim to understand the behavioral mechanisms by which northern spotted owls differentiate between old and second growth, the fact that 68 of 81 owls having a mixture of old, mature, young, and pole/sapling forest in their home range selected for old-growth forest (USDI 1990) suggests some form of discrimination by owls is occurring. Fifty-eight of 79 nests of northern spotted owls in northern California found by Blakesley *et al.* (1990b) were in forest defined as large sawtimber and old growth, while 21 of 79 were found in forest defined as small sawtimber. No nests were found in seedlings and saplings or pole timber. Although there appears to be some variability in nest site characteristics, nests are generally found in stands having a well-developed multi-layered canopy (USDI 1990). The Service does not accept the comment that owls can nest anywhere or that they cannot differentiate between old and young forest.

The Service accepts the comment that 22 percent and 78 percent of the lands surveyed by the Pacific Lumber Company and found to support owls in California were true old growth and stands containing attributes of old growth, respectively, but again notes that data from Kern's (1989 a, b) study are insufficient to analyze use patterns in a statistically rigorous manner. The Service further notes that the "young growth" on these lands is mostly redwood in coastal California, and that even though defined as "young growth" by Kerns (1988; 1989 a, b), is not characteristic of younger forests in other regions. As noted by Kerns (1988), redwood stands 60 to 80 years of age have many of the characteristics of mature and old Douglas-fir forests. Thus the age categories presented may be accurate for redwoods, but it would be incorrect to extrapolate these age classes to other forest types like Douglas-fir.

The Service contends that structure rather than age *per se* is the more important criterion. As mentioned previously, data from the Timber Association of California and other California studies indicate that owls are associated with structurally diverse habitat (USDI 1990). While these structural characteristics may arise because of repeated harvest entries (interior California) or better growing conditions (e.g., coastal redwoods), they occur in forests structurally similar to mature and old-growth forests. Thus, the Service believes that rather than apply the term "young" to California private forest lands, it is appropriate to examine structural characteristics to define owl habitat.

Comment: One commenter suggested that without surveying young-growth forest, one cannot assume the spotted owl prefers old growth. Numerous commenters maintained that because spotted owl research has been concentrated in old growth, the data are biased in favor of locating owls in old growth.

Service response: In the proposal and the Status Review Supplement (USDI 1989), the Service considered and included results of research studies that surveyed forests of all age classes. Bart and Forsman (1990) estimated the abundance of spotted owls in tracts lacking old-growth forest but containing extensive 50 to 80 year-old stands ("young-growth tracts") and tracts containing large amounts of old-growth forest ("old-growth tracts"). The tracts were well-distributed throughout the range and each had been surveyed 3 or more times for at least one year. Young-growth tracts varied in size from 5 to 277 mile^2 and old-growth tracts from 17 to 113 mile^2. Single owls were found on only two of the young growth tracts for a maximum estimate of 0.02 owl per mile^2. Pairs were rare or absent in these tracts, occurring on only 2 sites, for a maximum estimate of 0.01 pair per mile^2. In contrast, maximum abundance in old-growth tracts was 0.19 per mile^2 for single birds and 0.36 per mile^2 for pairs. Mean number of pairs per square mile was 0.01 on young-growth tracts and 0.14 on old-growth tracts. These data are not biased against younger forest and clearly demonstrate that northern spotted owls are found in old-growth forest in far greater numbers than in younger forest.

Abundance of owls on young growth on private lands in California has been described by Irwin *et al.* (1989b). Their review included surveys of 713 mile^2 of land, most of which was in stands <100 years of age. Most of the stands in the redwood zone were former clearcuts. The other surveys were primarily in selectively cut stands. The estimated density for the study area was 0.35 owls per mile^2.

In Washington, Irwin *et al.* (1989d), surveyed approximately 277 mile^2, of which 52 percent was stands 40 to 80 years of age, and found only two pairs (one in the only large block of old growth on their study area) and an average of 4 single owls per year during their 1-year study. Estimated abundances from these data are 0.006 pair per mile^2 and 0.03 single per mile^2.

New data received during the comment period greatly expands the coverage of younger-aged forests (e.g., Bart and Forsman 1990, Timber Association of California 1989b). When coupled with studies reviewed in the Status Review Supplement (USDI 1989), the studies cover a broad spectrum of habitat types, including young growth. The Service therefore considers young-growth surveys to be adequate in coverage and does not accept the comment.

Comment: According to one party, data were misinterpreted for some young-growth surveys. Another comment was that surveys by Forsman *et al.* (1977, 1986, 1988) were too brief and did not include a sufficiently broad range of forest age classes to rule out the presence of spotted owls in young forest. One commenter said that the Status Review Supplement misinterpreted the study by Meslow *et al.* (1986) in that only three of five sites were evaluated. The commenter stated that the use values only ranged from 22–33 percent compared to the 3–6 percent availability of old growth. Also, the Status Review Supplement, in the commenter's opinion, failed to note that the nests for three of these sites were in old growth, so one would expect the owl to tend to be found in this area more frequently. According to this commenter, because this study showed owls used young growth 67 to 78 percent of the time, it cannot be concluded that owls use old growth a significant part of the time. This commenter further maintained that the utilization of young growth contradicts the impression elsewhere in the Status Review Supplement that data show that spotted owls use primarily old growth out of proportion to its availability.

Service response: Although work by Forsman *et al.* (1977) covered a relatively short duration, from 12 to 28 July, later surveys by Forsman (1988) lasted from 31 March to 21 July. Missing from the surveys were stands 70 to 110 years of age although stands with younger-aged trees were relatively well covered. The Service does not believe

data were misinterpreted in some young-growth surveys. Since then, work by Bart and Forsman (1990) evaluated density values from areas having stands 50 to 80 years of age. Density of pairs in these areas was approximately 1 per 300 mi^2. In contrast, density of pairs in areas having older forest was approximately 40 times greater., Although information on owls in younger forests may have been limited in the Status Review Supplement, information since then clearly demonstrates that northern spotted owls are not present in large numbers in young forests, with the possible exception of coastal California redwood forests (USDI 1990). The Service also believes that a wide range of age classes has been covered in sufficient detail to justify the conclusion.

Studies of habitat selection by northern spotted owls have been accomplished mainly through radio-telemetry studies. Proper analysis of the data requires an assessment of the availability of forest types in an area as well as some quantification of use of the area. Simply stating the amount of time a forest type was used without assessing the availability of that forest type does not provide a basis for judging preferential use of habitat types. In the Meslow *et al.* (1986) study, use of old-growth forest by owls ranged from 22 percent to 33 percent, even though old-growth forest comprised only 3 percent to 6 percent of the landscape. This means use in relation to availability of this forest type was greater and conversely, that use of young forest was less, than expected. Young forest, although used by owls 67 percent to 78 percent of the time, comprised 94 percent to 97 percent of the landscape. The Service considers the information that 3 of 5 nest sites were located in old growth and that the owls used these areas to be an indication that northern spotted owls select for old-growth forest. Biased use estimates would occur only if sample locations were consistently taken when the birds were at the nest rather than when the birds were away from the nest. Study protocol precluded this. The Service disagrees with the statement that utilization of young growth contradicts data elsewhere, and maintains that data such as these support the position that owls select for old-growth forest.

Comment: Several commenters stated that the Status Review Supplement does not adequately discuss other studies in younger growth forests. For example, maintaining that the Status Review Supplement dismisses the importance of the findings of Irwin (1987) and Kerns (1988) who found owls using young-growth forest by stating that these sites had old-growth characteristics. One commenter wrote that the Status Review Supplement failed to discuss the 29 nest sites in young growth that were less than 80 years old, five of which were in stands that averaged 257 years old (Irwin *et al.* 1989c). Another commenter said that seven of the 1988 surveys contradict the Status Review Supplements' assumptions regarding the northern spotted owl. For example, stating that Ganey (1988) reports that the Mexican spotted owl requires larger home ranges when there is more old growth and Roberts *et al.* (1988) report high numbers of California spotted owls in Yosemite National Park. The commenter maintained that relatively high numbers of owls were found in Yakima Indian Reservation lands (letter from C. Palmer of the Yakima Indian Nation to B. Mulder, FWS, 1989). These two reports, according to the commenter, contradict a statement in the proposed rule that National Parks and Indian lands generally do not contribute significantly to spotted owl populations. According to this commenter, the reports by Ganey (1988), Roberts *et al.*, (1988), Miller (1989), Gutierrez and Call (1988), Irwin (1989), and Kerns (1988) contradict either the assumption in the Status Review Supplement that young growth is not suitable habitat or the assumption that habitat fragmentation arising from timber harvesting is detrimental to juvenile survival.

Service response: In the Service's opinion, the proposal and 1989 Status Review Supplement adequately addressed the use of younger forest based upon the data that were available at that time. The 1990 Status Review contains an extensive review of the abundance and productivity of northern spotted owls in young stands, including a review of Irwin (1987) and Kerns (1988). In Washington and Oregon, surveys have repeatedly shown that owls are rare or absent in stands less than 80 years old (see Discussion under Factor A). In Irwin's (1989a) study, 53 nest sites were examined, and nest tree age varied from 67 to 700 years. Many of the stands had been logged in the past several decades, using selective harvest methods, rather than clearcutting. As discussed under Factor A, it is well established that northern spotted owls sometimes persist in areas harvested by selective cutting methods. Survey work in 1988 on the Yakima Indian Reservation noted 10 individual owls (including 4 pairs), a relatively small component of the overall population estimate. The Service maintains that when compared to the numbers and amount of suitable habitat on Forest Service and Bureau of Land Management land, the contribution from National Parks and Indian land is relatively small. Miller (1989) is discussed in the Status Review Supplement. As discussed above, the Service disagrees with the commenter who stated that 7 of the 1988 surveys contradict the Status Review Supplement assumptions regarding the northern spotted owl. The reports by Ganey (1988), Roberts *et al.* (1988), and Gutierrez and Call (1988) do not refer to the northern spotted owl but rather the California spotted owl or Mexican spotted owl, different subspecies. The stands studied by Irwin (1989a) and Kerns (1988) had been selectively harvested, contained remnant older trees, or were older than currently anticipated rotation ages. The study by Miller (1989) pertained to owl abundance and reproductive success in areas partially covered by older forest. The 1990 Status Review shows clearly that abundance and productivity decline sharply as the proportion of young forest in an area increases (see Discussion under Factor A).

Comment: One commenter suggested that the proposal be revised because the statement "no known reproductive pairs in second growth" now needs to be amended. The commenter noted the following: 11 sites on Bureau of Land Management land in western Oregon had owls breeding with no old growth in the habitat; seven other pairs bred in sites with less than 100 acres of old growth which amounted to less than 10 percent of the home range; 30 other sites on Bureau of Land Management land where birds bred in forests with 75 percent young, managed forest; two successful breeding sites on the Rogue River National Forest in relatively young managed forests; two dozen sites where birds were reproducing in mixed-age managed forests in the Wenatchee National Forest. The commenter noted that although many of the owl sites contain some relatively large-diameter trees, they cannot be described accurately as old growth or, on the other hand, as second growth.

Service response: The Service accepts the comment that owls have been observed breeding in second growth. The final rule reflects the available data on owl reproduction in younger growth. The Service agrees that owls have been observed to breed in younger forests and notes that many of the owl sites referred to by the commenter contained relatively large trees. The Service also accepts that it would be inaccurate to

describe these stands as either old growth or as young growth.

Comment: According to one commenter, recent data from northern California (Irwin *et al.*, 1989b; Kerns 1989 a, b; Pious 1989) indicate that owls recolonized regenerating forest, some as young as 30 years postharvest in coastal redwood. A commenter stated that ostensibly some harvested tracts that maintained relatively dense (>40 percent) canopies of coniferous timber and hardwoods still retained or developed important structural components (scattered large trees and snags, downed logs, multi-layered conditions) that have allowed for recolonization after 30–50 years. He continued by stating that spotted owls may be present, in part, because timber management practices left a hardwood understory in conifer stands. He speculated that these hardwood stands provide a cooler operative thermal condition than open-canopy situations and are, therefore, more conducive to owl use. The commenter noted that mature stands of Douglas-fir with no hardwood understory are not used. One commenter stated that forests within the mixed-coniferous/evergreen hardwoods and coastal redwood regions in northern California produce suitable habitat within 50–60 years (perhaps earlier in redwood). This commenter maintains that limited evidence from field observations would indicate that the same may be true in mixed-coniferous forest on the east side of the Cascades in Washington because of the relatively high number of owls consistently breeding in forests managed via partial harvests.

Service response: The Service agrees in general with this comment, but cautions that use of the lower limit of the age range (i.e., 30 years post harvest) as an indicator of when habitat may be recolonized by northern spotted owls may not be correct. More confidence could be placed in a mean value. The Service also notes that these forests frequently had remnant older trees that they did not arise as a consequence of large-scale clearcuts, and that the estimate of 30 years is for coastal redwoods only and cannot be extrapolated to other tree species or regions.

Comment: A researcher commented that in a monitoring study of Miller Mountain funded by the Medford District of the Bureau of Land Management, he and his colleagues examined owl use in areas with limited old growth, but relatively large amounts of diverse young forest and previously partially cut stands. They found a crude density of 0.246 adult and subadult owl per square kilometer in one area, and 0.263 in a second (Wagner and Meslow 1989). This compares to 0.197 owl per square kilometer for the central western Cascades of Oregon (Miller and Meslow 1988) and 0.229 owl per square kilometer in northwestern California (Franklin and Gutierrez 1988). During 1989 in the vicinity of Medford, the mean number of young fledged/successful pair was 1.47 and the number of young fledged per pair was 0.437 (n=64) (Wagner and Meslow 1989).

Service response: The Service accepts this comment.

Comment: One commenter believed the Status Review Supplement applied the Fretwell-Lucas-Rosenzweig theory of habitat distribution in birds incorrectly because all the references pertained to passerines (songbirds). Also, according to this commenter, the Fretwell-Lucas concept predicts that average individual fitness may well be equal across a gradient of suitability because density-dependent interactions will reduce average fitness of individuals in the best habitat where populations may be more dense. Hence, the commenter maintains that northern California data collected in 1989 could be interpreted as establishing that managed forests are equally as suitable as is old growth, because densities were high and reproductive rates also appeared to be high.

Service response: The Service does not believe that the discussion in the Status Review Supplement pertaining to the Fretwell-Lucas theory of habitat distribution is invalidated simply because the examples presented were of passerines. The Service notes the other points raised in this comment, but considers them conjecture only.

Is Young Growth As Good As Old Growth for Spotted Owls?

Comment: According to one commenter, as suitable habitat diminishes, ecological density will increase in the short term, even if the population size remains stable, because the individuals will be occupying less habitat; therefore, ecological density is a poor measure of population change over a short sampling period.

Service response: The Service accepts the comment as being in general agreement with existing ecological theory and pertinent to research on the owl.

Comment: Irwin *et al.* (1989d) found a rate of 0.05 response/mile in 40–120-year old forest in southwestern Washington. Sixty percent of the surveyed tract consisted of trees less than 60 years old. The commenter noted that this contrasts with a rate of 0.08 response/mile that Forsman *et al.* (1977) found in surveying the largest and oldest stands. Irwin *et al.* (1989a) found 53 nest sites, all of which were in young growth and many in 70–80-year-old stands. Five were in stands 40 years old. According to this commenter, the Status Review Supplement misrepresented the results of the Irwin *et al.* (1989c) study. He noted that Irwin *et al.*, found that owl responses per mile in younger growth were approximately one-third of that of adjacent old-growth habitat, but 82 percent of his forested area was less than 60 years of age and had a low survey effort. Also, Irwin reported that he did not sample 1,500 miles as mentioned in the Status Review Supplement because some routes were covered 2–3 times, so the actual transect length was less; however, he did not provide a corrected survey length.

Service response: The Service believes that the best way to compare owl abundance is to calculate number detected/mi^2 rather than number detected per linear mile, and Irwin *et al.* (1989d) used the former approach in their final analysis of these data. Irwin *et al.* (1989d) detected 0.01 owl/mi^2 and 0.002 pair/mi^2. They detected one pair in one year in stands less than 80 years old. In the study by Forsman *et al.* (1977) old-growth stands occurred in small, isolated patches, which the authors hypothesized were probably too small to provide suitable habitat. In contrast, for surveys elsewhere in this region on sites where >60 percent of the area was older forest, the average number of pairs/mi^2 was >0.10. Examination of all currently available evidence thus shows that spotted owl abundance in southwestern Washington is much lower in young forests than in older forests. In the Service's opinion it is incorrect to characterize the stands studied by Irwin *et al.* (1989a) as 40–80 years old because they had been selectively harvested, and therefore contained trees of various ages. The nest sites, for example, were in trees varying from 67 to 700 years old.

Comment: One commenter cited relative owl density figures of 0.12 response/survey mile in young growth vs. 0.18 response/mile in old growth (Garcia 1979) to indicate that there is not much difference in densities of owl occurrence between the young- and old-growth stands.

Service response: Garcia (1979) surveyed only 11 km of transect in young forest. Since that time, many more studies, in which much larger areas were surveyed, have been carried out. The results (see discussion under Factor A) indicate clearly that northern

spotted owls are far more abundant in older forest than in stands less than 80 years old.

Comment: One comment provided density figures for stands ranging from 30–80-year-old managed second growth with no old growth to lands with substantial old growth and some fragmentation. On the youngest stands, densities ranged from 0.14 owl/sq. km. to 0.38 owl/sq. km. Areas with some fragmentation but substantial old growth ranged in density from 0.064 owl/sq. km. (Olympic Peninsula) to 0.235 owl/sq. km. on the Willow Creek Study Area in northern California.

Service response: These younger stands were either in the redwood zone and contained both remnant older trees and some stands up to 100 years old or they were in the interior of California and included stands that had been selectively harvested. The Service acknowledges that such stands often do support populations of northern spotted owls. These stands, however, occur on less than 15 percent of the range of the northern spotted owl (see discussion under Factor A). Throughout the rest of the range, even-age harvest methods predominate and the rotation age is expected to be less than 80 years on most areas. There is now abundant evidence that owls are rare or absent in such stands (see discussion under Factor A).

Comment: One commenter noted that about half of the 27 pairs he and his colleagues found in relatively young managed forests in northern California had access to a few trees in small patches of older forests (about 2–3 percent of the sites) (Irwin *et al.* 1989b). Further, this researcher stated that numerous fledgling owls in extensive old growth were observed to have been killed in a severe storm on Memorial Day 1989. Because their surveys started late, it is possible that the number of owls that bred may have been higher, according to this researcher.

Service response: The Service accepts the factual content of this comment, but notes that the speculation that more owls may have bred, is conjecture.

Comment: The Timber Association of California study (1989b) found densities of 0.37 owls/sq. mile or 0.14 owls/sq. kilometer in managed young-growth in northern California. Irwin et al. (1989b) note that these estimates for northern California surveys of private lands are similar to population densities reported in Willow Creek in the Six Rivers National Forest by Franklin and his coworkers (1986, 1987, 1988). Franklin et al. reported densities of 0.32 owls/sq. mile for territories and 0.56 owls/sq. mile for individuals. Industry's preliminary findings on studies over 920,000 acres (360,000 ha) in northern California in second growth noted that the number of fledglings appeared to be greater in second growth of all types than in old growth. One commenter stated that spotted owls were living and reproducing by the 100's if not 1,000's in managed forests.

Service response: The Service accepts the data presented by the Timber Association of California and Irwin *et al.* (1989b).

The assertion that 100's if not 1,000's of owls are living and reproducing in managed forests is essentially correct if managed forests are defined as all forest in the range of the owl. The Service has recognized that approximately 2,000 pairs of owls have been verified throughout the range of the owl (USDI 1990). On nonreserved forest lands available for timber harvest, however, the Service estimates there exist about 1,400 pairs. Whether this estimate represents "1,000's" of owls is a subjective determination, and as such the Service does not accept the comment. Instead, the Service presents the estimate of the number of owls on lands managed for timber production.

Comment: The Timber Association of California submitted comments that its data indicate that timber harvesting in northern California under current regulation and practice does not diminish overall spotted owl density or viability. The Timber Association of California believes that an owl will successfully incorporate substantial clearcut areas into its home range and reconfigure its home range as needed, even relocating its nesting area following timber harvest. Also, according to the Timber Association of California, owls may successfully live in managed forests subject to any combination of silvicultural prescriptions, including those resulting in extensive fragmentation. In the Timber Association of California studies, it was concluded that the limiting characteristics to nesting and roosting habitat are tree size—at least 30 to 40 feet in height, canopy closure—greater than 50 percent, and proximity to water and foraging habitat including appropriate perch sites and prey base.

Service response: Assertions that owls may successfully live in any combination of silvicultural prescription, including those that result in extensive fragmentation, that they will reconfigure their home range and relocate nesting areas, and that harvest practices under current law in northern California do not diminish owl density or viability, remain untested and represent speculation on the part of the Timber Association of California. The Service has reviewed current regulations and policies pertaining to private, State, and Federal land and concludes they are inadequate to provide sufficient protection to the northern spotted owl's habitat (see Factor D in the Summary of Factors Affecting the Species section). The Service does not accept this comment.

Although the Timber Association of California concludes that the limiting factors for owl habitat are trees 30 to 40 feet in height, canopy closure >50 percent and proximity to both water and foraging habitat, these merely represent the lower limits to observed ranges. Mean age of trees in known and presumed nest stands evaluated by the Timber Association of California (1989a: appendix b, Part 2) ranged from 45 to 60 years in coastal redwood and redwood/Douglas-fir stands and 45 to 80 years in interior California stands dominated by Douglas-fir. Canopy closure was 80 percent to 90 percent and 70 percent to 80 percent, respectively. Two hardwood stands containing nests had mean tree ages of 40 to 65 years and canopy closure of 80 percent. Mean age and canopy closure of coastal redwood stands associated with nests in Mendocino County were similar to those reported by the Timber Association of California (44 to >150 years of age; canopy coverages 73 percent to 91 percent) (Timber Association of California 1989b: appendix b, Part 2).

Over 90 percent of the roosts examined by Forsman *et al.* (1984) were in old-growth forest. Studies from the Six Rivers National Forest, California (Klamath province), also indicate that owls roost in habitat containing both an over- and understory component (Solis 1983, Sisco and Gutierrez 1984). Overstory there was dominated by Douglas-fir >45 inches dbh and the understory by hardwoods such as tanoak (*Lithocarpus densiflorus*) 4 to 20 inches dbh and 15 to 70 years of age. Mean estimated canopy closure for summer roosts was 87 percent. Additional estimates of canopy closure recorded at northern California roost sites in Douglas-fir habitat ranged from 40 percent to 90 percent (Gould 1975, Cordano and Cordano 1981). Information on habitat attributes of an additional 18 roost sites located on private timber lands in California was supplied by the Timber Association of California (1989b: appendix B, part 2). Overstory canopy closure ranged from 55 percent to 90 percent and 75 percent to 90 percent in sites predominated by Douglas-fir and hardwoods, respectively. Because these values are substantially in excess of those listed in

the comment, the Service rejects the specific values of the commenter.

Comment: One commenter stated that survey data indicate that commercial thinning as well as either selective or group harvesting methods are compatible with owls in at least some areas such as the eastside of the Washington Cascades, southwestern Oregon, and northern California. Further, he stated that population data suggest that some level of disturbance may be beneficial to owls. He noted further that during a Forest Service briefing on April 5, 1990, Dr. Barry Noon stated that if elevational effects are statistically removed, there was more chance of finding a spotted owl pair in general managed forest than within current reserved areas (Wilderness Areas, National Parks, etc.). The commenter also stated that all existing data indicate that road building is not detrimental to the owl or its habitat.

Service response: The Service agrees that some silvicultural practices may be compatible with owls, such as those that would enhance habitat suitability at younger stand ages, but also notes that no data exist to support this conclusion. A variety of silvicultural treatments must be assessed before definitive statements can be made on this subject (see Thomas *et al.* 1990).

The Service does not accept the comment that work by B. Noon can be used to support the assertion that disturbance is beneficial to northern spotted owls. One variable in the analysis referred to was status of land classified as reserved (i.e., mostly higher elevation wilderness areas) or nonreserved (i.e., lower elevation forest managed for timber). Densities of owls were greater on the nonreserved than reserved lands, but not because the nonreserved lands are subject to "disturbance" factors. Rather, the nonreserved lands, by virtue of their being lower in elevation, are more productive timber sites and provide more favorable owl habitat. Thus, the likelihood of owl presence is not a consequence of disturbance but rather of the fact that, once elevational effects are removed, nonreserved lands are more productive forest.

The Service agrees that effects of roads on northern spotted owls are unknown.

Comment: One commenter stated that the Status Review Supplement did not include results of the Gutierrez and Call (1988) report on the California spotted owl that found no significant differences between the number of California spotted owls in old growth and in second growth. The commenter continued that Wagner and Meslow (1988) found spotted owl densities comparable to old growth in highly fragmented forests with substantial second growth.

Service response: Work by Gutierrez and Call (1988) was considered in preparing the Status Review Supplement. In addition, the Service notes that Gutierrez and Call's work was on the California subspecies, not the subspecies proposed for listing.

Wagner (letter of 16 April 1990) disputes the assertion that his study site could be considered as highly fragmented. The Service therefore does not accept the comment that spotted owl densities in highly fragmented forests with second growth are comparable to densities in old growth.

Comment: A commenter stated that current intensive timber management particularly by clearcut, has not been effective in maintaining spotted owl habitat features. She continued that current intensive management in the general forest involves short timber rotations which preclude development of multi-canopy layering that is vitally important to spotted owls. According to the commenter, it is therefore not reasonable to equate mature natural fire stands that have been studied to intensively managed second growth, which has not been studied in terms of capability to support reproductive owls.

Service response: The Service accepts this comment.

Comment: One commenter cited a definition (Pulliam 1988) of population sinks as local areas where mortality exceeds reproduction, but where the population persists because of immigration. One commenter feels that the Status Review Supplement implies that young growth represents a population sink, with lower densities, depressed reproduction, and an increase in home range size. The commenter believed this statement is incorrect with respect to the Klamath Province. One commenter expressed the opinion that the Service does not recognize the "packing phenomenon" and that if the Service embraces the packing theory, then the data used to assess habitat suitability and comparisons of habitat quality will need to be reevaluated.

Service response: Population "sinks" represent local areas where mortality exceeds reproduction (after Pulliam 1988). Although the commenter maintains that the characterization of young-growth forest as a sink is incorrect, he presents no evidence to substantiate his assertion. The Service maintains, as it did in the Status Review Supplement, that the implication that young growth serves as a population sink represents an hypothesis only. The commenter provided no data or other information to support his belief that young growth in the Klamath Province does not act as a population sink.

The Service has never stated that is does not recognize the concept of "packing" and does not accept the comment that recognition of this concept would require wholesale re-evaluating of its habitat evaluations. Mobile animals have the capability to move from disturbed habitats to less disturbed habitats. Packing can be considered a temporary increase in local density of individuals (in less disturbed patches). Such local increases are not indicators of healthy populations and can, in fact, be misleading if considered as positive indicators (Van Horne 1983).

Comment: One researcher stated that current second-growth owl studies are at least four to six years away from demonstrating the existence of a self-sustaining population, and that birds occupying second-growth areas have fitness or survivorship equal to that of populations found in comparable geographic areas with old growth habitat. He suggests that studies document quantified habitat structure, tree species composition in the overstory and understory, age of dominant trees, habitat quantity by seral stage, and logging method or salvage prescription that resulted in the stand to assess conditions of second growth.

Service response: The Service accepts this comment in general, and notes that extensive research is being conducted by a variety of State, Federal, and private organizations. However, the Service notes that sufficient data are available to make a decision on the status of the owl.

Comment: One conservation organization responded that reports of owls in second growth are inconsequential. These commenters maintained that second growth areas that support owls are mostly coastal redwood retaining snags, coarse woody debris, and other structural features, and are extremely productive in that trees are able to grow rapidly and therefore attain some of the attributes of old growth at a much younger age than do Douglas-fir forests in Washington and Oregon. Hence, the commenters stated, this represents a special case with little relevance to other areas. Further, these commenters indicated that different silvicultural practices may permit a faster return to suitability, but that all practices result in a loss of habitat for some period of time.

Service response: The Service agrees that the conditions arising in coastal California redwoods are specific to that

region only, and that extrapolation of the results elsewhere in the range of the northern spotted owl would be improper. The role of silvicultural practices in "creating" suitable habitat for northern spotted owls remains uncertain and requires further research (Thomas *et al.* 1990: appendix T).

Is Old Growth Preferred Habitat?

Comment: One commenter responded that in the Status Review Supplement, it was assumed that a direct loss of owls was correlated with loss of old growth, and that only growth provides suitable habitat. According to the commenter, even though 90 percent of the presently known spotted owl sites in Oregon contained a major component of old growth forest, the Service cannot demonstrate that owls depend on old growth because surveys in young growth may have been minimal. The commenter maintained that only six surveys cited in the Status Review Supplement looked at younger growth (Meslow *et al.* (1986), Forsman *et al.* (1977, 1986), Irwin *et al.* (1988), and Kerns (1988)): of these, only Irwin tried to compare owl sites between old and young growth. As indicated by the commenter, as of early 1989, only two studies were designed to find owls specifically in young growth (Kerns 1988 and Irwin *et al.*, 1989d).

Service response: In the Status Review Supplement the Service reviewed all available studies on the use of young and older forests by northern spotted owls. The Service did not assert that only old growth provided suitable habitat but that surveys of spotted owls had demonstrated a clear association of spotted owl with mature and old-growth forests. In the 1990 Status Review (USDI 1990), the Service further examined the use of forest stands of various ages by spotted owls. Various studies (Forsman *et al.* 1977, Wickham 1981, Postovit 1977, Forsman 1986, Irwin *et al.* 1989d, Bart and Forsman 1990), have shown conclusively that throughout most of their range, northern spotted owls are absent or rare in stands younger than approximately 80 years of age. Irwin *et al.* (1989d) surveyed young-growth stands (<80 years) in southwestern Washington detected only 1 pair of spotted owls in a survey of 277 square miles of young growth. Bart and Forsman (1990) investigated the abundance of northern spotted owls throughout their range in areas containing extensive 50 to 80-year old stands but little older forest. They found that the density of pairs was about 40 times higher in nearby areas that had substantial areas of older forest. The Service concludes from the available biological data that northern spotted owls require large tracts of land containing significant acreage of old-growth and mature forest to satisfy their life history requirements (i.e., foraging, breeding) and that stands less than 80 years old seldom provide habitat for spotted owls (USDI) 1990).

Comment: In one person's opinion, the Status Review Supplement only reports limited portions of study results to support the conclusion that the spotted owl prefers old growth. The commenter further stated that although many of these studies may show some owls utilizing old growth in greater proportion than its availability, owls also use other habitat types. In the commenter's view, this coupled with a bias for surveying predominately old growth, results in misinterpretation of the study results, such as occurred with Meslow et al. (1986) and Solis (1983). For example, mature/old growth comprised 63 percent of the area within the home range, but was used 74.4 percent of the time by the owls (Solis 1983). The commenter concluded that although owl use in old growth was greater than expected based on the availability of old growth, these data cannot be considered significant.

Service response: The Service agrees that northern spotted owls do use habitat types other than old growth within a home range. The evidence, however, clearly demonstrates that owls having old growth forest in their home ranges select for it (USDI 1990). The Service rejects the comment that such habitat use studies are biased against other forest types. Within a home range, owls typically have a variety of forest types (e.g., old and mature forest comprised approximately <40 percent of the habitat in studied home ranges, USDI 1990: table 2.1) available for foraging, roosting, and other activities. Owls typically select against other habitat types, particularly pole/sapling and young forests. Clearly, since owls have access to these forest types in their home ranges, the statement of bias cannot be supported. In the example provided, availability of the old-growth forest type was 63 percent of the area and 74 percent of the owl observations were in this forest type. Using widely accepted statistical tests, such as the X^2 test (Neu *et al.* 1974), it was demonstrated that there was a significant difference between availability and use. All owls studied by Solis (1983, table 5) demonstrated selection for mature/old growth forest. Data from surveys on both old and young forest also demonstrate that owl densities are lower on younger forests (USDI 1990). With the addition of data obtained during the recent comment period, the Service believes there has been adequate coverage of the spectrum of forest types ranging from young to old. The Service rejects the comment that data such as these cannot be considered significant.

Comment: In one commenter's view, if floristic instead of age class descriptions of the habitat are used, the owl may be shown to use a different kind of habitat than what has been identified. Another commenter responded that population performance has not been evaluated across the full range of variability in structure and vegetation composition within the available environment. The commenter further stated that there is no quantified description of specific factors that constitute the niche requirement, or basic determinants, upon which the owls depend for survival and reproduction.

Service response: Floristic descriptions typically refer to species composition, and the Service agrees that different habitat types may be shown to be important if floristic rather than age class descriptions were used to define owl habitat. However, the Service contends that structural, not floristic characteristics, are more important to northern spotted owls. For example, owls use stands dominated by both redwood and Douglas-fir that contain structural characteristics similar to old-growth forest. Clearly, floristic definitions of these habitat types would differ.

Descriptions of stands based on structural characteristics generally agree with age class, particularly where clearcut harvest prescriptions have been used. In some areas (for example, in California), past harvest practices, such as allowing natural regeneration, retention of residual trees and selective harvests, have tended to mimic the structural conditions found elsewhere. Whether structural characteristics or age descriptions are used, owls are still associated with structurally diverse forest types. The Service recognizes that much of the confusion about age class stems from the application of age-related classifications developed in one region (e.g., Douglas-fir forests in the Oregon Cascades) to another region (e.g., redwood forests in California). For example, stands classified as "young" growth by Kerns (1989 *a*, b) and used to conclude that owls select for young growth can be reclassified as "old" or "mature" forest based on structural characteristics (USDI 1990). The Service maintains that structural rather than age classifications provide a better description of owl habitat.

The Service agrees that population performance has not been evaluated across the entire range of the northern spotted owl. To assess the population performance of the owl across the entire spectrum of vegetation variability would require an elaborate experimental scheme of enormous magnitude. The Service does not accept the inference that such data across the entire range of the owl are required prior to reaching a decision about the proposed rulemaking. Further, the Service rejects the comment that habitat features have not been quantified (see USDI 1990).

Comment: The Forest Service commented that recent Forest Service research has found more evidence that suitable spotted owl habitat is found in old growth.

Service response: The Service accepts this comment from the Forest Service.

Are Spotted Owls Dependent on Old Growth?

Comment: Several commenters noted that the **Federal Register** proposal concluded that old growth is required for survival of the owl based on several assumptions: 1. Owl density is lower in younger forests, and therefore owls are less abundant; 2. Reduction in old growth by timber harvesting will fragment habitat and increase home range size; 3. Prey is less plentiful in young forests; and 4. Spotted owls have been extirpated from private land. The commenters stated that pre-existing and new data contradict these assumptions, and that owls are almost as dense in young forests as in old growth. Further, they maintained that fragmentation does not appear to be detrimental, that home range size is not correlated with the amount of old-growth habitat, and that prey abundance is equal in young and old-growth forests.

Service response: The Status Review Supplement (USDI 1989) summarized information on abundance of owls in relation to stand age as presented by Forsman *et al.* (1977), Postovit (1977), and Forsman (1988), all of whom reported that owls were seldom found in forests <80 years old. Since then, analysis of owl abundance in younger and older forests clearly demonstrates that owl densities are substantially lower in younger forest, with the possible exception of some private lands in California (USDI 1990). These lands, however, have had markedly different harvest histories than the vast majority of public lands and have retained the structural characteristics of old-growth forest in some areas. Therefore, with the exception noted above, the Service rejects the comment that owl densities are as high on younger-aged as on older-aged forest.

Effects of fragmentation considered by the Service to adversely affect northern spotted owls included direct elimination of key roosting, nesting, or foraging stands, potential increases in predation or competition risk, and the possible reduction of interactions between individuals (USDI 1989). All of these factors led the Service to conclude that fragmentation effects would be detrimental (USDI 1989). Since then, Meyer *et al.* (1990) have initiated a study examining fragmentation effects on northern spotted owls by comparing random sites on the landscape against those occupied by owls. Although results are still preliminary, sites occupied have significantly less fragmentation than randomly selected sites, suggesting that owls are less frequent in fragmented areas. Further analysis of the data is planned, but the authors "doubt that the large differences associated with old-growth habitat between random owl sites and random landscape locations will change considerably as a result of the additional data or the use of alternate statistical procedures" (Meyer *et al.* 1990). The Service therefore does not accept the comment that fragmentation does not appear to be detrimental.

The large size of home ranges in the Olympic Peninsula were assumed to reflect the adverse influence of fragmentation (USDI 1989). Although median percent acres of old-growth and mature forest within a home range varied from 25 percent in the Oregon Coast Range to 74 percent in the Klamath Province (USDI 1990), the assumption that these large ranges are a consequence of fragmentation has not been documented by the Service. Nonetheless, these data clearly indicate that northern spotted owls require large tracts of land containing significant amounts of old-growth and mature forest.

The Service never stated that prey abundance was lower in younger than older forests. Data presented in the Status Review Supplement (USDI 1989:2.7–2.8) quite clearly stated that although evidence regarding prey abundance was limited, prey abundances were similar in old and young forest stands. The Service therefore does not accept this comment.

Comment: Another comment stated that although the Status Review Supplement carefully avoids stating that the northern spotted owl depends on old growth, the proposed rule concludes that old growth is essential to the spotted owl's long-term survival, and assumes that preference indicates dependence. According to the commenter, the Status Review Supplement avoided the term dependence and emphasized "preference" and "association" and offered little, if any, factual support for its assertion that old growth is necessary for the owl's survival. The commenters maintain that there is no showing that a preference for a single type of habitat evidences biological needs.

Service response: The Service agrees that no study has yet demonstrated true strict dependence on old-growth forest by spotted owls. Demonstration of dependence would require an elaborate experiment designed to specifically address the question. However, the overwhelming evidence is that owls are strongly associated with old-growth forest and not with young forest, and the evidence is strong enough for the Service to conclude that old-growth forest or forests with old growth structural characteristics are essential for northern spotted owls. Evidence indicating selection for older forest types and limited numbers of pairs of owls in young forests all indicate a strong association of northern spotted owls with older forest types (USDI 1990). Further, landscapes having large expanses of younger-aged forest have fewer owls and lower measures of productivity relative to landscapes with large portions of older forest. The Service contends that strong association demonstrates biological needs, particularly in the absence of significant numbers of owls in young forests throughout the range of the northern spotted owl.

Comment: One commenter cited testimony from a deposition of a state fish and game biologist (Gordon Gould, November 16, 1989 as cited in Oregon Lands Coalition, letter of December 19, 1989) that in a clearcut prescription for most redwood forest habitats in California, a site will be suitable for foraging by the owl within 30–60 years and roosting and nesting within 50–70 years. The commenter then asked how the Service can conclude that old growth is essential to the spotted owl's survival especially when the Service acknowledges that the spotted owl is not dependent on old growth? Numerous individuals said that knowledgeable experts believe that the owl does not select for old growth, just structural characteristics present in old growth and in other forest habitats. One commenter maintained that this issue must be resolved before the listing decision is made. Another commenter stated that because no one knows the

exact habitat characteristics selected by the spotted owl, there is significant scientific dispute and the proposal should be withdrawn.

Service response: Redwood forests are influenced by coastal conditions in California and are high growth sites. Strict age comparisons with old-growth forests further north which are mostly Douglas-fir, are therefore incorrect. As noted by Kerns (1988), redwood forests assume many of the characteristics of "old growth" at a younger age, presumably because of the influence of coastal conditions. The Service also notes that many of the age classes defined as young by Kerns (1989 a, b) could easily be reclassified as old or mature forest based on structural attributes (USDI 1990). These structural characteristics, while possibly arising at younger ages in redwoods, do not occur in Douglas-fir and hemlock-cedar forests until stands are >100 years of age. The data clearly indicate that owls are associated with structural attributes that occur in older-aged Douglas-fir and hemlock-cedar forests (i.e., typical "old growth") and possibly in younger-aged redwood forests (USDI 1990). The Service therefore contends that old growth or forests with old growth characteristics are essential to northern spotted owls.

The Service agrees that structural characteristics like those present in old growth forests are most important to northern spotted owls.

The Service disagrees with the contention that a serious scientific dispute exists and contends that habitat attributes selected by owls are well documented (USDI 1990). In the Service's opinion ample scientific data exist on which to base a decision on the proposal to list the northern spotted owl.

Comment: Several stated that the Status Review Supplement misuses Ruggiero *et al.* (1988) because the Status Review Supplement assumes that old growth remained basically static. A number of commenters wrote that the Status Review Supplement is factually incorrect because change is characteristic of the Pacific Northwest. One commenter cited Teensma (1987) who showed that prior to arrival of Europeans, fires resulted in a rotational age of 78 years for the central western Cascades and, thereafter, rotational age was increased to 587 years (as cited in Irwin 1989b). The commenter feels that the Status Review Supplement ignores this by asserting that natural perturbations within old-growth forests have been small and localized. Several commenters maintain that to apply Ruggiero's *et al.* (1988) theory requires studying the full range of habitats over the long-term to determine habitat preferences and this has not been done for the owl.

Service response: The Service acknowledges that the proposal did not place enough emphasis on the importance of natural perturbation such as fire in determining the overall forest landscape. The final rule acknowledges the significance of natural perturbations. However, timber harvesting results in a net decline over time in old-growth forest rather than a relatively constant amount that simply shifts across the landscape as might be expected in the case of natural disturbances considered over an extended period of time. Hence, the conclusion that historically the amount of old-growth forest may have been fairly constant is not unreasonable. The Service recognizes, however, that these statements represent conjecture.

Large-scale perturbations, such as the Mt. St. Helens eruption in 1980, the Tillamook burn in 1933, and the Cowlitz fire circa 1800 (Martin *et al.* 1974), do occur. However, the Service still contends that most natural perturbation would generally have been small and localized relative to the entire Pacific Northwest. Irwin (1989) cited Teensma (1987) as calculating a rotational age of 78 years in central western Cascades of Oregon. In contrast, Martin *et al.* (1976: table 2) estimated fire frequencies of 50 to 400 years and >150 years for western Cascade Douglas-fir and hemlock forests, respectively. They further recognized that there exist a wide variety of factors influencing forest types and hence fire frequency, and implied that fire frequency should be expressed as a broad spectrum rather than a specific average value. Thus, while the Service accepts the fire rotation value of 78 years cited by Irwin *et al.*, it also recognizes that variability in fire frequency as noted by Martin *et al.* casts doubt on the use of a single average value as a meaningful estimate of fire rotation time.

Franklin *et al.* (1988) also examined the scale of 14 major fire events in Mt. Rainier National Park from 1230 to 1703 and estimated that these fires burned from 8 percent to 47 percent (median of 24 percent) of the park's reconstructed forested area. Fire rotation in the park was estimated at 465 years (Hemstrom and Franklin 1982). Given that these represent major fires events, it is not unreasonable to conclude that the impact of most other, non-major natural perturbations would be smaller. Moreover, since the arrival of European man, the most common disturbance in Pacific Northwest forests is clearcutting, a disturbance regime whose impact differs markedly from wildfire (Franklin 1988).

The Service agrees that further study is required before Ruggiero *et al.*'s hypothesis can be validated for most species, not just northern spotted owls. However, the Service contends that overwhelming evidence exists that owls are strongly associated with forests having old growth structural characteristics and not with young forest lacking those characteristics (USDI 1990), and that the evidence is strong enough for the Service to conclude that forest with old-growth forest characteristics is essential for northern spotted owls. The Service does not accept the comment that data across the entire range of the northern spotted owl is required before reaching a decision on the proposed rulemaking.

Comment: According to one commenter, Ruggiero *el al.* is not persuasive because it does not discuss a number of scientific articles one would anticipate to be included in an in-depth review of ecological dependency and population persistence. The commenter maintained that Ruggiero *et al.*'s concept of ecological dependency does not account for cases where an important habitat is used less often than predicted by availability because the animal does not have to be there often to acquire a resource critical for survival.

Service response: The Service quoted Ruggiero *et al.* (1988) as stating "It is *likely* * * * that habitat preferences are indicative of the long-term needs of a species * * *," not that preference is equated with strict true dependency. The Service contends that Ruggiero *et al.*'s statement constitutes an hypothesis that remains largely untested. Questions about the adequacy of the literature base in Ruggiero *et al.*'s paper or its failure to account for all possible uses of habitat merely reflect opinion and as such are considered by the Service to represent opinion. Much like the conclusion that Ruggiero *et al.*'s concept of ecological dependency remains a largely untested hypothesis for northern spotted owls, the hypothesis that important habitat features could be used less often than predicted by availability is a largely untested hypothesis.

Comment: Before the Service adopts Ruggiero *et al.*'s theory of habitat association as the equivalent of ecological dependence, one commenter stated that it must, under the Endangered Species Act, determine whether the three subspecies are only ecotypes adapted to different climates and geographic regions (Smith 1989). In this commenter's view, the absence of variation between northern and

California spotted owls supports the ecotype theory (Smith 1989).

Service response: The Service accepts the decision of the American Ornithologists' Union that the northern spotted owl is a recognized subspecies (N. Johnson, letter of 12 December 1989) and rejects the comment.

Comment: The Forest Service commented that its recent research reiterates the importance of old growth in physiographic provinces where research is most complete (Oregon Coast Range, western Oregon Cascades). For example, Carey *et al.* (1990) restated the importance of old growth in this region; the proportion of home ranges in old growth explained 64 percent of the variance in the minimum convex polygon home range size, using regression analysis. The Forest Service concludes that these results provided strong evidence that spotted owls depend on old growth in the western hemlock zone in Oregon.

Service response: The Service accepts the comment from the Forest Service.

Issue 16. Habitat Trends

Definition of Old Growth

Comment: A number of commenters questioned the definition of old-growth forest—how old is old growth? Several commenters asked how it can be argued that only ten percent of the critical habitat is left when there is no agreement on a definition of old growth or how and when it was measured.

Service response: The Service recognizes that there exist numerous definitions of what constitutes old growth. In general, old-growth forest is characterized by a multi-layered canopy, dense tree canopy closure and the presence of dead and down material. Ages used to characterize old-growth vary as well, although age in excess of 200 years is generally agreed on (e.g., Forsman *et al.* 1984, Carey *et al.* 1990). Tree diameter at breast height has also been used in some instances (e.g., Allen *et al.* 1989, Hays *et al.* 1989b). Northern spotted owls, however, do not select habitat based on its age *per se.* Instead, owls likely select for structural characteristics that are correlated with older trees in some instances (e.g., Douglas-fir and Hemlock/cedar forests) and with younger trees in others (e.g., coastal California redwood forest). The Service believes it is more appropriate to emphasize structure instead of age. Hence, use of the term old-growth refers to the structural characteristics important to owls, not tree age *per se.*

Historical Amount

Comment: Several commenters noted that there is no widely accepted estimate of the amount of historical old-growth forest in the Pacific Northwest. They stated further that the assumption of 17.5 million acres in the Status Review Supplement is unsubstantiated and discounts the role of fire. Several commenters argued that the Service does not have the data to construct the historical quantity of old growth and concludes such an estimate is a guess, especially considering the impacts of natura disasters.

Service response: The Service agrees that estimating historical amounts of old growth is difficult. The estimate in the Status Review Supplement was based on published reports, which are cited in the Status Review Supplement. The Service did estimate the decline in amount of suitable habitat on lands managed for timber production by Region 6 of the Forest Service. In making its estimate, the Service assumed that approximately 70 percent of this land provided suitable habitat for northern spotted owls prior to widespread timber harvest. The basis for this estimate is explained in Factor A, and it was developed in consultation with staff of Region 6, Forest Service. The Service does not discount the role of natural perturbations such as fire, windstorms, volcanic eruptions, etc.

While it is true that the precise amount of old growth originally present in the Pacific Northwest is impossible to determine, the Service accepts the estimate of about 17.5 million acres provided by the Forest Service (USDA 1989) and accepted by ISC (Thomas *et al.* 1990). This figure does factor in the probable fraction of forest land in young stages due to fire, volcanism, storms, and other natural events. It is quite clear that old growth has been severely reduced due to harvest, and that there is considerably less than what was originally present.

Comment: A conservation organization quoted Norse (1989) regarding the amount of historical old growth; estimates range from 78.5 percent (27 million acres) (Brown and Curtis 1985) to 90 percent of western Washington and 90 percent of western Oregon (Harris 1984) as being old-growth forests. The commenter felt that these estimates seem high and allowed for an overestimate of 20 percent, resulting in an estimate of 19 million acres of old growth before settlement.

Service response: Because of the difficulties of determining the amount of original old growth in the Pacific Northwest, it is not surprising that estimates differ. The Service accepts the Forest Service estimate of 17.5 million acres (see above comment).

Current and Future Habitat Trends, Amount of Old Growth Remaining

Comment: Another commenter noted that the Forest Service's estimate of 6 million acres of old growth remaining west of the Cascade Range in Oregon and Washington is too high and that a more realistic estimate is about 3 million acres. When The Wilderness Society analyzed six National Forests, it found the amount of old growth to be about 45 percent of that estimated by the Forest Service. Hence, The Wilderness Society calculated that 1.1 million acres of suitable habitat remained on these six national forests. Further, the Society stated that had its estimate of available suitable habitat been used in the viability analysis presented in the Forest Service SEIS, a much lower probability for survival would have been predicted under the preferred alternative F. When one considers that a substantial proportion of the remaining old growth is adjacent to roads or clearcuts, the amount of viable old growth may be less than one-third of that estimated by the Forest Service, according to one view. One commenter reported that a recent survey of the Willamette National Forest by the Forest Service found that the actual old growth was 36 percent less than what was presented in the draft forest plan.

Service response: The Forest Service currently (USDA 1989) estimates that about 4.2 million acres of habitat suitable for the spotted owl is found in its lands in Oregon and Washington. This includes old growth and mature forest that has structural characteristics similar to that of old growth. The Wilderness Society (Morrison 1988) used a more restrictive criterion for old growth. The Service accepts the Wilderness Society figures that 1.1 million acres of old growth exists on the six forests he studied (Mt. Baker-Snoqualmie, Olympic, Gifford Pinchot, Mt. Hood, Willamette, and Siskiyou); the Forest Service estimates that there are 2.6 million acres suitable for spotted owls (about 44 percent of which is old growth by Morrison's criteria in these 6 forests). The Service accepts the Forest Service acreage figures as suitable for owls because spotted owls do, in fact, use mature forests.

Morrison points out that 52 percent of old growth forest occurs in areas modified by roads and clear cuts, and thus fragmented to varying degrees. Owls are adversely affected by fragmentation, responding to a

decreasing percentage of suitable habitat with decreasing density (USDI 1990). An unknown fraction of suitable habitat may, in fact, be incapable of supporting any owls because it is so highly fragmented (USDI 1990). Because the impacts of fragmentation were not adequately considered, the FSEIS (USDA 1988) estimate of spotted owl viability was probably too high.

In the draft forest plan, the Forest Service estimated that the Willamette National Forest contains 639,000 acres of mature and old growth habitat and later revised the estimate to 636,600 acres (USDA 1989). However, updated estimates suggest 552,920 acres of suitable habitat remains, a decline of just under 9 percent. Because old growth and mature forests are being logged, these acreage figures will continue to decline. The Service has found no evidence that Forest Service estimates of the amount of remaining old growth are 36 percent less than presented in the draft forest plan.

Comment: The Forest Service's Regional Forester, Region 6, estimates that there are 6.23 million acres of old growth in Oregon and Washington, of which approximately 2.97 million acres are available for timber harvesting. One commenter cited Norse (1989), who estimated that only 13 percent of old growth acreage present in the Pacific Northwest prior to European settlement remains.

Service response: The Service has calculated that there are about 5.84 million acres of habitat suitable for spotted owls (mature plus old growth) in Washington and Oregon, of which about 3.59 million acres (61 percent) is available for timber harvesting. This does not include some State, tribal, or private lands with habitat available for harvest; estimates are small. About 17.5 million acres of old growth was present in the Pacific Northwest at the time of settlement. About 6.79 million acres of mature and old growth forest is currently estimated. According to Morrison (1988), somewhat less than half of suitable owl habitat meets his old growth definition. Spotted owls now inhabit some coastal redwood stands that were cleared at the end of the 19th century. However, the occupied stands show many of the characteristics of old growth, which develop far more rapidly in redwoods growing under the high-site conditions in coastal northern California than do other tree species elsewhere within the range of the spotted owl. It is incorrect to assume growing conditions in the redwoods, which comprise about 7 percent of the owl's range, apply elsewhere. Spotted owls thrive primarily in those areas on public lands (especially the National Forests) that have been little-modified by timber management. Their density decreases as the percentage of suitable habitat in the landscape declines (USDI 1990). With the possible exception of the coastal redwood zone and some forests that have been selectively harvested, there is no evidence that spotted owls thrive on private land that has been harvested. Only 38 of 906 known reproductive pairs have been located on private land, only two of them in Washington and Oregon (Thomas *et al.* 1990)

Comment: Several commenters stated that because spotted owls are now known to be living on land cleared at the turn of the century, spotted owl habitat lost during clearcutting develops into suitable habitat more quickly than previously believed. These individuals stated that spotted owls thrive within national forests and private forested lands and are abundant in second growth. A commenter said that the status review is notably deficient in its forecasts of future timber harvesting trends (see graph on 2.19 of status review). He had heard that the Forest Service, the Bureau of Land Management, and industry say they need 25 more years before they enter second growth. Hence, by his calculations there are still 25 more years of old growth on non-reserved lands plus 2.7 million acres in reserved lands (74 percent of what is now present). Another said there are 6.2 million acres of old growth in the Pacific Northwest, plus an additional 943,000 acres of old growth in national parks within Oregon and Washington, and 403,000 acres owned by the Bureau of Land Management for a total of 7.3 million acres. Of this amount, the commenter stated that 2 million acres are preserved and cannot be harvested and asked how it can be said that we are on the verge of cutting the last old growth.

Service response: The Service acknowledges that there are spotted owls living in regenerated forest in the redwood zone and some interior areas of northern California that were clearcut at the turn of the century. However, as described under Factor A, some of these areas contained residual old growth. Because of favorable site conditions, stands in the redwood zone apparently grow more rapidly than in the rest of the range and achieve the old growth structural attributes that are characteristic of spotted owl habitat at an earlier age.

Private timber companies are currently harvesting second growth timber. Also, the Siuslaw National Forest anticipates that 74 percent of its annual harvest over the next 10 years will consist of trees 60 to 80 years old. The Forest Service plans to harvest about 40,000 acres of old growth per year (1 percent of its supply); this represents a decline in the harvest rate of about 20,000 acres/year. The Bureau of Land Management its currently harvesting 3 percent of its old growth/year, and anticipates running out of old growth in 12 years on the Eugene District, 14 years on the Salem District, and 17 years on the Coos Bay District. Therefore, the Service does not agree that a 25-year supply of old growth remains available for harvesting.

The Service agrees that there are about 2.7 million acres of suitable habitat in reserved lands (National Parks, Wilderness Areas, Research Natural Areas, etc.). The Service calculates that there are about 6.796 million acres of suitable owl habitat remaining in all ownerships in the Pacific Northwest; this includes 5.06 million acres held by the Forest Service, .878 million by the Bureau of Land Management, and .570 million by the National Park Service. However, this does not include State, tribal, or private land. Anticipated harvest schedules will continue to result in a decline in spotted owl numbers.

Comment: The Wildlife Society stated that the 1989 surveys on the Olympic Peninsula showed an increased loss of critical habitat in the Cedar River watershed, Interstate 90 Corridor, Clearwater block on the Peninsula, Columbia River Gorge area, southwestern Washington, and many other areas. Further, The Wilderness Society stated that it had examined the amount of old growth now available and concluded that the northern spotted owl has lost over 80 percent of its preferred habitat. The Society cites Morrison's (1989) estimates that suitable habitat consists of 1,153,000 acres, including 816,000 acres of optimum habitat: this is compared to 2,714,000 acres of habitat that is referenced as being available in the Forest Service SEIS.

Service response: The Service accepts that there has been a continuing decline in suitable habitat throughout the range of the spotted owl, and calculates that about 6.79 million acres of suitable habitat remains (39 percent of what was present at settlement). Morrison (1988) excludes mature forest (which is used by spotted owls) from his calculations of suitable owl habitat (old growth), yet mature (>100 years old in Region 6) forest is used by spotted owls. Recent Service calculations (USDI 1990) show that there are 4.2 million acres of

suitable habitat on Forest Service land in Region 6 (not 2.7 million), of which 1.5 million is reserved or unsuited for harvest.

Comment: One commenter who owns over three million acres in second growth in Oregon and Washington provided data on the number of acres of habitat that would be present in 60–120, 130–240, and >250 year old stands in the future.

Service response: The Service has considered the information presented.

Comment: Simpson Timber Company argued that owls return to regenerating forest after 30 years. Simpson noted that it takes perhaps 10–20 years to harvest substantially one drainage. Since this company is on a 60 year rotation, it stated that for 40 out of every 60 years, each drainage will have owls and that at any one time about 50 percent of Simpson's 380,000 acres in California will support owls. Given that if it takes 10 years to harvest a drainage, Simpson stated that 20 years after the logging operation is completed, at least some of the regenerating stand will be 30 years old and will provide suitable owl habitat.

Service response: The Service cautions that use of the lower limit of the age range (i.e., 30 years post harvest) as an indicator of when habitat may be recolonized by northern spotted owls may not be correct. More confidence would be placed in a mean value. The Service also notes that these forests had remnant older trees, that they did not arise as a consequence of large-scale clearcuts, and that the estimate of 30 years is for coastal redwoods only and cannot be extrapolated to other tree species or regions. Hence, in regard to current logging practices, the Service believes it would be premature to conclude that for 40 years of a 60-year rotation schedule, suitable habitat for owls will be present throughout all stands >30 years of age.

Comment: One commenter said that evidence indicates there are several million acres of land currently 30–60 years of age that is available for spotted owls. Further, the commenter stated that existing inventory data indicate the presence of 4.4 million acres in pole timber stands, 11.6 million acres in small saw timber (11–21 dbh), and 4.1 million acres in large saw timber.

Service response: With the possible exception of coastal California redwood forest, the evidence clearly indicates that forest 30 to 60 years of age is selected against by nesting, roosting and foraging northern spotted owls, and that few owls exist in landscapes containing large amounts of forest 30 to 60 years of age (USDI 1990). The Service does not accept the comment that all commercial forests 30 to 60 years of age can be considered available for northern spotted owls.

The Service has considered the comment regarding the estimates of timber, but has no way to verify the amounts indicated or the exact condition or structural characteristics of the stands indicated. In the Service's opinion not all of this timber is considered suitable owl habitat.

Comment: One commenter asked how much young growth is on private lands today that will provide habitat over the next few decades; what percent of private timber lands will constantly be coming into or existing in a successional stage that will provide owl habitat; and how much land currently 30–60 years of age is available in the Pacific Northwest?

Service response: Although the figures requested by the commenter are unavailable, the Service has found that spotted owls do not occur in significant numbers or densities on lands under even-aged management (clearcuts), the principal method of timber harvest on about 95 percent of all forest land, private and public. Thus very little acreage in young growth today will reach an age suitable for owls because rotation ages will preclude the growth of young stands into habitat suitable for owls.

Comment: Several commenters argue that the Status Review Supplements' failure to consider future new forests is fatal to estimating future habitat trends. According to the commenter, the Status Review Supplement ignores young-growth forest acreage that may develop old-growth characteristics or conditions during the next 60 years, because conversion of younger habitat to mature was not expected to be significant unless current logging practices change. The Timber Association of California commented that it estimated that at least 1,137,999 acres of industrial California forest land is expected to produce owls. Another commenter referenced the State of California's "California's Forests and Rangelands: Growing Conflict Over Changing Uses" (1988) and stated that by the year 2010, the amount of tree volume in California will begin to increase by 50,000,000 mbf in 50 years from the regrowth of forests. The Timber Association of California estimated the number of acres of land subject to different management intensity and stated that it believes over 8,400,000 acres in California will be available for owl nesting within and for the foreseeable future, an amount "significantly larger than the Status Review Supplement would lead one to believe (over 8,400,000 acres vs. 963,000 acres (Status Review Supplement 2.25, Table 1))." Sierra Pacific Industries stated that it had used the Wildlife Habitat Relationships system of vegetation typing to estimate the amount of habitat that will be maintained and created on its land. According to the commenter, this system underestimated the amount of suitable owl habitat because its vegetation types are based on the size and density of overstory trees and generally neglects understory components. Further, Sierra Pacific retains 60,000 acres in watercourse protection zones (8.5 percent of its land base) and stated this is superior owl habitat. An additional 120,000 acres is unsuitable for timber production. Hence, Sierra Pacific commented that about 180,000 acres or more than 25 percent of its ownership is dedicated to non-timber management.

Service response: The Service agrees that forests systems are dynamic and that "new" forests arise through time. However, much of this new forest is harvested before it reaches the age it can be considered suitable habitat for owls. For example, current timber plans call for the harvest of most Douglas-fir forest at approximately 70 years of age, close to the age at which stands begin to be used by owls. Thus, conversion of young forest to mature is not expected to add significant amounts of habitat suitable for owls unless current logging practices change.

The Timber Association of California's submittal to the Service included estimates derived from Smith and Self (1989), who present a table entitled "Suitable Habitat Table" (page 24) for owls in California. It contains estimates for five categories of land, including industrial lands with a timber emphasis, non-industrial lands with a timber emphasis, non-timber emphasis lands, retained lands (i.e., incidental timber production), and preserved lands. Under each of the categories is an estimate of the amount of each land type (acres) multiplied by a proportion that, according to the Timber Association of California, represents the proportion of each land base that is available owl habitat (e.g., Preserved 1,723,985×.9). For example, the "lightly or never harvested" subcategory is multiplied by 20 percent. The Timber Association of California assumes that all lightly or never harvested land constitutes suitable owl habitat, even though this amount is defined as rock outcrops and landslide, land that clearly cannot be considered suitable owl habitat. Consequently, a land base multiplied by this figure overestimates owl habitat.

Similar concern can be expressed about the 90 percent multiplier used to estimate the amount of suitable habitat on retained and preserved lands. The 90 percent multiplier for preserved lands was created by recognizing that 10 percent of the land is unsuitable due to fire, disease and other natural disturbance (100 percent−10 percent=90 percent). Clearly not subtracted were the same geographic features mentioned under the industrial lands category. The Service contends that it is unreasonable to assume these features are present on industrial lands, but not present on preserved lands, and that they constitute suitable owl habitat. Therefore, the 90 percent estimate used to estimate the amount of suitable habitat in both preserved and retained lands is too high and results in an overestimation by the Timber Association of California of the amount of suitable habitat. The Service notes that the "regenerated but unharvested" subcategory is multiplied by 0.4, but the accompanying description provides no explanation as to how the 0.4 estimate was derived. In fact, no explanations were provided for any of the proportional estimates used. The Timber Association of California states that these resultant values are estimates of the amount of timber not being harvested at any one time (e.g., "When harvesting prescriptions other than clearcut are appropriate, vegetation after harvest is often suitable owl habitat" page 20) or of habitat "* * * considered unsuitable for harvest * * *" (page 21). Apparently the Timber Association of California is maintaining that all the resultant value (amount × proportion) in each category is suitable/potential habitat capable of providing the habitat attributes necessary to sustain viable populations of northern spotted owls. Moreover, many of these values are carried through all the calculations used to estimate available land, resulting in probable overestimations for every land category mentioned by the Timber Association of California. By letter dated February 21, 1990, the Service asked the Timber Association of California to provide clarification of this table including an explanation of how the figures were estimated. However, no response was received.

In evaluating this table, ISC (Thomas *et al.* 1990) notes for example the Timber Association of California calculated that at any given time 40 percent of the 1,750,767 acres of industrial timber land that has regenerated (700,307 acres) will be in stands old enough to provide suitable spotted owl habitat. However, in making its predictions, the Timber Association of California assumed that all such habitat is capable of supporting owls and used rotation ages for coastal areas of 50 to 60 years and inland areas of 80 to 90 years, whereby suitable habitat would become available in 25–30 years and 40–50 years post harvest in each area, respectively (Thomas *et al.* 1990). Although some habitat within these age-classes does support owls, the ISC believes that the Timber Association of California underestimated by about 50 percent the age at which habitats in these areas usually attain the attributes associated with spotted owl habitat (Thomas *et al.* 1990). Similarly, the ISC believes that the Timber Association of California has provided an optimistic prediction that 1,037,671 of 2,599,177 acres of timber-emphasis lands owned by small landowners will be suitable owl habitat at any given time (Thomas *et al.* 1990). The degree to which these lands will be subject to harvest will depend on the timber market which reflects the demand for lumber, changes in company ownership, impacts of corporate takeovers, and other market uncertainties.

The Service also notes that 103,100 acres of spotted owl habitat were estimated for reserved areas (parks, Wilderness Areas, or other protected ownership) in California by the ISC (Thomas *et al.* 1990). In contrast the Timber Association of California calculated there were 1,732,985 acres of preserved lands (parks, Wilderness Areas) in California of which 90 percent (1,559,686 acres) were predicted by the Timber Association of California to be suitable spotted owl habitat at any given time. The Service estimates there are 1,145,000 acres in Wilderness Areas in California of which 148,900 or 13 percent is estimated to be suitable spotted owl habitat (USDI 1990, USDA 1989). Hence, whereas the Timber Association of California predicted 1,559,686 acres of preserved lands would be available at all times as suitable spotted owl habitat, the Service estimates this figure to be 148,900 acres, and the ISC estimates it at 103,100 acres. Although data are not available to review every component of the Timber Association of California's suitable habitat table, it is the Service's opinion that the Timber Association of California's overall estimate of 8,408,531 acres of "expectable and owl habitat" in California at any given time is substantially overestimated. Given the lack of explanation for how the estimates were derived, the clear lack of any reasonable biological basis for some of the multipliers used to estimate suitable owl habitat, and what the Service contends is the resultant overestimation of the amount of suitable habitat in preserved lands, the Service rejects the specific figures of available habitat presented by the Timber Association of California.

Although the State of California's "California's forest and rangelands: growing conflict over changing uses" document states that the amount of tree volume will begin to increase by approximately the year 2010 (California Department of Forestry and Fire Protection 1988), the Service contends that current rates of loss of suitable owl habitat are such that the owl population is undergoing a rapid decline (USDI 1990).

The Service does accept the comment that the Wildlife Habitat Relationships (WHR) underestimated suitable owl habitat. Because the WHR system only identifies overstory trees, there is no way to determine whether an understory component is present or absent. Consequently, it is impossible to distinguish between lands having an understory and overstory component from lands having only an overstory. In this circumstance the WHR system will more likely overestimate suitable habitat by including all habitat having an overstory component.

Streamside protection zones are narrow strips, at most a few hundred feet wide, that are found along certain streams. Not every stream has a streamside protection zone. Although they cannot be clearcut, 50 percent of the canopy within the zone in California can be removed at each harvest entry. Sierra Pacific states these zones occupy 8.5 percent of its land base; however, owls make little use of areas with less than 20 percent older forest (USDI 1990). Hence, streamside protection zones do not provide a significant amount of suitable habitat for northern spotted owls. Given that owls demonstrate selection for forest having high canopy coverage for roosting, nesting and foraging purposes, it is unlikely that canopy coverage of 50 percent can be considered superior habitat. The Service does not accept the comment that streamside protection zones provide superior owl habitat.

Areas outside streamside protection zones and considered unsuitable for timber production are not necessarily suitable for owls. For example, many of these areas are too small, lack one or more of the structural characteristics of suitable owl habitat, or lack forest cover. Furthermore, as harvest techniques improve or timber prices rise,

areas once considered unsuitable for timber production may be reclassified and harvested. For these reasons, lands considered unsuitable for timber production cannot be relied upon to provide suitable habitat for northern spotted owls. The Service does not dispute the commenter's estimate that 25 percent of its land base is dedicated to non-timber management, only that not all of the noncommercial acreage can be considered suitable owl habitat.

Comment: The Timber Association of California submitted additional comments during the last comment period. The Timber Association of California reports using a growth and yield computer model to estimate the approximate time to grow timber to size classes and densities in which owls have been found roosting, nesting, and foraging. Based upon these models, the Timber Association of California suggests that the commercially managed regenerating tracts alone may provide all the attributes needed by owls. Further, that when combined with non-managed areas that contain "residual trees" such as riparian areas, the Timber Association of California believes that between 20–35 percent of the interior managed landscape in California will support these "residual tree" stands that maintain suitable spotted owl structural characteristics. The Timber Association of California stated that the previous studies used the age of "wild" rather than managed stands to predict the time required to attain structural characteristics attributed to suitable spotted owl habitat. In the Timber Association of California's opinion, by applying appropriate forestry techniques, stands with these attributes can be achieved in one-half to one-third the time that would be required for wild stands.

Service response: The Service notes that this comment is conjecture only. There is no evidence that commercially managed tracts alone will provide all the attributes required by spotted owls. Although studies on private land in California indicate that stands managed using uneven-aged methods often continue to support owl populations or support them at earlier ages than if the stands had been clearcut, it also is clear that stands less than 80 years of age seldom provide suitable habitat for northern spotted owl (USDI 1990). Further, northern spotted owls are rare or absent where less than 20 percent of the region is suitable habitat (USDI 1990). Most timber production land is managed using even-aged logging methods. Once stands more than 80 years old have been harvested it is improbable that these areas will support spotted owls (USDI 1990). Although clearly the stands less than 80 years of age in the redwood zone in California support spotted owls, such stands are expected to eventually fall into a 60–80 year, or possibly less, rotation schedule whereby they will attain the attributes of spotted owl habitat for a relatively brief period before they are harvested. Further, harvesting methods today in this zone are less likely to leave the remnant old growth as was done in the early 1990s. In fact, under current harvest management such large, remnant trees will not be present in future stands (USDI 1990). Further, analysis indicates that owl productivity per pair was lowest in areas with little older forest; hence, this suggests that even if some owls persist in these areas, it is probable that their productivity rate would be insufficient to maintain the population long-term (USDI 1990). The Service maintains that it is extremely unlikely given current and anticipated management strategies for commercial forest lands, that these lands will provide a significant amount of suitable northern spotted owl habitat. Moreover, the commenter provided no empirical evidence that modern forestry techniques are capable of regenerating spotted owl habitat in one-half to one-third the time required for wild stands to be reforested, although there is evidence that uneven-aged management may provide suitable habitat in younger stands.

Comment: One researcher stated that he was not aware of any owl populations that exist in young even-aged (<40 years) stands established by clearcuts, followed by site preparation and planting, and he hypothesizes that spotted owls depend on old growth. He maintained that if the predicted harvest trends are coupled with preferred clearcutting harvest methods and short rotation age, then the limited managed (i.e., second growth) conditions under which spotted owls now exist would be eliminated. He argued that if spotted owls are abundant and widespread in second growth, then spotted owl populations will be more heavily impacted in the future because a much larger proportion of the population will be unmanaged or unprotected. The commenter stated that for private land to make significant contributions would entail a change from clearcut to alternative harvesting methods, a change in appropriate silvicultural prescription, longer rotation time, and encouragement of hardwoods, in some forest types.

Service response: The Service accepts the comment that no populations apparently exist in young even-aged (<40 years) stands established by clearcuts and followed by site preparation and planting. The Service also contends that northern spotted owls clearly and consistently select old-growth forest or forest with old-growth characteristics (USDI 1990).

The Service maintains that northern spotted owl habitat will continue to decline if predicted harvest trends and current harvest methods continue. Forest systems are dynamic, and timber not considered suitable at one point in time may become suitable at another. However, current timber plans call for harvest of most Douglas-fir at approximately 70 years of age, close to the age at which stands begin to be used by owls. Moreover, the rate at which old-growth forest is declining due to harvest far exceeds the rate at which it is regenerating.

The Service accepts the comment that for private lands to make a significant contribution to the habitat base for northern spotted owls they would have to change some silviculture practices, but notes that several private landholders in California already practice some of these techniques.

Impacts From Natural Perturbations

Comment: A commenter stated that new forests are quite vulnerable to climatic shifts resulting in the loss of more habitat. Natural forest ecosystems in old growth are expected to show greater resistance to change and to recover more quickly from wildfire, storms, pest and pathogen disease than intensively managed forests.

Service response: The Service accepts the comment.

Comment: Massive natural disturbances (wind, fire, disease) are common in the Douglas-fir forests of the Northwest according to numerous commenters. That being the case, if these natural disturbances have not led to the extinction of the spotted owl, the commenters asked why will logging. In the view of several commenters, because uncontrolled natural disturbances of the past did not threaten the owl, modern timber harvesting which mimics natural disturbances in a controlled manner should not pose a threat.

Service response: The Service agrees that natural disturbances like fire are an integral component of coniferous forests in the Pacific Northwest. According to Franklin (1988), windthrow tends to accelerate succession towards climax species by eliminating larger trees and

leaving shade-tolerant seedlings and saplings untouched. Fire, in contrast, tends to favor the establishment of early successional species. However, impacts from clearcutting, the common current perturbation on Pacific Northwest forests, are not analogous to natural disturbance (Franklin 1988). Successional paths and nutrient cycling are disrupted by logging and subsequent replanting and other silvicultural practices (Franklin 1988). Other factors important to the proper functioning of a diverse ecosystem, such as nonarboreal plant species and snags and down logs, also are typically removed during logging. These factors distinguish logging from natural disturbances. Wildfire, in contrast, typically leaves individual trees and groups and stands of trees that enhance rapid revegetation and reestablishment of trees, even when the fire is extemely large (e.g., the Tillamook Burn) (Franklin 1988). In addition, timber damaged from windstorms and light intensity wildfire obviously was not salvaged until the arrival of European man and would have been left on the landscape. Current U.S. Forest Service practices call for the timber from natural perturbations like wildfire and windstorms to be salvaged as soon as possible for commercial interests. Clearly this does not mimic natural disturbance regimes, where the residuals from wildfire and windstorm would naturally recycle into the ecosystem. Pathogens can create significant disturbances in some situations but are not considered as important a disturbance factor in the Pacific Northwest as in other conifer forests (Franklin 1988). The Service contends that the assertion that current logging practices mimic natural disturbance patterns is unwarranted and the Service rejects the comment.

Comment: Fire intensity, severity, and duration were exacerbated by managed young-growth in the 1987 fires in California that burned thousands of acres of potential SOHA stands distributed throughout the landscape according to one researcher. He continued that these younger stands carried the fire to the crown of many old growth stands.

Service response: The Service accepts the comment.

Comment: One researcher stated that of 52 nest sites on the Wenatchee National Forest that he studied, 97 percent were influenced by fire in the last 40 years (Irwin *et al.* 1989a). The commenter cites Huff (1984) who notes that wildfire is considered important in the distribution of Pacific Coast conifers and without such fires (or other disturbances) to remove the canopy and duff layers, establishment of Douglas-fir would be severely restricted.

Service response: The Service accepts the comment that fire plays an important role in the Pacific Northwest but again notes that current logging practices do not mimic natural disturbances.

Issue 17. Fragmentation

Comment: Issues pertaining to the impacts of forest fragmentation on owl distribution and numbers were raised by various commenters. One asked if the increased home range of birds residing on the Olympic Peninsula relative to birds further south could be attributed to something other than habitat fragmentation. Another commenter suggested that fragmentation of habitat on the Olympic Peninsula may only be a contributing factor to the population decline and that a combination of factors, such as natural causes and being on the edge of the subspecies' range, may be responsible. Another asked if we are trying to maintain the spotted owl on the Olympic Peninsula in a portion of its range which may not be conducive to its survival.

Service responses: It is probable that the increased home range exhibited in the northern part of the northern spotted owl's range results from a combination of factors. Possibilities include a different or sparser prey base, harsher climatic conditions, and perhaps different vegetation composition or structure. There is no indication that any factor, other than amount of suitable habitat, has changed during the past few decades on the Olympic Peninsula. The Olympic Peninsula is within the owls' historic range. There is no reason for believing that populations there will not be viable if adequate habitat for them is available.

Comment: Several commenters argued that larger home range sizes in Washington and Oregon may be attributable to this being the periphery of the distribution of the owl, rather than reflecting any effects of fragmentation. In the view of these commenters, if home range size was directly correlated with poor quality habitat, then presumably home range in Oregon and Washington would be smaller because home ranges there contain a large proportion of old growth. Several commenters stated they believe that prey is equally abundant in young and old-growth forests and, therefore, the adverse effects from fragmentation are disproved. They argued that high densities of owls in fragmented private forest lands in California, coupled with successful reproduction, indicate that the concern for impacts of fragmentation is unwarranted. One commenter wrote that the issue needs to be further researched.

Service response: The Service agrees that the large home range size in Washington may be related to being near the edge of the subspecies' range. The relative abundance of different prey in old-growth and in different kinds of young-growth has not been studied well enough for clear patterns to emerge. Evidence does exist, however, that over all or most of the northern spotted owl's range, including public land in California, increasing fragmentation is associated with decreasing owl abundance (see discussion under Factor A). The Service agrees that the issue of prey abundance in different habitats warrants additional research.

Comment: Another commenter stated that the proposal failed to account for or address the implications of harvest unit size restrictions imposed by the National Forest Management Act on fragmentation of spotted owl habitat. Someone stated that the proposal ignores a study done on highly fragmented Bureau of Land Management land that shows some of the highest densities and best reproduction known for the spotted owl.

Service response: The National Forest Management Act sets upper limits on the size of clearcuts, but under current harvest schedules, most of the land will be maintained at ages too young to support owls (see discussion under Factor A or Issue 15). The Service agrees that some highly fragmented land managed by the Bureau of Land Management contained high numbers of northern spotted owls, but they were associated with the few remaining parcels of old-growth, and, as in other areas, numbers were higher in portions of the study area with the greatest amount of old-growth. The Service also accepts that densities in these areas may be examples of "packing."

Comment: Several parties assumed the position that no ill effects for the owl have been demonstrated to result from habitat fragmentation. These commenters argued that the Status Review Supplement implies that fragmentation is detrimental to the owl, yet predation and competition were not shown to increase because of fragmentation. According to several commenters, the impacts of fragmentation on home range and the importance of these impacts, if any, is unclear. Further, there is nothing detrimental per se to increased home range size. One commenter argued that because spotted owl hunting methods do

not involve long flight, home range size should not even be an issue. Another commenter argued that data in the States Review Supplement on home range contradicts the Status Review Supplements' assumption that an increase in home range size is related to fragmentation.

Service response: The discussion of Factor A shows clearly that owl densities in landscapes with little old growth are signficantly lower than those in less fragmented landscapes containing more contiguous old growth. The number of owls, number of pairs, and number of young produced per square mile all decline significantly as the level of fragmentation increases. The mechanism that leads to these declines is not known nor has it been demonstrated that fragmentation leads to increased home range size.

Comment: The Forest Service reports that results of recent research (Carey, in review) suggest that light fragmentation may increase the variety of prey available, but that this benefit is short-lived as the young seral stages grow into closed-canopy sapling-pole stands. One commenter noted that according to a recent study (Chavez-Leon 1989), owls within areas of highly fragmented spotted owl habitat in northwestern California may have lower fitness than owls in nearby more contiguous habitat.

Service response: The Service noted the cited studies with interest and anticipates that additional research on these points will be carried out.

Comment: One commenter stated that isolation is not demonstrated to result from fragmentation, at least not in California. Another commenter maintained that survival of the spotted owl is only dependent on two families being able to exchange members and breed: as there are many such families capable of interbreeding, the northern spotted owl is neither endangered nor threatened.

Service response: The Service agrees that slight isolation, caused by timber harvest or other factors, undoubtedly does not endanger a population. But if current trends in California and elsewhere continue, then large portions of the northern spotted owl's range will contain only widely separated patches of suitable habitat (see discussion in Factor A). Under these conditions successful dispersal and genetic exchange would be difficult or impossible. The Service maintains that survival of the spotted owl is predicated on the maintenance of sufficient suitable habitat to provide for long-term viability throughout the range. By maintaining well distributed owls, genetic exchange should be sufficient. The Service does not believe that the future success of the spotted owl is merely dependent on two owl families interbreeding.

Comment: Meyer *et al.* (1990) submitted a progress report on work assessing the influence of habitat fragmentation on spotted owl site selection, reproductive status or site occupancy for Bureau of Land Management lands in western Oregon. In the Coast Ranges and Klamath Provinces, the results indicated that considerably more old-growth habitat and larger average tree size in old-growth patches were found within random owls sites than within random landscape sites. Although the results are preliminary because not all data have been evaluated, the authors stated that they doubt these general preliminary findings will change with the incorporation of additional data into the analysis. One commenter stated that the Meyer *et al.* progress report suggests that once a pair of spotted owls has 500 acres of suitable habitat available, there is less of an effect of fragmentation of the remaining landscape on the pair's reproduction and behavior.

Service response: This commenter seems to imply that habitat outside the 500 acres surrounding an owl site is of little importance to northern spotted owls. The study by Meyer *et al.* (1990), however, does not lead to that conclusion. Meyer *et al.* (1990) found significant differences between randomly selected sites and both 0.8-km-radius circles centered on owl sites and 3.4-km-radius circles centered on owl sites. The differences were larger between the 0.8-km circles and random sites, but the larger circles were also significantly different from the random sites indicating that "site selection may also be influenced to at least some degree by habitat quality in an area at least as large as 3500 ha (8800 acres) * * *" (Meyer *et al.* 1990). The Service agrees with Meyer *et al.* (1990) that habitat in an areas of at least 8,800 acres around the owl site appears to be important to northern spotted owls. Meyer *et al.* (1990) reported that their analysis of reproduction showed similar trends to the site occupancy results; they did not study behavior.

Issue 18. Management Activities

Estimates of the Amount of Habitat Per Pair

Comment: One commenter expressed the opinion that the Chief of the Forest Service said he will set aside 7,800 acres per pair; thus making it impossible for the Forest Service to implement the short-term timber sale compromise pending before Congress (note; section 318 did pass). Someone else said that the Fish and Wildlife Service announced a tentative plan to set aside 8,000 acres, or 14 square miles for every pair of spotted owls. A party commented that only 10-15 acres of old growth are needed to support a pair of owls. Others said there was no proof that an owl cannot survive in 1 acre, 100, or 640 acres. Someone else said that in Roseburg, Oregon, the Bureau of Land Management found two pairs over a 10-year period in an isolated 80 acre tract of old growth, and questioned the owls' requirement for large blocks (2,000 acres or more) of old growth for survival. One commenter stated that it is unclear why the emphasis is on preserving old growth in large acreage tracts when the spotted owl seems to need more specialized habitat which might be enhanced rather than hindered by management techniques.

Service response: The Chief of the Forest Service in the Forest Service Record of Decision, established the following SOHA acreages: Olympic Peninsula, 3,000 acres; Washington Cascades, 2,200 acres; Oregon Cascades, 1,500 acres; Oregon Coast Range, 2,000 acres; and Klamath Province, 1,000 acres.

Median home range size of paired northern spotted owls ranged from 1,411 acres in the Klamath Province to 9,930 acres in the Olympic Peninsula (Thomas *et al.* 1990). Not unexpectedly, as the home range size increased, so did the actual acreage of suitable habitat contained in the home range. The median percent of old-growth forest within home ranges varied from 25 percent to 74 percent. Even when the lowest percentage value is multiplied by the lowest median range size, the value exceeds the 10 to 15 acres suggested adequate for owl survival. Data from home range studies clearly demonstrate that northern spotted owls require large tracts of land containing substantial amounts of suitable habitat.

The Service considers the observation of 2 pairs in an isolated 80 acre block of old growth over a 10 year period an incidental observation and not indicative of the requirements of northern spotted owls.

The Service agrees there is some indication that owl habitat might be enhanced through certain silvicultural practices (see also Thomas *et al.* 1990), although the effects of specific silvicultural prescriptions remain unknown at this time.

Spotted Owl Habitat Areas (SOHAs)

Comment: Several commenters asked if the SOHAs were established based on

biological or economic considerations. Setting aside SOHAs with large blocks of old growth is a misguided approach according to one person because there was no systematic attempt to sprinkle SOHAs on private land, yet the birds are still there. One individual believes that SOHAs have increased in size from 640 to about 4,600 acres without a sound basis.

Service response: The establishment of SOHAs is based primarily on biological considerations; SOHAs must include certain amounts of habitat suitable for owls within a 1.5 mi. or 2.1 mi. radius circle. The amount of suitable habitat required depends upon the physiographic province in which the SOHA is established, and this is based upon owl home range sizes. For example, in the Klamath Province of California and southern coastal Oregon, where median home range sizes vary from 1,692–3,314 acres that include 800–2,484 acres of suitable habitat, SOHAs should contain 1,000 to 1,250 acres of suitable habitat, respectively. In the Olympic Peninsula (Washington), the median home range of a pair of spotted owls is 9,930 acres, of which 4,579 is suitable habitat. SOHA acreages are 3,200 acres of suitable habitat within a 2.1 mi. radius circle. Site selection for SOHAs depends on both biological and management considerations. The Forest Service has no authority to establish and manage SOHAs on private land. A system of areas managed for the owl is necessary on public lands because northern spotted owls generally are scarce in privately managed timberlands throughout most of its range. No reproductive pairs are known from private lands in Oregon, 2 have been found in Washington, and 36 are known from private land in California (of a total of 906 known reproductive pairs) (Thomas *et al.* 1990).

The basis for the SOHA dimensions was determined by radio-tracking spotted owl pairs and determining their spatial requirements. The largest SOHAs (on the Olympic Peninsula) are required to contain 3,200 acres of suitable spotted owl habitat.

Comment: Someone reported that the Forest Service had sold a sale adjacent to a SOHA so that it could study the effects of logging on the northern spotted owl. Even though road construction and logging were underway during the course of this study, the owls were located and found to be nesting. Juveniles were observed, but not every year. A biologist stated that on the Siuslaw National Forest, there were 11 breeding pairs between 1984 and 1989 of which seven were in SOHAs. Of the four breeding pairs outside of SOHAs, two have logging within 100 yards of the nest sites and habitat of the third may be included in a land exchange.

Service response: The SOHA system is designed to protect a limited amount of suitable habitat within a specified radius (1.5 or 2.1 miles). Other commercial forest stands within that circle, including parcels adjacent to protected units with breeding pairs of owls, can be harvested.

According to the Forest Service, there are 22 designated SOHAs on the Siuslaw National Forest, of which 8 (36 percent) contained reproductive pairs of spotted owls. Sixty-nine percent of all known reproductive pairs on the Siuslaw were found in reserved land, SOHAs, or in lands unsuited to timber production. The Siuslaw Forest Plan anticipates a 29 percent decline in spotted owl habitat over the next 50 years.

Comment: The Forest Service commented that in 1989, 92 percent of the SOHAs in Region 6 and 95 percent in Region 5 were occupied. In 1988 and 1989, more than 50 percent of SOHAs in each physiographic province in Region 6 had a resident pair at least for one of these years. During 1989 in Region 5, 95 percent of the SOHAs were occupied by at least one owl, 58 percent contained pairs, and 46 percent contained pairs with young. In comparison, for random sample areas in reserved sites, 40 percent were occupied, 14 percent contained pairs, and 83 percent contained pairs with young; for random sample areas in non-reserved sites 67 percent were occupied, 25 percent contained pairs, and 82 percent contained pairs with young.

Service response: The Service has considered these data in the assessment of the status of the spotted owl. Most forests report modest occupancy of SOHAs by owls. Forest Service figures indicate that 67 percent of SOHAs on the Olympic National Forest have contained breeding owls in the last 10 years. Comparable figures are 52 percent for the Washington Cascades, 36 percent for the Oregon Cascades and Coast, and 47 percent for the Klamath Province (best year, 1988–89). It is equally important to consider how many reproductive owls occur in areas other than SOHAs, reserved areas, or lands unsuitable for timber production. The figures for this suitable and available habitat range from 79 percent (Winema National Forest) to 0 percent (Okanogan National Forest) in Region 6, and from 84 percent (Six Rivers National Forest) to 24 percent (Klamath National Forest) in Region 5.

Comment: The Forest Service comments included a report by Lamberson *et al.* (1989) that concluded that crowding of adult owls into remaining suitable habitat as logging of spotted owl habitat continues is likely to lead to very high occupancy rates in SOHAs—much higher than expected under long-term stable conditions. Therefore, the authors conclude that caution should be exercised when using occupancy data to infer the condition of the population.

Service response: The Service accepts the comment.

Comment: One commenter questioned the statement in the Status Review Supplement, "Future management options are lost if SOHAs are deficient" because of the amount of small and large saw timber in the Pacific Northwest, and suggested that the Service interpret net habitat change over the region.

Service response: Most SOHAs have been placed in areas with good owl habitat. Even so, few of them could be enlarged if it were required. In Region 5, for example, the percentage of SOHAs with 1,000 acres of suitable habitat within a 2.1 mi. radius circle ranges from 56 percent (of 50 SOHAs in Mendocino National Forest) to 100 percent (of 50 SOHAs in Six Rivers National Forest). These figures reduce to 14 percent and 82 percent for 1,500 acres on the Mendocino and Six Rivers National Forests, respectively, and 4 percent and 68 percent, respectively, for 2,000 acres. Clearly, options have already been lost in forests like Mendocino, in which barely half the SOHAs contain the requisite acreage.

Larger areas of suitable owl habitat are required in most forests in Region 6. For example, Olympic National Forest must provide 3,200 acres in its SOHAs, yet only 69 percent of them have 3,000 acres. Because habitat is so fragmented over the owl's range, it would be difficult to add new SOHAs, or expand many of those already established.

The Service has considered net habitat change over the entire range of the spotted owl. About 1 percent of suitable habitat on Forest Service lands and 3 percent on Bureau of Land Management lands is being cut each year, leading to an inexorable decline in the owl population. Even though younger forest is regenerating, anticipated rotation ages are short enough to prevent most of this younger growth from developing to a stage where it would provide suitable habitat for the spotted owl.

Comment: A recent survey of Bureau of Land Management and Forest Service

personnel by the Interagency Spotted Owl Scientific Committee indicated that fewer than one-half of the SOHAs could be expanded (Thomas *et al.* 1990). Also, existing SOHAs within most of the physiographic provinces would need to be increased 65–80 percent to reach mean amounts of suitable habitat in spotted owl home ranges. The general opinion as revealed in the survey was that options are fast disappearing. Sales for fiscal years 1989 and 1990 are in proximity to a high proportion of SOHAs. A commenter stated that its organization had been informed by the Forest Service that there exist empirical data from spotted owl inventories over the last two years indicating that the SOHA network may have been working as intended, with only moderate long-term risk to the species.

Service response: The Interagency Scientific Committee found that about 20 percent of the SOHAs in the Pacific Northwest failed to contain their 1988 target acreages because of insufficient suitable habitat before section 318 called for expanded SOHA acreages (for one year) throughout the range of the owl. Clearly, there are no options for these SOHAs, for no suitable habitat remains to add to them.

Most SOHAs do not need to be increased 65–80 percent to include the acreages required in the Record of Decisions or Section 318. In Olympic National Forest, 27 of 30 SOHAs contain 2,000 acres of suitable habitat, while 21 (69 percent) contain the 3,000 acres required under the Record of Decision. In the Siuslaw National Forest, 21 (95 percent) SOHAs contain the requisite 2,000 acres, and all could be expanded to include 2,500 acres as required under Section 318. The Four National Forests in the Washington Cascades have designated 138 SOHAs: 83 (60 percent) of them contain the requisite 2,500 acres within a 2.1 mi. radius circle. The Mendocino National Forest in California has many SOHAs with small acreages of suitable habitat, and only 30 percent of them contain 1,000 acres, and only 2 (4 percent) of them could be expanded to 1,500 acres. While 20 percent of the SOHAs in Region 6 (Oregon and Washington), and about 38 percent of those in Region 5 (California) fail to meet their acreage requirements, the shortfall in about 20–60 percent, not as severe as suggested by this commenter.

Many timber sales are near SOHAs simply because that is where much of the good timber remains. According to the Thomas *et al.* (1990) report, and contrary to the Forest Service's Record of Decision, options are fast disappearing, and will no longer be available in 5 years. In a thorough review, the ISC (Thomas *et al.* 1990) concluded that the SOHA network is fatally flawed and does not provide long-term protection to the owl.

Interagency Spotted Owl Scientific Committee (ISC) Conservation Plan

In August 1988, an interagency agreement was signed by the Forest Service, Bureau of Land Management, National Park Service, and Fish and Wildlife Service establishing the Interagency Scientific Committee to Address the Conservation of the Northern Spotted Owl. This committee prepared a conservation plan (Thomas *et al.* 1990) for the northern spotted owl and released the plan in April 1990. To accommodate inclusion of the biological information in the plan pertaining to the status of the owl, the Service reopened the comment period on the listing proposal on March 29, 1990.

Comment: Numerous commenters reviewed the ISC conservation plan and submitted comments on the plan to the Service. A number of commenters stated that the plan was sufficient to postpone or delay indefinitely the listing decision. Others said the plan went too far in restricting harvesting. A number of commenters said that if the plan is approved and implemented, there will be no need to list the spotted owl and, therefore, the Service should withdraw the proposal. Still others stated the plan was unproven and that the owl should be listed regardless of whether the plan is accepted and implemented. A commenter stated that the public comment period should remain open indefinitely until such time as the documents used to develop the ISC plan are available for public review, inspection, and analysis such that the public can comment on the management plan. The commenter further wrote that the Service's consideration of the ISC plan should be limited to the information that is documented in the plan and should give no weight to the overall conservation strategy in the listing decision. Moreover, it is the commenter's opinion that the underlying data used in the ISC report are not part of the Service's administrative record on the owl listing proposal and, therefore, the Service cannot consider peronsal communications regarding such data.

Service response: The Service has responded to comments generated by the ISC plan only insofar as they are germane to the listing decision. Comments pertaining to the adequacy of the plan or the need or lack thereof to list the owl in light of the plan will not be addressed specifically. As discussed under Factor D "Inadequacy of Existing Regulatory Mechanisms," the Service regards the ISC document as a draft plan that remains largely untested. Its possible effectiveness, therefore, is yet to be tested. There is no assurance that the plan will be approved by the four agencies, nor that it will be implemented. Most importantly, however, it is uncertain whether the plan, if fully implemented, would be sufficient to recover the northern spotted owl. Even if the plan were to be implemented using accredited, proven methodology with a high likelihood of success in protecting the species, anticipated implementation of the plan is not sufficient justification for the Service to withdraw the proposal or delay its decision on listing. The Service sees no need to reopen the comment period further for individuals to comment on the validity or lack thereof of the ISC plan. Although the specific strategy suggested in the plan did not enter into the Service's decision on the proposal, the Service did review data on which portions of the plan were based. These data were entered into the administrative record on this listing proposal during the open comment period and were available along with the entire record for public inspection, by appointment. It is the Service's opinion that the conservation strategy developed in the ISC plan presents a possible starting point for the development of a recovery plan for the owl. Under provisions of the Act (Section 4(f)), the Service is required to develop recovery plans for listed species that are likely to benefit from such plans. If any conservation strategy is undertaken and successfully implemented so that the northern spotted owl no longer requires the Act's protection, the Service will consider a delisting action.

Other Management Plans and Options

Comment: One commenter reported that because owls can live in mixed-age managed forests, the Service should be able to provide suitable habitat for owls. Numerous commenters stated that recent research suggests that it is possible to provide owl habitat in managed forests. Others said that remnant old-growth trees remaining after timber harvesting contain nesting pairs of spotted owls, and provide further evidence that it is possible to provide suitable owl habitat in managed forest. Another commenter argued that owl research, to date, has focused on assessing habitat damage caused by timber harvesting and this is the wrong approach. According to this commenter, the question that needs to be asked is.

"What habitat conditions must be present in a managed forest to insure the survival of a viable owl population?"

Service response: The Service agrees it may be possible to provide suitable owl habitat in managed forest in some locations and under certain conditions. Evidence from private lands in California, for example, suggest that owl populations may survive in forest subjected to repeated harvest entries. Such methods tend to create a mutlilayered canopy with mixed ages of trees. However, more than 95 percent of the timber harvest occurs using clearcuts, a method not immediately conducive to the creation of mixed-age timber stands.

The Service does not accept the comment that owl research has focused on assessing damage caused by timber harvest. Most research has assessed how owls perform in a landscape where timber harvest has occurred and is made independent of any subjective assessment of damage. In general, habitat conditions in most managed forest—even aged stands with little structural diversity, young age classes of trees due to short rotation periods—are not conducive to a viable owl population.

Comment: Several commenters stated that Bureau of Land Management and Forest Service personnel are capable of developing habitat management plans for the owl, that they are doing a fine job, and that they should be trusted to continue to do so. In contrast, another party stated that current forest plans do not protect habitat. Someone else asked what effect Forest Service plans will have on the Service's decision and whether they are sufficient to maintain the spotted owl. Several commenters expressed confidence in reforestation plans that will suffice for all species.

Service response: Although Forest Service and Bureau of Land Management personnel have developed an elaborate network of habitat areas for the spotted owl, there is no guarantee that those areas will protect the owl. The Bureau of Land Management has set aside 121 agreement areas, yet 12 of these are temporary (one year), and the other 109 (228,000 acres) are not permanently protected—they could be changed when new management plans are completed in 1992. In fact, 72 percent of all known owls on Bureau of Land Management land are not covered in the agreement area network. Overall, suitable habitat on Bureau of Land Management land is declining (being harvested) at a rate of about 3 percent per year. There are 644 SOHAs in the Forest Service network, as well as additional acreage in wilderness areas and other reserved lands. However, the SOHA system has been criticized and may be incapable of sustaining a population of owls due to inherent problems with fragmentation, and loss to fire, storm, volcanos, or administrative decisions. Additionally, with harvest rates anticipated to be about 39,400 acres per year, about 1 percent of spotted owl habitat on Forest Service lands will be lost each year.

Obviously, the anticipated loss of most Bureau of Land Management suitable habitat, and about 70 percent of Forest Service habitat, has been carefully considered by the Service. It is the Service's opinion that current management plans are insufficient to prevent the continued loss or degradation of suitable spotted owl habitat and that current regulatory mechanisms are inadequate (see Factor D in "Summary of Factors Affecting the Species" section).

Reforestation plans may prove insufficient to provide suitable spotted owl habitat if the rotation age is such that the regenerated stands are harvested prior to attaining the attributes associated with owl habitat. The role of silvicultural treatments needs to be assessed to determine which management systems produce suitable spotted owl habitat and the amount of such habitat that can be regenerated.

Comment: According to one opinion, at the current rate of harvest there is a 60–70 year supply of old growth left. By that time there will be new stands of trees to take the place of old growth. Another party believes it is possible to harvest without decreasing the spotted owl population yet maintain the sustained yield and timber harvest to supply the needs of industry from an economic standpoint. One individual maintained that with so much habitat already preserved, options exist to accommodate both the owl and timber-dependent communities. According to a commenter, owl populations persist in eastern Oregon and Washington because logging techniques have resulted in timber growth patterns that mimic old-growth forest in western Oregon and Washington, thereby suggesting that viable owl populations can be sustained in managed forests.

Service response: The supply of old-growth forest remaining depends upon the National Forest or Bureau of Land Management District. To talk about a 60–70 year supply oversimplifies the issue. For example, about 23,400 acres (3 percent) of old-growth forest on Bureau of Land Management lands in Oregon are being cut each year. The Eugene District will run out of old growth in 12 years, Coos Bay District in 17 years, and Salem District in 14 years. The Forest Service plans to log just under 40,000 acres of old growth each year, which is about 1 percent of its total remaining spotted owl habitat. Much of the remaining old growth is in small, fragmented acreage, and forests with less than about 20 percent old growth are little used by owls (USDI 1990).

In most situations, managed forests provide poor habitat for spotted owls. Anticipated rotation ages will lead to harvest schedules that remove the trees before they become suitable for spotted owls.

Some silvicultural prescriptions (i.e., selective removal) allow owls to persist, or repopulate, managed forests at younger ages. However, selective logging is practiced on only about 5 percent of the timber base in the Pacific Northwest (USDI 1990). Also, after 2 or 3 entries, selective removal techniques generally fail to provide an adequate crop of commercial trees, and clearcuts are then used to increase future production. Abundant data show throughout much of the range that owls persist only in very low numbers in areas managed for timber production, especially when the amount of remaining old growth decreases to less than about 40 percent of the total acreage, and that areas with less than 20 percent old growth are little used by owls (USDI 1990).

Habitat preserved in National Parks, Wilderness Areas, and lands unsuited for timber production exists in a highly fragmented patchwork. Owl population densities and reproductive output are lower in protected areas than in non-protected old growth (USDI 1990). This is because a high percentage of suitable habitat in reserved status is at higher elevation or on poor timber sites. The Service believes that options do exist to accommodate both the owl and the timber-dependent communities, but also believes that more old growth and mature forest than is currently reserved will have to be left standing to assure the owl's survival.

There is no evidence to suggest that owls persist because of logging techniques. There is more habitat available in the Cascades than in the Coast Ranges of both Oregon and Washington, and habitat availability explains the larger populations there.

Comment: Someone suggested that timber harvesting be allowed to continue under current sustained yield management while intensive research and planning for owls continues. A number of commenters stated that non-use of renewable natural resources is

not in keeping with sound forest management for multiple use, that much of the old-growth timber is deteriorating and should be systematically harvested, and that harvested old growth should be replaced with young healthy forests. Another writer asked that no further cutting be allowed on disputed lands until it is definitely known whether there is or is not endangerment to the owl. If the Forest Service continues with its current harvesting program, this commenter believes that the spotted owl would not become extinct for 300 years.

Service response: There is abundant information available on the requirements of the northern spotted owl, and an equally rich source of information that suggests that current forest management is resulting in an inexorable decline in owl numbers and a reduction in future management options for the species. Therefore, it would be imprudent to assume that continued harvesting would not be deleterious to the owl even if research were being conducted concurrently.

Non-harvest of commercially-suitable trees does not equate with non-use of old-growth forest in a multiple-use strategy. Old-growth forest is a dynamic ecosystem with a complex flow of energy through countless organisms. It serves a number of crucial human uses, such as watershed protection, and is used extensively for hunting, fishing, and many non-consumptive types of outdoor recreation. Old growth is not "deteriorating"—it constantly renews itself through the replacement of old trees by young ones.

Injunctions against harvesting certain lands were lifted by the courts subsequent to the passage of section 318. In the Service's opinion, continued harvesting of old growth and mature forest will result in further decreases in owl numbers. The need is to implement a management plan that provides for the continued existence of the northern spotted owl in perpetuity. The Service does not agree that the owl could persist for 300 years if the present rate of harvesting were to continue.

Comment: One commenter indicated that even-aged management was presumed to be incompatible with the maintenance and development of spotted owl habitat. In the Service's proposal it was implied that uneven-age management would perpetuate owl habitat. This commenter disagreed and argued that over much of its range Douglas-fir is less shade tolerant than its associated species and that it naturally develops an even-age structure within much of its range. He stated that forest openings (created by a group selection form of timber harvesting) or minor perturbations in the primary tree canopy (created by single tree selection) will create seral conditions conducive to the germination and establishment of Douglas-fir and that this type of uneven age-management creates within-stand fragmentation and edge effects that favor invasion by great horned owls.

Service response: Even-aged management may produce suitable owl habitat under certain circumstances, such as when reserved trees are left after a selective harvest entry (Thomas *et al.* 1990). Silvicultural treatments that produce a multiple-canopy structure may also provide one possibility for integrating owl habitat requirements with timber demands. However, the extent to which silvicultural treatments could produce habitat suitable for northern spotted owls is unknown.

Current evidence clearly indicates that even-aged Douglas-fir stands do not become suitable for owls until >100 years of age (USDI 1990), well in excess of the current more or less 70 year rotation plans. The Service recognizes that Douglas-fir is a shade-intolerant tree species whose growth may be inhibited under less than clearcut prescriptions, but considers the relation between owls and alternative silvicultural treatments a potentially fruitful area of future research.

Whether smaller, more localized fragmentation impacts resulting from uneven-aged management favor invasion of great horned owls relative to even-aged managed stands is unknown.

Comment: One commenter maintained that a recovery plan is needed to provide consistent direction for public land managers to follow. Another stated that the owl should be listed and a habitat conservation plan developed.

Service response: The Service is required by provisions of the Endangered Species Act (Section 4(f)) to prepare a recovery plan for each listed species. The Interagency Scientific Committee to Address the Conservation of the Northern Spotted Owl has produced "A Conservation Strategy for the northern spotted owl" (Thomas *et al.* 1990) that will provide a significant contribution to the development of a recovery plan. A habitat conservation plan is prepared by private parties applying for an "incidental take" permit under Section 10(a) of the Act (see Issue 4 for details).

Comment: A commenter provided an extensive report pertaining to management alternatives and suggesting future research activities.

Service response: The Service recognizes that many potential management alternatives can be developed for the northern spotted owl, and further realizes that some spotted owls persist in, or recolonize quickly, forests harvested under selective cut prescriptions. However, such prescriptions now occur in less than 5 percent of managed forests, and have had little overall positive impact on owl numbers. Until adaptive management strategies have been shown to benefit the owl, the Service concludes that current harvesting methods are resulting in a continued decline of the species.

Reserved, Set Aside, or Land Otherwise Unavailable for Timber Harvest

Comment: Another party stated that old growth will never be eliminated totally because about one-third of Federal lands are set aside for total preservation with another approximately one-third designated for multiple-use other than timber production. The commenter maintained that it is pure conjecture that wilderness areas may be logged someday.

Service response: There were originally about 17.5 million acres of old growth that may have contained forest land suitable for the spotted owls in the Pacific Northwest. Much of this has been harvested. Presently about 6.7 million acres of suitable habitat (old growth and mature) still remain. Of this, about 2.7 million acres is preserved in National Parks, Wilderness Areas, watershed management areas, wild and scenic rivers, research natural areas, etc. Not all of this is "totally preserved." For example, watershed areas such as Bull Run (Mt. Hood National Forest) serve a multitude of functions, are extensively roaded, have reservoirs, and can be salvage-logged. The 2.7 million acres also contain areas unsuited to timber harvest (about 0.8 million acres), and some of this may be logged as silvicultural techniques change. As an example, the Siuslaw Forest Plan (1990) changed the protected stream headwall areas from 5 to 4 acres, thus increasing their timber base and reducing the area considered unsuitable for timber production and tallied as protected. In reality, about 84 percent of the timber base is available to timber production. The Service agrees that it is conjecture that wilderness areas may someday be logged.

Comment: Numerous parties argued that enough land is set aside already to manage for spotted owls and with 4.2 million acres of old growth in Oregon and California, there is more than enough habitat. One party stated that there are 3 million acres of roadless and other areas that are protected. Another said there were 5 million acres set aside and if the spotted owl cannot survive

within that area, let it become extinct. Some asked how much more habitat does the spotted owl need. Several commenters maintained that even if further study establishes the dependence of owls on old growth, adequate old-growth timber is now protected in wilderness to maintain viable spotted owl populations. According to one commenter, more forest and national park lands (53 percent) are available to the owl than are designated for multiple-use. One individual questioned how the northern spotted owl can be "endangered" if it has more land than people do. A number of commenters stated that no more timber lands should be taken out of the economy to create additional protected habitat. Another questioned why spotted owls must be found in every National Forest.

Service response: As stated above, the widely accepted figure for the amount of old growth set aside today is about 2.7 million acres. In the Service's opinion, considering anticipated logging prescriptions and rotation ages, the protected owl habitat is not sufficient to provide for long-term viability.

The owl needs sufficient, well-distributed habitat to ensure its survival. How much secure habitat is enough? In a thorough review of the needs of the northern spotted owl, Thomas *et al.* (1990) described a management plan that set aside 193 Habitat Conservation areas in California, Oregon and Washington that totalled about 7.6 million acres. It was the reasoned opinion of Dr. Thomas' team of scientists that this much suitable habitat was required to maintain the owl in perpetuity. Only about one-third of this acreage is contained now in National Parks, Wilderness Areas, SOHAs, and other reserved lands.

There are about 4.7 million acres in the wilderness system in the Pacific Northwest. Much of this does not provide owl habitat. It is estimated that only about 1 million acres is suitable for spotted owls, and owls in wilderness sites studied have lower densities and lowered reproduction compared to owls in non-reserved forest lands, which tend to have better habitat (USDI 1990). The Service has concluded that wilderness areas are not sufficient to assure the long-term survival of the spotted owl.

The amount of land available to owls is nowhere near the 53 percent claimed by the commenter. For example, of the 13.8 million acres of lands controlled by the Forest Service in Oregon and Washington, 2.6 million acres (19 percent) is reserved, but only .8 million (6 percent) is suitable for spotted owls. About 2.7 millions acres (15 percent) is now protected: the rest are available for timber harvest (multiple-use).

Clearly, owls do not have more land than people, and will only survive with prudent land management.

The issue to list the northern spotted owl as threatened or endangered must, by law, be made without considering the potential economic impacts of the listing decision.

The likelihood that a species will persist through time is increased if its original distribution can be maintained. An interconnected population covering a large geographic area is much less vulnerable to natural disasters (such as fires, severe storms, volcanic activities, or disease) and less susceptible to the deleterious effects of inbreeding than a population broken into fragmented, isolated units. Also, the National Forest Management Act of 1976 requires that the National Forests maintain "a minimum number of reproductive pairs and that habitat must be well distributed so that those individuals can interact with others in the planning area" (36 CFR 219.19). Hence, the Service believes that a reasonable approach at owl management would involve maintaining viable owl populations on all National Forests within its range.

Issue 19. Regulatory Mechanisms

Existing Management Plans for Federal Lands

Comment: According to one commenter, in the **Federal Register** the Service failed to consider the adequacy of existing regulatory mechanisms. Someone argued that listing is not needed because the Bureau of Land Management and Forest Service already have considered the biological needs, allocated habitat, have a monitoring program, and the flexibility necessary to provide for the continued existence of the spotted owl. Another commenter stated that the Fish and Wildlife Service is now doing a forest-by-forest, distribution-by-distribution review of the plans and allocation process; hence, it is not necessary to list.

Service response: The Service considered all the major applicable regulatory mechanisms in place that deal with timber harvest and spotted owls on private, State, and Federal (Bureau of Land Management, Forest Service, and National Park Service) lands in California, Oregon, and Washington (see 54 FR 26673–4). These issues are again considered and discussed in the 1990 Status Review, and in this **Federal Register** document (see Factor D). It is the Service's opinion that existing management plans pertaining to timber harvest and the spotted owl are inadequate to ensure the long-term viability of the species.

The Bureau of Land Management, which administers about 11 percent of all spotted owl habitat, operates under constraints imposed by the Oregon and California Act, which mandates that their lands (over 2,000,000 acres in Oregon) provide for production of timber in perpetuity. Lands can be set aside for the protection of owls for short periods of time (10 years). Even though the Bureau of Land Management has 121 SOHAs with over 230,000 acres set aside, these are temporary, and may last only until a new management plan is completed in 1992. Although it is true that the Forest Service has a comprehensive network of SOHAs, research, and monitoring programs, the SOHA system is considered flawed because it is scattered, subject to natural disasters, and isolates small numbers of birds (generally pairs). Of about 5 million acres of suitable spotted owl habitat on Forest Service land, 3.2 million acres (63 percent) is suitable for harvest, and logging of these lands is anticipated to greatly reduce owl numbers.

The most comprehensive Fish and Wildlife Service study of the spotted owl is the most current status review (USDI 1990) to assess the current and future status of this species.

Comment: The Bureau of Land Management noted that it manages 2 million acres of commercial forest lands in western Oregon, of which over 800,000 acres is considered suitable spotted owl habitat (mature and old growth). Less than three percent of these lands will be harvested in any one year. There are 122 management agreement areas on Bureau of Land Management land during fiscal year 90. Further, 254,000 acres of mature/old growth is constrained from harvesting to protect owls.

Service response: The Service agrees with these comments. There are 121 management agreement areas (one was lost in a land transfer to the Bureau of Indian Affairs) that protect over 230,000 acres of forest for spotted owls. Twelve of these are one-year interim areas required by section 318 of the FY 1990 Interior Department Appropriations Act. All 121 areas are interim areas, and may be changed or eliminated when management plans are finalized in 1992. Since none of them are permanently dedicated to owl protection, the Service cannot rely on their long-term adequacy. While it is true that 3 percent of the suitable habitat is being harvested each year, habitat will be lost from entire

districts much sooner than implied by these figures (i.e., <33 years). For example, it is expected that all suitable habitat will be lost from the Eugene District in 12 years, the Salem District in 14 years, and the Coos Bay District in 17 years. Only the Medford District anticipates that available habitat will last more than 33 years.

Comment: The Forest Service commented that 5 million acres of suitable spotted owl habitat exist on National Forests in California, Washington, and Oregon and that 51 percent of this (2.6 million acres) is not available or suited for timber harvesting. The Forest Service defines suitable habitat as "forest that includes considerable large dominant trees, multi-layered canopy with moderate to high canopy closure, and downed logs."

Service response: The Service agrees that there may be about 5 million acres of spotted owl habitat on Forest Service land in California, Oregon, and Washington. However, according to the Service's estimates only about 1.8 million acres (37 percent) of this is not available for timber harvest (USDI 1990). This represents about 10 percent of the original spotted owl habitat in the Pacific Northwest.

Comment: One commenter urged the Service not to list the spotted owl in the Quinault Ranger District on the Olympic Peninsula because of the unique status of the unit. This unit was established by the Chief of the Forest Service in 1949 who dedicated this portion of the area's timber supply for manufacture within communities so vitally dependent on it.

Service response: The Service is required by law to consider the status of the owl throughout its range on biological grounds only, and thus cannot apply non-biological criteria to the Quinault Ranger District.

Comment: According to one opinion, the Status Review Supplement cavalierly treats the Forest Service's expected compliance with its statutory duty under the National Forest Management Act. The commenter stated that the anticipated compliance is speculation on the part of the Fish and Wildlife Service and should be given no weight. Contrary to a statement in the Status Review Supplement, one commenter maintained that forest plans under the National Forest Management Act are legally binding upon the Forest Service. The commenter noted that the Status Review Supplement asserts that cutting rates and forest harvest activities will eliminate most spotted owl habitat that is available within the next 60 years; yet forest plans and regulatory guides establish land protection and preservation of spotted owl habitat. In this commenter's opinion, regulatory mechanisms exist on Forest Service and Bureau of Land Management land to permanently protect what is now perceived to be spotted owl habitat and these mechanisms are flexible enough to take into account new information on habitat use.

Service response: In the Service's opinion, the responsibilities of the Forest Service under the National Forest Management Act were carefully considered in the previous status reviews (USDI 1987, 1989) as well as the proposal. The 1990 Status Review (USDI 1990) has reached similar conclusions about the effects of harvesting upon the long-term survival of the spotted owl. The continued harvest of old-growth forest, coupled with anticipated shorter rotation ages for younger even-aged stands (the Siuslaw Forest Plan anticipates that 74 percent of their harvest will come from 60 to 80 year old stands) will guarantee that suitable habitat will be lost, with a diminished chance that it will be replaced by growing managed forests. The Service agrees that the Forest Service has assumed an active role in, but has concluded that current measures are not enough to guarantee the survival of the owl. If the Bureau of Land Management's and Forest Service's regulatory mechanisms are flexible in managing for the owl, then there is no assurance that any plans developed and implemented under such regulations could not be altered in the future to the detriment of the owl and its habitat. Current management, however, is inadequate to prevent the continued decline of the northern spotted owl.

Comment: WDW commented that it filed an administrative appeal to the Forest Service's Region 6 Record of Decision. About 80 percent of the spotted owl population in Washington is on Federal land. According to WDW, the Forest Service management plan (Final Supplement Environmental Impact Statement/Record of Decision) will prevent the state from fulfilling its mandate "to preserve, protect, and perpetuate" the native wildlife of Washington. It will foreclose options to recover the northern spotted owl. WDW commented that there is no scientific evidence to support the Chief of the Forest Service saying that the plan will ensure viable populations. Further, WDW stated that habitat areas have about a 50 percent chance of being occupied and provide about 50 percent of the average amount of suitable habitat used by owls in Washington and Oregon. WDW argued that silvicultural options to manage for spotted owls are experimental and untested, and further that no current evidence exists that spotted owl habitat can be created or maintained through silvicultural management. WDW noted that the Gifford Pinchot National Forest recently revised its estimate of old growth downward by 30 percent. According to WDW, the Forest Service failed to consider cumulative impacts of harvesting on spotted owls and did not consider all pertinent information. Hence, in WDW's view, the Forest Service violated NEPA.

Service response: The Service shares the concerns expressed by WDW. The Forest Service has 168 SOHAs on the 5 National Forests in Washington; 92 of them (55 percent) have had reproductive pairs in the last 10 years, and only 87 of them (52 percent) hold 3,000 acres of suitable habitat. Continued harvest will further reduce owl populations and reduce future options to manage the species.

Comment: Several commenters argued that evidence indicates that current levels of timber harvesting can be continued for five years without jeopardizing the owl, during which time additional information will be provided to determine available habitat and future needs and plans. They maintained that current management plans provide adequate habitat protection and allow time to study owls before making a decision regarding listing. According to comments from the Forest Service presented at one of the public hearings, about 95 percent of habitat capability for spotted owls during the next five years is protected and this approach provides for 95 percent of the timber supply that would have been available without the added protection of owl habitat.

Service response: Evidence indicates that current levels of timber harvest are resulting in adverse impacts to the owl. Spotted owls are reduced to lower levels by timber harvesting, cut blocks are regularly placed near SOHAs and non-network pairs of owls, and a large portion of SOHAs do not contain the required acreage of suitable habitat. The SOHA system itself is flawed, and options for management of larger areas will be lost with continued harvest. Thomas *et al.* (1990) disagree with the Record of Decision that five more years of harvesting will not affect the availability of future options. There is ample evidence already available to determine the status and management needs for the owl. Thomas *et al.* (1990) have concluded that the present distribution and quantity of old-growth

forest is not enough to guarantee the long-term survival of the spotted owl.

An assessment and survey of current management by the Forest Service and the Bureau of Land Management (Thomas *et al.* 1990) indicates that it is not adequate to protect the owl. In 5 years about 15 percent of suitable owl habitat on Bureau of Land Management lands, and 5 percent on the national forests, will be lost at current harvest levels. The harvest on Forest Service lands does not equate, however, to a retention of a 95 percent capability of the habitat to support owls. Many timber sales are adjacent to SOHAs or in concentrations of suitable habitat: 60 percent of all 1989 and 1990 timber sales were in the vicinity of known spotted owls. The impact of harvesting where owls are most abundant will further reduce management options in future years.

Comment: Numerous commenters said there is no evidence that the Forest Service can continue to allow timber harvesting for five more years with no risk to the long-term viability of the spotted owl. The commenters argued that the proposed rule failed to communicate the information available at the time of publication, which demonstrated the problems associated with existing efforts to protect the owl on public lands. Several commenters stated that the Forest Service consistently refused to adopt guidelines protecting non-SOHA owls or pairs, that it failed to adopt guidelines to maintain management options during the five-year operating period of the Record of Decision, and that it chose to ignore its own established guidelines for timber harvesting in the vicinity of all nest sites or owl pair activity sites (USDI 1989). A commenter noted that Forest Service staff were forced to pass over more suitable habitat occupied by owls to establish SOHAs that met spacing requirements and that in 1982–88 only 44 percent of SOHAs in Region 5 supported breeding pairs during at least one season.

Service response: The Service accepts this comment (see above), but disagrees that the proposed rule failed to adequately acknowledge the inadequacies of Forest Service management as it pertains to the spotted owl. The ISC (Thomas *et al.* 1990) surveyed Forest Service staff throughout the range of the owl, and found little consistency with direction related to how timber sales impacted non-network owls. "The general sense appeared to be that the situation is so dynamic that policy is not keeping up with events" (Thomas *et al.* 1990, p. 107). The Service was told by Forest Service biologists that spacing requirements did necessitate placing some SOHAs in areas of marginally suitable habitat, or areas lacking owls, rather than placing them in areas that supported owls. In the best year during the 10-year period 1980–89, 128 of 268 SOHAs (48 percent) in Region 5 held reproductive pairs of owls (USDA 1989).

Possible Adaptive Management Alternatives

Comment: One commenter expressed the view that the Service professes not to know whether the opportunity exists for a successful adaptive management strategy and states that the Service concluded that adequate regulatory management mechanisms do not exist because: 1. It is not known if the number of sites and allocated acreage of habitat per managed site will provide for long-term population viability; 2. flexibility in future management options may be limited; and 3. little or no allowance has been made for long-term catastrophic environmental changes in habitat which may affect small habitat patches. In this commenter's view, these conclusions are wrong and not supported by the record. He states that Forest Service management activities as early as 1972 were routinely modified to protect the owl habitat. In this commenter's opinion, the Service has been part of this regulatory system on public lands and has been accommodated at every step.

Service response: Management activities to date have not demonstrated that adaptive management is a viable option for the owl on land subjected to clear cutting. About 95 percent of all commercial land, public and private, is harvested using clearcut prescriptions. While it is true that younger-aged stands that have been selectively harvested do harbor owls when they structurally resemble old growth (especially in Klamath Province and the California redwoods), such prescriptions account for only about 5 percent of all potential owl habitat in the timber base. There is no indication that adaptive management will be undertaken. The two most recently-completed Forest Plans (Siskiyou and Siuslaw National Forests) rely predominately upon clear cutting, and anticipate further declines in owl numbers. The owl has continued to decline since 1972 under Forest Service, Bureau of Land Management, and private land management practices. The Service continues to maintain that existing regulatory mechanisms are insufficient to provide for the long-term population viability of the owl. Further, the Service disagrees that its concerns for the owl on public land have been routinely accepted and accommodated.

Comment: One commenter wrote that the Status Review Supplement assumes that an intensively managed forest of even-aged trees with an average cutting rotation of 70–120 years will no longer develop or retain the variation of old-growth characteristics which require about 200 years of development. In the commenter's view, this type of analysis is flawed because it assumes that all non-public forested lands will be managed on a short rotation, even-aged basis and ignores the fact that owls can live in younger forest.

Service response: The Service agrees that some silvicultural treatments may create the structural attributes of old-growth forest at younger stand age, but also notes that the long-term effectiveness of this approach is untested (Thomas *et al.* 1990). The Service also agrees that not all nonpublic timberlands are even-aged forests managed on a short-term basis. However, lands subject to other than harvest clearcut prescriptions, the basis of even-aged management, comprise less than 5 percent of the managed timber base in the range of the northern spotted owl (USDI 1990).

Forest Service Old-Growth Guidelines

Comment: The Forest Service commented that it had issued new old-growth guidelines on October 11, 1989, to provide for considering old-growth values in managed National Forest lands. The Forest Service estimates that about 15 percent of the old growth in Region 6 is scheduled for harvesting during the 1990s. By memo dated November 3, 1989, Mr. John Butruille, Regional Forester for Region 6, in responding to the new Forest Service guidance stated, "It is important to note the new statement by the Washington Office [re: policy on old growth] does not alter any of the land allocations set forth in the forest or draft forest plans, nor does it indicate a need to halt completion of plans or the need for immediately revising completed plans." In an accompanying position statement, dated October 11, 1989, the Forest Service stated that old growth land suitable for timber production and not subject to extended rotations is to be scheduled for harvest to establish young stands which more fully utilize potential timber productivity and also meet other resource objectives.

Service response: The Service agrees with this comment. Since Mr. Butruille's statement, the Siuslaw Forest Plan has been published, and there is no indication of a policy change on old

growth. The Siuslaw holds about 33,800 acres of old growth (3.7 percent of the land base), of which 23,100 acres is reserved. Of the 10,700 acres of non-reserved old growth (32 percent), old patches >40 acres will not be cut *until a new inventory is completed.* The plan anticipates a 29 percent decline in spotted owl habitat over the next 50 years—virtually eliminating all the unprotected old growth remaining on the forest. Apparently the Forest Service will continue its policy of converting old growth to younger stands, with subsequent losses to the spotted owl.

Management on Non-Federal Lands

Comment: In another's view, the owl policy on Federal land is forcing the cutting of private forest lands that should grow another 40–60 years. A number of commenters stated the proposal has hastened the extinction of the owl as companies increase the cutting of old growth because they fear they will be unable to continue to harvest if the owl is listed.

Service response: Very few reproductive pairs of owls (2) are known to remain on private land in Oregon and Washington, and only 36 are known from California (Thomas *et al.* 1990). Cutting on private land has been at the discretion of the landowner, with whatever State approvals are required. There has been no acceleration of the sale of old-growth timber on Forest Service or Bureau of Land Management land, where the majority (92 percent) of the known reproductive pairs of owls occur. Indeed, because of litigation, the Allowable Sale Quantity (ASQ) has declined about 9 percent on Forest Service lands in the past two years.

Comment: The Washington Department of Natural Resources stated that there is a program to defer logging for 15 years on 15,000 acres of spotted owl habitat on trust lands on the Olympic Peninsula during which time research will be conducted to ensure an improved information base for future decisions. It anticipates eventually applying a new ecosystem-based approach to forestry on all the 260,000 acres of state owned lands in the area. Another commenter responded that the recent recommendation by the Washington Department of Natural Resources for the Olympic Peninsula by the Commission on Old Growth Alternatives for Washington's Forest Trust Lands (Commission) will result in the reduction of habitat for 24 pairs or single owls and certainly eliminate at least five pairs and five single spotted owls.

A commenter maintained that given the nature of experimental science and that logging will occur in areas now occupied by spotted owls, it is likely there will be a loss of existing spotted owls on experimental forest lands. Further, the commenter stated that implementation of the Commission's recommendations will likely result in a significant reduction in the spotted owl population on the Olympic Peninsula.

Service response: The Service accepts the comments. The Service agrees that if experimental forests containing spotted owl are harvested in the usual manner, it is likely that owl numbers there will decline. The Service also agrees that it appears that spotted owl numbers on Washington Trust Lands on the Olympic Peninsula will decline if all but 15,000 acres of old growth are eliminated.

Section 318

Comment: In commenting on Section 318, one commenter wrote that under this amendment the Forest Service would have to sell almost all the old-growth timber currently locked up by a Federal court order, violate Forest Service guidelines on protection for the owl, and exceed its own long-term timber production capacity.

Service response: The normal ASQ for the "owl forests" in the Pacific Northwest has been about 3.2 billion board feet/year (USDA 1988). Sec. 318 of P.L. 101–121 mandated a sale of 5.8 bbf for 1989–1990. This is a 9 percent reduction in the normal ASQ. The Service understands that one difficulty with Section 318 is the short time constraints under which the volume must be sold (by September 1990). This makes it difficult to apply all the proper environmental safeguards when developing the timber sales.

Comment: WDW recently looked at 50 sales and found that 30 of these contained sale units within 2 miles of spotted owl nests or activity centers. According to WDW, several nests or activity centers are inside of or within one-half mile of sale units and a large percentage of the 1990 timber sales will have impacts to spotted owls. The Department is particularly concerned about the area in the central Cascades (I–90 Corridor).

Service response: The Service concurs with these findings.

Comment: One commenter stated that the protective measures provided for by Section 318 are being ignored or cannot be met. The commenter noted that some SOHAs have sale units within expanded SOHA boundaries or in large old-growth blocks adjoining SOHAs.

Service response: It is clear that the requirements for expanded SOHA areas cannot be met for a large number of SOHAs throughout the Pacific Northwest. In California, only 210 of 267 SOHAs (79 percent) include 1,000 acres. On the Oregon Coast Range (Suslaw National Forest), 21 of 22 (95 percent) SOHAs can hold 2,000 acres, and 20 of them (91 percent) can achieve the required 2,500 acres. On the Olympic Peninsula, fewer than 21 (69 percent) can be expanded to 3,200 acres. These figures are typical for the entire SOHA system, and illustrate how options for managing the owl have been lost. The SOHA consists of protected acreage within the bounds of a circle. For example, a 2.1 mi. circle contains 8,867 acres. On the Olympic Peninsula, only 3,200 acres within that circle needs to be protected. By Forest Service policy, timbers sales can be (and often are) placed on other acreage within the 2.1 mi. circumference.

Issue 20. Finite Rate of Population Increase and Modeling

Comment: Another commenter questioned the use of population models because these relatively new models are predicated on hypotheses that have not been tested and proven over time. One commenter maintained that the Status Review Supplement relies on several population viability models that have been criticized as inadequate to support the opinion that the spotted owl population is declining. Another commenter noted that subsequent to the release of the Status Review Supplement (1989), Review Team Leader Barry Mulder wrote in a letter that population viability models played no role in the listing decision. The commenter maintains that this subsequent recanting of the population viability analysis chapter in the Status Review Supplement shows the Service failed to establish a rational basis for its proposed rule. The commenter questioned why the population viability analysis was discussed if it did not affect the decision.

Service response: Population viability analysis played no role in the Proposed Listing (June 23, 1989) or in the 1989 Status Review Supplement (USDI 1989). The issue was reviewed briefly in the 1990 Status Review (USDI 1990) and the use of these techniques was again dismissed from consideration. Careful review of all information is required and appropriate. If some material is found to be unreliable, the reasons for this are provided and no further consideration is given in the decision.

Comment: It appeared to one commenter that the Status Review Supplement relies on four theoretical ecology and modeling studies to corroborate that the spotted owl is

declining (See Ewens 1969; Lande 1988, 1989; Pulliam 1988). However, the commenter argues that the projections from these models contradict the conclusion that the population is declining. The commenter maintained that Lande (1988) states that the owl population growth rate is not significantly different from that of a stable population, even assuming that all available old-growth habitat is clearcut. Further, the commenter stated that Ewens (1989) concludes that geographically subdivided populations, like that of the spotted owl, are actually more likely to maintain their overall genetic diversity than geographically homogeneous populations. The commenter cites Pulliam (1988) as stating that interspersed population "sources" and population "sinks" represent a stable condition for a species.

Service response: The estimates of population parameters have been updated in the 1990 Status Review (USDI 1990). Estimates are based on the most current data, the best models and estimation methods, and the best model selection methods. These current estimates make all other estimates in survival and fecundity parameters obsolete. Using the best available information, it is clear that populations are declining (USDI 1990). In fact, there is solid evidence that the populations are declining at a statistically significant rate. The new information makes prior analyses, based on former estimates, of no relevance.

Ewens (1969) speculated that genetic diversity may be enhanced in geographically subdivided populations. Nothing is said about the northern spotted owl by Ewens (1989). The spotted owl is currently subdivided by forest fragmentation. In addition, the ISC Habitat Conservation Plan, if implemented, would allow geographic subdivision. Pulliam's (1988) theoretical paper examines model populations and model stability. He does not mention the northern spotted owl, nor did he examine models where hatitat and carrying capacity were declining drastically. The Service did not consider any of these 4 models in its decision.

Comment: According to one commenter, three growth rate figures used in the Status Review Supplement (USDA 1988, Lande 1988, and Noon and Biles 1989) have serious methodological, factual, analytical errors. The commenter states that each study assumes a constant rate of survival and reproduction, but this assumption is not supported by demographic data. Hence, the estimated asymptotic finite rates of population increase values (ranging from 0.85 to 0.98) are not the best available data. According to this commenter, both the Forest Service and Noon and Biles use incorrect reproduction and survival data; with correct data the Forest Service and Noon and Biles would have to conclude the spotted owl population is increasing. This commenter maintains that if these parameters are corrected, all the respective studies show the population is stable, the USDA rate being 0.99 and Noon and Biles being 0.96.

Service response: Although specific statistical tests were made, no significant year to year variation could be found in survival or fecundity for the two sets of demographic data (northwest California 1984–1989 and Roseburg Study Area 1985–1989). Therefore, it is reasonable to assume a constant rate of survival and reproduction during the 5 or 6 year study periods. The result of likelihood ratio tests are given in USDI (1990). Likelihood ratio test allow 2 models, each making different assumptions, to be statistically compared. Thus, parameters constant over years were estimated and were used in the estimation of lambda (the average finite rate of population change). The best estimate of survival (or fecundity) of a given year, is the constant (average) value. This applies to the estimates of lambda. The estimate of the sampling variance of the constant parameter includes a year to year component using quasi-likelihood theory where appropriate (e.g., section 3 of USDI, 1990).

Previous estimates of the rate of population change were from 0.85–0.98. The best estimates currently available show a significantly declining population in both areas where sufficient data are available (see USDI 1990 for details). Had the Forest Service and Noon and Biles (1990) used the best estimates of parameters now available, it is the Service's opinion that they also would have concluded that the population was declining. The Service has estimated the finite rate of population change to be 0.95 for northwest California and 0.86 for the Roseburg Study area in southwest Oregon. The populations are declining at a significant annual rate.

The estimates of lambda of 0.99 and 0.96 are based on old data, and the parameter estimates are based on a model that is not the best. Estimates of precision were only approximations. If the best and most current estimates were based on the most current data and the best models, the estimates of lambda would be 0.95 and 0.86 for northwest California and southwest Oregon, respectively. Lambda values less than 1 indicate declining populations.

Comment: A commenter remarked that using work by Marcot and Holthausen (1987), the Forest Service assumed the spotted owl's life span was 15 years (USDA 1988), yet Lande (1988) states that spotted owls may live as long as 55 years. The commenter maintained that this changes the asymptotic rate of population increase from 0.85 to 0.985. The commenter stated that with a corrected life expectancy value, the Forest Service calculated 0.99 as the rate of population increase and used this value in its analysis of spotted owl management in Region 6 National Forests (USDA 1988). Even so, according to this commenter, the Status Review Supplement did not recognize this fact and concluded the Forest Service assumed a decline of 0.85.

Service response: The issue of senescence is now summarized in a recent paper by Noon and Biles (1990). USDI (1990) provides insight on this matter and concludes that the failure to include senescence in the survival and reproductive process might lead to substantial overestimates of lambda. This overestimation is particularly relevant to northwest California where the estimate is 0.95, as the true rate might be substantially less than this. If this is the case, the rate of decline is underestimated.

There is no evidence to support the commenter's statement that the corrected value of lambda should be 0.985. This value is based on data, methods, and models that are obsolete or poor, relative to what is currently available.

Comment: According to one commenter reproductive rates are significantly higher than those cited in the Status Review Supplement. Using these new data, the commenter claims that the growth rate model in the Status Review Supplement now projects that the northern spotted owl population throughout the range has been increasing at a rate of 1 percent per year since 1986. The commenter remarked that lambda value for 1986–1989 were 1.008 for Oregon (a population increase of 0.8 percent/year), 1.016 for California (a population increase of more than 1.6 percent per year), and 1.01 for Oregon, California, and Washington combined (a population increase of more than 1 percent per year). The commenter did not provide a separate growth rate value for Washington.

Service response: The reproductive rates given in USDI (1990) are the best available, based on the current data, and estimates of precision are provided. Age- and year-specificity are tested and final estimates ae given. The estimates of lambda cited by the commenter are based on old and crude estimates of parameters) (e.g., lambda=0.94). Estimates of lambda > 1.0, cited by the commenter are simply incorrect because they are based on old data, poor models and methods. In addition, the demographic data for Washington (Olympic Peninsula) consist of only three years of data and are, therefore, inadequate for a rigorous analysis. At least 4 years of capture-recapture/resight data are required to perform a rigorous analysis and assess goodness of fit. The northern California data were taken over 6 years while 5 years of data are available on the Roseburg area in Oregon.

Comment: One commenter noted that the Forest Service (USDA 1988) model and that of Lande (1988) both conclude the spotted owl population is nearly stable. Several commenters stated that the models developed by the Forest Service and Lande have numerous errors and inadequacies and cannot be used to conclude the owl population is declining. One commenter stated that these models are flawed, ignore valid biological factors and common sense, and do not allow for variations in demographic parameters. Further, the commenter noted that the analyses by Lande (1988) and the Forest Service (USDA 1988) both assume that owls are dependent on old growth. As indicated by several commenters, Lande's population model for the northern spotted owl was criticized for predicting extinction in 20 years and for estimating unreasonably large historical spotted owl numbers based on the amount of available habitat. One individual stated that Dr. Mark Boyce's comments criticizing the Lande and Forest Service models were omitted from the Status Review Supplement discussion. The commenter stated that the Service cannot ignore criticism and this constitutes an important omission. According to one commenter's view, population demographics were subject to scathing criticism by noted scientists yet the status review did not mention this criticism much less discuss the work of those who disagree.

Service response: The Service agrees with the comment that the Forest Service (USDA 1988) model and that of Lande (1988) both concluded that the population was "nearly stable" but an indication of population decline was found. The data and the analysis methods available at the time the above work was done are now obsolete and the results are no longer useful. USDI (1990) presents a full analysis, using the best models, the best estimation methods, and the most current demographic data available. Thus, comments concerning prior analyses, possible errors and flawed models are no longer relevant. Tests were conducted to determine if significant variation existed in the demographic parameters over years (i.e., both survival and fecundity rates). No such year-specific variation could be found in either demographic data set for the parameter estimates used in the calculation of the finite rate of population change. However, significant year-defendent adult survival was found and the estimated standard errors incorporated this component of the variance using quasi-likelihood methods (USDI 1990). Both Lande (1988) and the Forest Service (USDA 1988) assumed that owls were dependent on old growth. The Service has strong evidence that owls are tightly linked with characteristics found in old-growth forests (USDA 1990, Thomas *et al.* 1990). This is not to say that owls are never found in other age stands.

A full discussion of the criticisms mentioned by the commenter, of the population viability models, including those were omitted from the Status Review Supplement because this type of model was not used by the Service in its decision. While the Service recognizes that such analyses have been the subject of extensive criticism, their shortcomings and other associated problems are not pertinent to a decision on this proposal. Basically, these analyses have not been demonstrated to have credibility and, hence, were evaluated but not considered by the Service in its deliberations.

Comment: Frank Wagner (OCWRU, Oregon State University) submitted comments on results of his research on spotted owls in the Elk Creek watershed, near Medford, Oregon. He noted that there is some evidence in his study area for substantial immigration of owls in 1988–1989. He calculated lambda values for three areas; 6 sites on the Miller Mountain Telemetry Study Area (with less than 200 acres of old growth near the activity center); 12 sites dominated by partial cut or young forest; and 11 sites in which old growth within the vicinity was greater than 1,000 acres. Lambdas for the three areas were 0.78, 0.87, and 1.05, respectively. The calculations were done by setting first year juvenile survival at "an optimistic rate of 0.60." Many of the birds in this study carried radio-transmitters.

Service response: The Service found the pattern in the estimates of lambda values interesting; however, the results are inconclusive for two reasons. First, the sample sizes are extremely low and the precision (although not reported) would be quite poor. Second, all of the birds on the Miller Mountain Telemetry Study Area and approximately one-half of the birds on the Meslow *et al.* (1986) area carried radio transmitters (see issue 23). Setting the juvenile survival rate at 0.60 is simply incorrect and not substantiated by any evidence.

Comment: One population modeler (M. Boyce) stated that his preliminary results of a density-dependent model suggest a low probability that spotted owls will go extinct under the Forest Service's preferred alternative.

Service response: The Service agrees that models incorporating a density dependent component generally predict a lower probability of extinction than models that are density independent. The Service did not give serious consideration to population viability models because they are based on too many assumptions that cannot be validated and because they lack credibility (see USDI 1990).

Comment: One commenter stated that the Service should not cite significantly flawed analyses and then conclude the errors are overborne by preconceived ideas; rather the errors should be corrected. In this commenter's opinion, for the Service to rely on these studies to justify the reversal of the previous decision is arbitrary and capricious.

Service response: New analyses in USDI (1990) correct previous errors. Flaws in analyses were discussed in USDI (1990) with respect to population viability models and these models and results were not considered in the Status Review. The Service did not rely upon the various models to reverse a previous decision on the status of the owl. In the proposal to list, the Service presented the data and other information on which the proposal was based.

Comment: If current Forest Service and Bureau of Land Management counts are showing a greater number of owls, one commenter asked if the prediction formula would be changed regarding the base number.

Service response: USDI (1990) and the ISC report contain updated estimates of owl numbers and are the best estimate currently available. The Service is not in a position to answer the question whether or not the Forest Service will modify its prediction formula based

upon an updated spotted owl population estimate.

Comment: Several commenters stated that the Status Review Supplement uses incorrect juvenile survival, adult survival, and reproductive rates and misinterprets Franklin's data for Willow Creek. One weakness, according to a commenter, is that Franklin never statistically corrected for the absence of owls that cannot be attributed to specific causes. One commenter stated that the low adult survivorship value for spotted owls without radio transmitters in the Roseburg demographic study area may be a consequence of the birds not being fully territorial and simply relocating elsewhere. Hence, the commenter believes the low adult survival may be in error and that no reliable data exist to demonstrate any present population decline in spotted owl populations anywhere within the range.

Service response: The Service believes the comment is in error regarding the low adult survivorship in the Roseburg demographic area. Thomas *et al.* (1990) presented data on the emigration of adults from the Roseburg demographic study area. They found only one occurrence of permanent emigration of adults in 100 bird-years. Thus, the estimated adult survival rate is not in error and the sharp population decline in the Roseburg area is fully supported by the data.

USDI (1990) reports the best and most current estimates of survival and fecundity available. The Status Review Supplement (USDI 1989) used the best estimates of population parameters available; however, these estimates are obsolete because more data and better analysis methods are now available.

Comment: The survival problem of the young is a factor one would expect since the owl habitat is at carrying capacity and this is a no vacancy situation according to one commenter.

Service response: The Service agrees that the survival of young owls may be depressed because the population may be above long-term carrying capacity. Habitat has decreased in some areas faster than the owl population. Hence, there may be insufficient habitat available to support juvenile owls.

Comment: One commenter believed the Status Review Supplement and Forest Service SEIS placed a great deal of faith on an untested HSI model, developed using assumptions about relative value of habitat other than old growth. The commenter stated that data for this HSI model came from a small population size.

Service response: USDI (1990) gave no consideration to the HSI model concept. However, the Forest Service has considered this approach in the SEIS and the Status Review Supplement mentioned the methods briefly.

In its status reviews (USDI 1987, 1989, 1990), and listing proposal, the Service did not consider the HSI model concept.

Issue 21. Experimental Design/Statistics

Comment: According to one commenter, the use of stand classifications in the literature and Status Review Supplement is confusing. Several commenters stated that little, if any, of the research referenced in the Status Review Supplement was conducted totally in old-growth timber stands. Many authors have lumped data from forest stands of various ages. Several commenters wrote that it is grossly inadequate to use age as a shorthand for forest stand characteristics as stand classification varies widely even among age groups, depending on latitude, elevation, species, and growing site qualities. A number of commenters stated that most owl studies were conducted on Federal lands which contain an inadequate representation of age classes and forest stand conditions. According to these commenters, because these forests usually have only older, unmanaged forests or regenerated stands less than 60 years old, studies are not available that conclusively examined habitats between 50–200 years.

Service response: The Service believes that terminology regarding old growth, second growth, young growth and stand age has been carelessly used and is, thus, confusing. USDI (1990) is more specific regarding these matters. Stand age is often quite useful, but not adequate in many cases (e.g., the Klamath Province). Data on younger stands, but those having some old-growth characteristics, notably coastal redwood forest, are reviewed in the USDI (1990). Information on owl use in various stand classifications is provided. The Service acknowledges that Federal lands have few regenerated stands over 60 years of age. The commenter is correct in that most studies have been conducted on Federal land where more old-growth forests still exist. However, during the past three years a number of studies have been conducted in younger stands, including private lands (e.g., Irwin *et al.* 1989b,d; Diller 1989; Pious 1989). Studies on Bureau of Land Management lands (Forsman 1980a,b; Thrailkill and Meslow 1989; and Wagner and Meslow 1989) all involve intermingled private and Federal lands.

Comment: Several commenters stated that studies showing preferential use of old growth are subject to statistical errors that may mask owls using young forests more often because none had a sample size greater than 20, the minimum size to avoid this defect. The commenters noted that this problem is not addressed in the Status Review Supplement. According to one view, Chi-square statistical tests (a statistical test to determine deviation from randomness) are used to calculate the distribution of the habitat in proportion to use, however, this statistical test minimizes a Type I statistical error but is subject to a Type II error in cases with a small sample size. Hence, these commenters maintain that habitat use calculations may omit a habitat type that the species actually prefers, such as young-growth.

Service response: Contingency tables are frequently analyzed and a test statistic T computed. Under some general conditions, T is asymptotically distributed as chi-square. Generally, T is approximately chi-square if the smallest expected value is greater than 2 (not 20 as was suggested). Habitat use versus availability studies analyzed by the Service typically had five or fewer habitat categories and greater than 50 independent observations per bird (USDI 1990). The number of owls followed per study ranged from 5 to 16 (USDI 1990: table 2.4). In a paper examining error rates for a variety of statistical methods used to assess selection studies, Alldredge and Ratti (1986) estimated Type I and II error rates for studies having different numbers of animals, observations per animal and habitat types. Type I error occurs when the null hypothesis, in this case the hypothesis that owls do not preferentially select any forest type, is rejected when in fact it is true. A type I error rate <0.05 percent is considered acceptable. Type II error is the acceptance of a false null hypothesis, that is acceptance of the null hypothesis that northern spotted owls do not preferentially select a particular habitat when in fact the hypothesis is false. Type II error is a function of several factors in studies of habitat selection by northern spotted owls, including the number of owls studied, number of habitats and number of observations per owl. A Type II error rate of 10 percent to 20 percent is considered acceptable (Snedecor and Cochran 1980:102 cf. Alldredge and Ratti 1986).

One method of resource selection analyzed by Alldredge and Ratti was that proposed by Neu *et al.* (1974), a method used in studies of habitat use versus availability by northern spotted owls (e.g., Forsman *et al.* 1984). The

estimated Type II error rate for studies using the Neu *et al.* method and having <7 habitats and > 50 observations per animal. One potential problem, however, is the number of animals analyzed in each study. The maximum estimated Type II error rate for studies of 20 animals, <7 habitat classes and 50 observations per owl was 3.6 percent. Although all studies evaluated by the Service had fewer than 20 owls, and therefore likely have a Type II error rate greater than 3.6 percent, the criticism regarding number of study animals would be valid only if the studies had statistically analyzed the population of owls (i.e., the number of study animals). Instead, owls were analyzed individually and discussions of habitat selection were restricted to statements like "4 of 5 birds studied exhibited preference for * * *". In studies of relatively few animals, such as most of the studies examining habitat selection of northern spotted owls, "conclusions should be restricted to the * * * study animals per se" and not extrapolated to other populations (Alldredge and Ratti 1990:17). As noted above, conclusions about habitat selection were restricted to the study animals.

Given the preponderance of birds exhibiting selection for old growth (68 of 81, USDI 1990), however, there is little need for additional statistical analysis on the population. The data clearly indicate selection by owls for old-growth forest. The Service therefore does not accept the comment that the results of habitat selection studies on northern spotted owls were affected by Type II error rates due to small sample sizes.

Comment: One researcher noted that many of his observations resulting from nighttime surveys on Pelican Butte, Klamath County, Oregon, were in second growth, whereas all roost sites and the one nest site in its particular study were in mature/old growth. The second growth had been logged less than 40 years ago. Because spotted owls are attracted to limitations of their call, this researcher believes he could have falsely concluded that this was a population using second-growth forest if he had relied totally on nighttime surveys. He concluded that nighttime surveys were inappropriate to draw inferences about habitat use.

Service response: Surveys using owl calls can be misleading, particularly if only a single visit is made. Owls from surrounding areas may fly toward the observer and then call. If the observer is in a young stand, the owl's call might thus be misinterpreted and the observer could conclude that the owl was using the young stand. In fact, the owl had been in another stand type, but flew to the young stand prior to calling and being heard. Therefore, the Service acknowledges that caution should be exercised when interpreting nighttime survey results regarding habitat use.

Issue 22. Studies Using Radio Telemetry/Potential Impacts of Radio Transmitters

Comment: According to several commenters studies by Forsman *et al.* (1984) and Reid *et al.* (1987) of radio-equipped owls do not prove that owls prefer old growth even though owls spent far more time in old growth than expected based on the availability of old growth in the home range. For these commenters, the studies at best indicated that owls do not prefer very young forests.

Service response: There is no evidence to question the home range and habitat use data garned via radio telemetry. The data sets used for estimates of home range and habitat use rely on a pair of owls or individual owls, respectively, tracked for 1 or more years; such birds demonstrated their capabilities, habitat selection and home range use over 12 months or longer without apparent impairment. The impact of radio transmitters on actual population performance of spotted owls is slight; at any one time only a very small proportion of the overall population has borne transmitters.

Comment: The Forest Service commented that on the Olympic Peninsula, Forsman (1989) found that survival of radio-tagged adult owls was not significantly different from color-banded owls. A commenter noted that similar work in the Oregon Coast Range, Sierra Nevada, and northwestern California on birds fitted with radio backpacks caused concern.

Service response: Backpack radio transmitters have been used since the mid-1970's as a standard technique to allow research of home range, habitat use, dispersal and behavior of spotted owls. The Service notes that results from several studies found statistically significant differences in some measures of owl demographic rates and none in others in comparing results of birds equipped with transmitters versus those without. Observations of apparent differential mortality between radio-marked owls and color-banded owls at some study sites (Paton *et al.* 1990, Forsman unpublished data) prompted close examination of both survival and reproduction of radio-marked owls. Data from radio-marked owls were not used in calculating demographic parameters.

Research requiring use of radio-telemetry techniques is currently adopting methodology to avoid or minimize use of backpack transmitters on spotted owls. Lightweight transmitters, less than 9 g, are available that can be attached to the central tail feathers or used as a backpack. Research utilizing radio-telemetry has had no significant effect on northern spotted owl populations and has been an important source of information for spotted owl conservation plans.

Comment: In the view of several commenters, data show a high juvenile mortality rate that cannot exclude radio-transmitters as the primary cause of death in dispersing owls. According to one commenter, virtually all the mortality data, especially for juveniles, are derived from studies using radio transmitters and are, therefore, biased because the use of transmitters affixed to the birds affects the results.

Service response: Backpack radio transmitters were used between 1982 and 1985 in studies of juvenile dispersal (Miller 1989, Gutierrez *et al.* 1985); these studies were also the source of some survival rates of juvenile spotted owls. The computed annual survival rates varied between years and between regions and averaged 19 percent. Various individuals have questioned the accuracy of the estimated rates because they viewed the rates as high and suspected that the radio transmitters were responsible for elevating the rate of mortality. Because some studies have demonstrated elevated mortality rates in radio-marked adult owl the Service cannot dismiss these concerns. Dispersing juvenile owls carrying backpack transmitters weighing about 20 g had an annual survival rate of about 19 percent (Miller 1989). Whether or not this is a low or high rate is unknown; it is simply the average rate observed over 4 years of studying radio-marked juveniles. The only other survival rates of juvenile owls are based on banding studies and these averaged 13.8 percent for northwest California and 21.9 percent in the vicinity of Roseburg, Oregon (USDI 1990). Hence, there is no evidence to conclude that mortality in radio-marked juvenile owls was higher than that of birds without radios. Neither is there evidence that the sustained mortality was related to the use of radio-transmitters. Nevertheless birds carrying radio transmitters were excluded from calculations of survival rates employed in computation of lambda values (USDI 1990).

Comment: Several commenters stated that the Status Review Supplement dismisses the impacts of radio

transmitters even though Forsman (1988) had data indicating that radio transmitters interfered with reproduction. One commenter remarked that the Forest Service's Pacific Northwest Research Station found that 24 percent of radio-tagged birds fledged young versus 81 percent for non-radio tagged owls (USDA 1988). Another commenter wrote that in a study conducted on the Roseburg District of the Bureau of Land Management comparing radio-tagged to color-banded spotted owls, it was found that the proportion of radio-tagged owls nesting was significantly lower than that of banded birds (Forsman, unpubl. data), but that over a five-year period, no clear relationship was detected in nesting success. The commenter stated that radio-tagged birds produced fewer young, but this apparently reflected that such birds had fewer nesting attempts rather than a higher failure rate. A researcher reported that in a monitoring study conducted for the Bureau of Land Management on Miller Mountain, Oregon, there was no significant difference between mean annual number of young fledged at sites occupied by radio-marked and non-telemetry owls in 1986, 1987, 1988, and 1989 (Wagner and Meslow 1989).

Service response: At least in some studies it appears that backpack radio transmitters decrease survival of adult spotted owls. The effect of backpack radio transmitters on reproduction seems more widespread. Radio-marked owls have been excluded from all calculations of adult survival and reproduction; therefore, any effect of radio-transmitters on survival or reproduction does not extend to or bias the various estimations of population increase/decrease or models of population viability.

Paton *et al.* (1990) working in California, and Foster *et al.* (1990) working in Oregon and Washington contrasted survival and reproduction of radio-marked adult spotted owls with a color-banded sample matched temporally and geographically. In California female radio-marked owls experienced significantly lower survival rates than their color-banded control group. The California sample of radio-marked pairs also was less likely than color-banded owls to attempt nesting. In Washington and Oregon there were no significant differences between the survival rates of combined made and female radio-marked owls and their color-banded counterpart. The radio-marked cohort of owls in Oregon and Washington exhibited evidence of lower reproduction than the color-banded cohort in some areas; in other areas that was not the case.

Comment: One commenter stated that many credible scientists believe that heavy radios interfere with a young bird's ability to hunt and forage. Someone asked why Dr. Fred Gilback's (Baylor University) data on tagged screech owls were not reviewed. His study according to one commenter, revealed that tagged screech owls were not as successful in prey capture as those that were not tagged

Service response: Dr. Frederick Gehlbach of Baylor University (Texas) has studied screech owls for a number of years, mostly in a suburban setting. He has presented no reports of differential capture success between radio-marked and unmarked screech owls. Dr. Gehlbach indicated that he had conducted limited experiments with 2 radio-marked owls versus 2 unmarked owls in flight cages and free-flying (pers. comm., March 1990). Dr. Gehlbach interprets the results as indicating radio attachment severely limits the performance of the screech owls. He further stated that he believes that radio attachment influences the performance of a wide variety of wildlife.

Issue 23. Foraging and Prey Base

Comment: Several individuals remarked that owls move from old growth to areas where food and mates are available and that studies in which researchers assumed that an owl had died if it could not be relocated in old growth were in error. A number of commenters maintained that openings created by clearcuts are beneficial to owls because that is where they hunt. The commenter also maintains that wildlife, in general, does better in clearcuts. A further comment was that owls use old growth only for shelter because there is no food under the forest canopy. One commenter wrote that loggers enhance foraging for owls as they walk through woods and flush rodents and other prey that spotted owls can capture. Another viewpoint was that second growth provides more foraging habitat for spotted owls.

Service response: Extensive data obtained by radio-tracking 81 individual northern spotted owls in the various physiographic provinces offers no evidence that owls leave old forest areas to preferentially use young forests (USDI 1990). Survival rates of spotted owls do not utilize information from birds marked with radio transmitters. Survival rates of spotted owls are calculated using repeat observations of individually marked owls on demographic study areas; search for missing, marked owls is not limited by forest age class. Hence, such studies did not assume that an owl with a radio-transmitter had died if it was not relocated in old growth. The suitability of young stands or clearcuts as foraging habitat is best addressed by examining locations of foraging spotted owls. In examples cited from across the range of the subspecies the 1990 Status Review (USDI 1990) reported that in studies comparing habitat used to habitat available 68 of 81 owls selected old forest for foraging. In contrast, none of 57 owls selected for pole stands and only 3 of 81 owls selected young stands for foraging. In the proposal and previous status reviews (USDI 1987, 1989) similar habitat use patterns were reported. Spotted owls forage heavily on nocturnal arboreal mammals; these prey are either not present in adequate numbers or are apparently not available to spotted owls in clearcuts (Thomas *et al.* 1990). Because spotted owls are nocturnal and most human beings, including loggers, use the forest during daylight hours, it is unlikely that people walking in the forest assist the owls by flushing prey. Although a considerable area of the landscape is young forest, spotted owls disproportionately avoid young forest and choose to forage in old forest.

Comment: A commenter noted that data available on prey cannot be cited to conclude that old growth provides more or better prey for owls than does young growth. The commenter stated that the Status Review Supplement refers to old growth as supporting a high density of prey species for the spotted owl, apparently implying that old growth provides a better prey base than any other habitat type.

Service response: The Service concurs that recent summaries of prey abundance (Thomas *et al.* 1990) do not support a generalization that prey are more abundant in old than in younger forests. Rather, abundance of prey species by forest age varies with the species of prey, geographic region, and probably year. The fact remains that spotted owls forage disproportionately in older forests with the clear inference that they obtain prey in proportion to the time spent in the various age classes of forest.

Comment: According to one commenter, studies cited in the Status Review Supplement to indicate a high density of prey species in young growth were misinterpreted. Another asked why, if the owl survives only on red voles, can it be easily enticed to catch a white mouse that has been released near the owl by a biologist? A party stated that disease and food supply are

the limiting factors on the spotted owl population.

Service response: The Status Review Supplement (USDI 1989) indicated that on the H.J. Andrews study area densities of flying squirrels were not significantly different in old-growth versus young-growth stands; that interpretation is correct for the specific study. The fourteen papers cited on p. 2.1 of Status Review Supplement (USDI 1989) were cited primarily to document descriptions of spotted owl habitat. These papers provide only a limited assessment of prey habitat relationships. Red tree voles are only one of a variety of prey taken by the spotted owl (see review in Thomas *et al.* 1990). Adult spotted owls can be enticed to take a variety of offered prey items including white mice especially when young owls are present. The Service concurs that food supply is likely a limiting factor for spotted owls as it is for most wildlife. No new evidence since the Status Review Supplement (USDI 1989) leads the Service to suspect that disease currently plays an important role in limiting the spotted owl population.

Comment: Several commenters maintained that the Status Review Supplement inadequately assesses the relationship between prey base and the spotted owl by omitting data suggesting that prey base is a significant component of reproductive success. According to these commenters, the Status Review Supplement is contradictory in that it states that high prey density is an important factor in selection of old growth. Elsewhere prey abundance is said to be similar in old growth and young growth, thereby suggesting that prey abundance may not be the determining factor in selecting for old-growth forest, yet the revised finding states that fluctuation in reproductive success may be attributed to prey availability. According to these commenters, the Review Team failed to appreciate the importance of understanding prey relationships. Several commenters wrote that the team concluded that the study by Ward and Gutierrez (1989) showed no correlation between prey abundance and reproductive success, but that this was an improper conclusion. It appears to several commenters that studies present contradictory findings and no conclusion can be reached based on current data. In their view, these contradictions are indicative of a significant scientific dispute on the relation of prey base to the definition of suitable habitat. Further, commenters argued that the interpretation in the Status Review Supplement that prey density is comparable in old-growth and young-growth forest is not supported. One commenter recommended that the proposed rule be withdrawn until information on prey abundance and availability in young- and old-growth forest is available.

Service response: The most recent comprehensive review of spotted owl food habits and prey is presented in Appendix J of the Thomas *et al.* (1990) report. The hypothesis that variation in reproduction by spotted owls is linked to variation in prey abundance is based on such studies as those of tawny owls (Southern 1970) and great horned owls (Rusch *et al.* 1972). The relationship of spotted owl reproduction to abundance of prey has not been well established. The reported positive association between reproduction and the frequency of large prey in spotted owl diets may represent either differential capture or differential transport of large prey to the nest; this issue is unresolved. The Ward and Gutierrez (1989) study was unable to demonstrate differences in prey abundance between reproducing and nonreproducing owl pairs by sampling prey at foraging sites used by the male owls (Thomas *et al.* 1990). Small mammal populations vary greatly from location to location and from year to year. It is not surprising, therefore, that investigators in different regions, and often in different years, report differing measures of abundance of the same or different species over a variety of forest types and age classes. It is not accurate to portray the lack of strong congruity among the assortment of studies as evidence of significant scientific dispute. There is ample evidence to indicate that spotted owls obtain their necessities from forests with old-growth characteristics and are present at much reduced densities, if at all, when forests lack such characteristics. It is unnecessary to resolve the question of prey availability in old versus young forests, or, managed versus unmanaged forests, to make a determination of the status of the northern spotted owl.

Comment: A possible hypothesis regarding prey availability and habitat use by owls was provided by one commenter who speculated that general prey unavailability in most young (40–60 year old) even-aged stands may be the result, in part, of dense overlapping crowns preventing access to prey. He suggests that pre-commercial or commerical thinnings may inprove habitat quality for owls.

Service response: Even-aged stands 40 to 60 years old that have not been thinned often develop a dense overlapping crown. The dense crown intercepts most light and thereby limits the development of the understory; such stands have little structural diversity which is likely reflected in a reduced complement of small mammals, the primary prey of spotted owls (Forsman *et al.* 1984). A dense overlapping canopy may also limit maneuverability of foraging spotted owls and preclude their effective use of such habitat. Whether thinning stands would increase prey abundance or availability and, thus, increase use of managed stands by spotted owls has not been demonstrated.

Issue 24. Home Range

Comment: According to one commenter, the proposal assumes that spotted owls are very territorial, yet this ignores empirical study to the contrary. Further, the commenter maintained that basic data included in the home range analysis are also problematic in that overestimation is possible. Also, one commenter stated that because the use of transmitter backpacks appear to affect the owl's ability to forage, they probably also modify home range data. According to one viewpoint, the convex polygon method of measuring home range contains numerous mathematical and biological problems such as a high probability of overestimating the area of use (*e.g.*, Samuel and Garton 1985).

Service response: There is no empirical evidence indicating that northern spotted owls are not territorial and the Service rejects the comment.

The minimum convex polygon method for estimating home range (Southwood 1966) results in the smallest possible convex polygon containing all the observed locations. The area of this polygon represents the home range. One problem with use of the convex polygon method as a means of estimating home range size is a tendency for the estimated home range to increase in size as the number of locations increases (Jennrich and Turner 1969, Schoener 1981, Anderson 1982). As the number of locations increases, the probability of an "outlier" location being noted increases. Because the method connects the most distant points from the center of location points, a particularly distant "outlier" results in a larger area being contained with the polygon.

For example, the method is likely to overestimate the home range if a bird has two different use areas some distance apart, that is it forages in one area, nests in another, and tends to move in a straight line between the two (*e.g.*, a barbell shaped territory). No one approach to estimating home range,

however, is free of problems (Anderson 1982, Samuel and Garton 1985). Because of the difficulty in comparing home range estimates derived from different methodologies, a more important concern than the technique *per se* is whether different investigators used the same technique so that comparisons can be made. Comparisons of home range estimated from different methodologies are incorrect. Most estimations of home range size for northern spotted owls were obtained using the minimum convex polygon method, and although the Service recognizes there is a tendency for overestimation to occur under some circumstances it nonetheless considers the estimates reliable.

An informal "rule" for biologists planning to place radio transmitters on birds is that the weight of the package should not exceed 5 percent of the bird's mass (Cochran 1980, Caccamise and Hedin 1985). Effects of the "rule" on attributes such as behavior (e.g., home range size, distance for foraging bouts) and survivorship have not, however, been evaluated for many species. Gessaman and Nagy (1988) demonstrated that homing pigeons wearing backpack transmitter of 2.5 percent and 5 percent of their body mass expended more energy and flew slower, but their work was on high performance homing pigeons (i.e., birds trained to fly as rapidly as possible and in as straight a line between two points as possible), inferences to other bird species like the northern spotted owl are limited. In fact, Gessaman and Nagy conclude that since the majority of flights of birds in the wild are at or near the most efficient flight speeds, effects of transmitters on energy expenditure should be smaller than those demonstrated for homing pigeons. Effects of transmitters on behavior such as home range size are, at this time, unknown, but it is reasonable to assume that if there was an effect it would lead to smaller, not larger, home range estimates.

Comment: One commenter disagreed with the statement in the Status Review Supplement that (2.16). "Home range size increases as quality and quantity/unit area of preferred habitat decreased" and believes there are no data to support this as no one has measured habitat quality relative to population fitness. According to this commenter, large spotted owl home ranges have larger amounts of old growth than contained in small home ranges. He speculates that home range size may be affected by continuity of acceptable habitat (fragmentation effect), and hypothesizes that home range increases in fragmented habitat (see Solis 1983, Forsman et al., 1984, Carey 1985, Gutierrez 1988). Although this is a reasonable hypothesis, there is no proof, according to this commenter.

Service response: The Service agrees with the comment that there are no data to support the suggestion in the Status Review Supplement (USDI 1989:2.16) that home range size increases as the quality and quantity per unit area of suitable habitat decreases. The current Status Review (USDI) 1990) reflects this change. The hypothesis that home range size increases with increasing fragmentation is reasonable, but has not yet been demonstrated.

Issue 25. Nesting and Roosting

Comment: One commenter stated that the Status Review Supplement noted that nesting activities of northern spotted owl are strongly associated with old-growth forests, but fails to support this contention. Several commenters wrote that in California, studies on private lands show that nests are located in managed forests containing considerably less canopy cover than 100 percent. Commenters cited studies on private land to show that broken tree tops and/or large cavities are not required nor even preferred as nest sites.

Service response: Nest sites of northern spotted owls are strongly associated with old-growth forest and forest containing structural characteristics similar to old growth (USDI 1990).

The Service rejects the specific assertion that nests on private managed forests in California contain considerably less than 100 percent canopy. Canopy coverage in coastal redwoods and redwood/Douglas-fir ranged from 80 percent to 90 percent, and 70 percent to 80 percent, respectively. Two hardwood stands containing nests had canopy coverage of 80 percent. The lowest reported value by the Timber Association of California was 70 percent (1989b; appendix B, part 2). Although the Service recognizes that there undoubtedly are nests in stands having canopy coverage <70 percent, the vast majority are in excess of 70 percent, a value the Service does not consider to be "considerably" less than 100 percent.

Evidence from across the range of northern spotted owls suggests owls exhibit considerable flexibility in the nesting substrate (USDI 1990) and the Service accepts the comment.

Comment: Results of a recent study of 53 spotted owl nest sites within the Wenatchee and Okanogan National Forests in Washington were reported by one commenter (Irwin et al. 1989a). Many of the stands had been selectively logged within the past 70–80 years and five nests sites had been harvested over 40 years ago. Nest trees were 67–700 years old (average 194 years) and nests were mostly found in platforms created by mistletoe or in nests originally constructed by hawks. The majority of nests were in uneven-aged stands classified as mid-successional (climax species were grand fir or western red cedar and western hemlock, these were overtopped by residual Douglas-firs which survived previous logging or fires). Twenty of the nests were in trees 67–125 years old.

Service response: The Service accepts the comments.

Comment: According to one view, the Status Review Supplement has not proven the point that owls prefer to roost in old growth because the studies they cite (Miller 1989, Forsman *et al.*, 1984) failed to analyze a complete range of age classes. Further, commenters stated that the studies rely almost exclusively on public lands that only have mature/old growth and very young stands. Moreover, several commenters noted that the studies lumped various age classes and covered a limited geographical area. One commenter maintained that the Status Review Supplement omitted relevant data from Franklin *et al.*, (1986) in which none of 10 roost sites in 1983 and seven of 14 roost sites in 1984 were in old growth. A study by Diller (1989) was quoted to indicate that on Simpson's lands the average age of the dominant trees used for roosting was 57 years even though an old-growth stand was within 8.6 miles on average.

Service response: Studies by Thrailkill and Meslow (1990) and Miller and Meslow (1989) both examined use versus availability of forest type used by roosting northern spotted owls. Both studies examined three age classes of forest, including old, mature and young. Young was defined as <100 years of age by Thrailkill and Meslow and "less than mature" by Miller and Meslow. An additional study by Carey *et al.* (1990) analyzed the same three classes plus pole/sapling forest. Owls in all three studies selected for old-growth forest and against young and pole/sapling forests. The Service considers the age classes examined sufficient and therefore rejects the comment that studies examining habitat use of northern spotted owls failed to include a broad representation of all age classes of trees. Recent work by Blakesley *et al.* (1990b) also supports the contention that roosting owls select old growth.

Franklin *et al.* (1986) did not state that none of 10 roost sites in 1983 and 7 of 14 roost sites in 1984 were in old growth. The Service therefore does not accept the comment that relevant data was omitted from the Status Review Supplement (USDI 1989).

The Service accepts the data from Diller's (1989) study in coastal California redwoods. However, the Service again notes that redwood stands have many of the structural characteristics of old growth at younger ages (Kerns 1988) and that selection of stands for roosting by northern spotted owls is more likely related to stand structural characteristics than age *per se*.

Issue 26. Reproductive Rates

Comment: Several commenters stated that industry data for northern California indicate that young growth supports owls as well as does old growth and reproductive rates are similar. Although the Timber Association of California did not band birds, did not have several years to conduct the study, and did not undertake numerous site visits in the survey areas, it believes its results are comparable to studies on Federal lands (note that the Timber Association of California also included data on the California spotted owl). Therefore, the Timber Association of California concludes that the Status Review Supplements' hypothesis that northern spotted owls only successfully reproduce in old growth is disproved or at least unreliable. The Timber Association of California data from California show a reproductive success rate (50 percent) slightly higher than other reported rates in Franklin *et al.*, (1986, 1987, 1988) (42–47 percent). Furthermore, one commenter maintained that recent data show an increase in reproductive success.

Service response: The Timber Association of California data from the coastal redwood zone included many stands of up to 100 years in age, whereas rotation ages in the future are likely to be approximately 60 years or less. The surveyed stands also included remnant older trees (see discussion under Factor A) which are believed to have been important in making the stands usable by northern spotted owls. These remnant older trees, however, would not be present in the future if the stands are clearcut. The Timber Association of California data from inland areas were gathered primarily on lands that had been harvested using selective cutting methods. These lands contain the structural characteristics that are associated with spotted owls. These methods are seldom used on public land and are not used on much of the private land in northern California. The Timber Association of California study therefore did not characterize typical commercial timberland in California.

Comment: One commenter stated that the actual reproductive rates are significantly higher than the Status Review Supplement indicates. For example, the rangewide mean reproductive rate for 1982–1985 was 0.20+.16 and for 1986–1989 was 0.32+.09.

Service response: The Service believes that the Status Review Supplement provided a thorough review of the information available at the time the Status Review Supplement was prepared. Since the Status Review Supplement was prepared, new information has become available which indicates that reproductive rates are higher than the estimates contained in the Status Review Supplement. Current estimates (female fledglings produced per adult female) are 0.32 and 0.38 for study sites in Oregon and California, respectively. Even when these higher rates are used, however, analyses indicated that both populations are declining (USDI 1990).

Comment: According to one commenter, data regarding spotted owl reproductive success do not conclusively show that the rate of reproduction is insufficient to maintain a viable population and averages between 40 and 60 percent. One commenter wrote that the Status Review Supplement states there was no reproduction in young growth, yet this was inaccurate because Irwin *et al.* (1989c) had reported 29 nest sites in young growth in the Wenatchee and Okanogan National Forests.

Numerous commenters argued that data on spotted owl survival, especially of juveniles, and reproductive rates, are not the best available data and reveal significant information gaps in population trends and dynamics.

Service response: The Service has conducted a thorough analysis, since the Status Review Supplement was prepared, of all existing data (see Discussion under Factor A). The analysis used state-of-the-art methods both to estimate the demographic parameters and to estimate whether populations in the Willow Creek Study area of California, and in the Roseburg Study Area in Oregon, are reproducing at replacement rates. The conclusion was that resident birds in both populations are not reproducing at self-sustaining rates. The reproductive rate was 0.38 and 0.32 fledglings/adult female in the Willow Creek and Roseburg Study Areas, respectively. These values are less than those cited by the commenter and in the Service's analysis were found to be insufficient to maintain a stable population size. Data are insufficient from other sites to make such an assessment. The study by Irwin *et al.* (1989a) was in stands harvested using selective methods. Many of the trees were much more than 100 years old. For example, nest site trees varied in age from 67 to 700 years. Thus, these were not young stands.

Issue 27. Competition and Predation

Comment: One commenter stated that the Status Review Supplement concludes that the barred owl competes with the northern spotted owls for habitat, however, this is conjecture. Another party stated that it was not shown that the presence of the barred owl is detrimental to the spotted owl. In contrast, another said that the real threat to the northern spotted owl is the presence of the barred owl and the expansion in range of the latter species, and that this threat will continue even if the old-growth trees are not removed. According to one commenter, because the barred owl is a much better competitor, it will replace the spotted owl regardless of the management efforts implemented to protect habitat. One commenter stated that recent work seems to indicate that barred owls displace spotted owls.

Service response: The 1989 Status Review Supplement did not reach a conclusion regarding the impact of the barred owl on the distribution, reproductive success, abundance, or survival of the spotted owl. Rather, the Status Review Supplement indicated that the long-term impact of the expansion of the barred owl into the range of the spotted owl was unknown, but of concern. The issue remains unresolved (USDI 1990).

Comment: One investigator submitted a recently completed study on the relationship between barred and spotted owls (Hamer *et al.* 1989). The study concluded that by reducing the amount of available habitat to spotted owls, barred owls appear to be placing more food stress on at least one spotted owl population (northwestern Washington on the west slope of the North Cascade Mountains) that shows signs of being near its energetic and ecological limits (Hamer *et al.*, 1989).

Service response: The Service accepts the comment noting that the Maner *et al.* (1989) study was conducted on the northern edge of the spotted owl's distribution.

Comment: One commenter stated that the Status Review Supplement assumes that predation in combination with timber harvesting poses a threat to the owl. According to one commenter, assumptions pertaining to a small area were extrapolated to the entire range. One individual maintained that the listing team was selective in its use of terminology and studies to avoid finding that the owl might be increasing at other places.

Service response: The Status Review Supplement [USDI 1989] recounted both the observation of predation on spotted owls by great horned owls and the concern that such predation may increase with increasing habitat fragmentation. The Status Review Supplement did not make a judgment as to the impacts of great horned owl predation on the spotted owl population; the 1990 Status Review [USDI 1990] deals with the situation in a similar fashion (Sec. 3.5). The Service employs the best scientific information available and extrapolates where warranted and does not believe that unwarranted conclusions were drawn concerning the significance of predation or competition to the status of spotted owl populations. Nor does the Service accept the commenter's statement that the listing team was selective in its use of terminology or in its review of studies.

Issue 28. Captive Propagation, Relocation, and Miscellaneous

Comment: Several commenters stated that the forest products industry should propagate northern spotted owls in captivity so that there would be no need to list them. A number of commenters recommended that northern spotted owls be relocated to wilderness areas from areas scheduled for timber harvesting. Another commenter asked if studies are being done to enable the transfer of spotted owls from areas scheduled for timber harvest to areas already preserved as wilderness or roadless areas.

Service response: Among the purposes of the Act are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved and to provide a program for the conservation of such endangered and threatened species (section 2(b)). It would not be in keeping with the intent of the Act to substitute a captive propagation program for maintaining the owl in its native habitat.

The Service generally dismisses proposals to transfer listed individuals from known suitable occupied habitat to other areas simply to expedite or permit destruction or adverse modification of existing suitable habitat. Instead, the Service may require compensation for habitat losses through section 7 consultation process with other Federal agencies for activities proposed that require Federal funding, approval, or authorization. Nor would the Service encourage capture and translocation of owls to other areas. Generally spotted owls have large home ranges. There is no reason to believe that large blocks of suitable, but currently unoccupied, habitat exist within wilderness or other protected areas that are free from logging pressure. Evidence indicates that home range size increases with elevation. As most wilderness areas within the owl's distribution are at higher elevations, home ranges in such locations would tend to be larger than those in many of the nearby lower elevation, non-wilderness areas scheduled for harvesting. The premise that owls occurring within the scheduled harvest areas could be captured and successfully established at translocation sites in wilderness or other protected areas is without foundation. Presumably the majority of suitable owl habitat located within wilderness areas already is occupied by spotted owls.

Comment: One commenter feels that the Service's analysis should be expanded to address many non-timber cutting uses of Forest Service land and that there should be guidelines for recreation and other non-consumptive activities. Without such guidelines, the commenter feared that restrictions may be developed for timber harvesting and inadvertently applied to forest activities that have little or no impact on the owls such as ski developments, camping, and off-road vehicle use.

Service response: In its assessment of the status of the northern spotted owl, the Service did not restrict its analysis to timber harvesting activities on Forest Service land. The Service recognizes that modification and loss of owl habitat can occur as the result of other activities. However, it is the Service's opinion that logging is the major factor affecting the continued availability and distribution of suitable habitat on Forest Service lands. Under section 7 provisions of the Act, the Forest Service will review any proposed projects that it is considering authorizing, funding, or carrying out to determine if such activities may affect the northern spotted owl. If proposed projects, including recreational activities, may affect the northern spotted owl, the Forest Service must consult with the Service who will evaluate the potential impacts of actions on the owl. These section 7 consultations will provide the guidance suggested by the commenter.

Comment: Several commenters were concerned that owls were being killed by loggers and other individuals and that immediate enforcement action is needed. The commenters referenced an article in the Oregonian that a mutilated spotted owl had been found hanging in a noose from a Forest Service kiosk. Others were concerned about the, "If it flies, it dies" bumper stickers.

Service response: As a listed threatened species, the northern spotted owl will be protected against "take" under prohibitions outlined in section 9 of the Act upon the effective date of this rule. Hence, at that time Service law enforcement agents may investigate possible violations of the Act and take whatever legal action is deemed appropriate. The Migratory Bird Treaty Act provides inadequate protection against take (see Factor E for details).

Comment: Several commenters indicated that the greenhouse effect will alter vegetation patterns in the Pacific Northwest and will have far more significant effects on the spotted owl than timber management. One said that these dying old-growth forests are contributing to the greenhouse effect.

Service response: The possible implications of the greenhouse effect have not been studied in relation to long-term viability of the northern spotted owl. The Service infers from this comment that if a threat is identified that may possibly have a more significant impact on the spotted owl than timber harvesting does, that the effects of clearcutting and other logging activities should be dismissed as inconsequential. However, the Service must include in its review and assessment, past, current, and foreseeable impacts on the habitat of the spotted owl. Clearly, timber harvesting has contributed and will continue to contribute to modifying and reducing the amount of suitable owl habitat. The Service cannot minimize the import of this impact simply because there may be other elements impinging on the owl's status. Furthermore, in a recent article in *Science*, Harmon *et al.* (1990) reports that old-growth forests capture and store much larger amounts of carbon from the atmosphere than younger forests. For landscapes with rotations of 50, 75, and 100 years, the carbon stored is at most 38, 44, and 51 percent, respectively, of that stored in an old-growth stand. Moreover, this study concludes that, contrary to the commenters' opinions, logging old growth contributes to the global greenhouse effect by releasing large amounts of carbon dioxide into the atmosphere, even when the old trees are

replaced by new seedlings. More than half of the wood harvested from old-growth stands is burned or used in other ways that releases carbon dioxide into the atmosphere (Harmon *et al.* 1990).

Comment: One commenter asked if there was a comprehensive report of the scientific literature on the owl that included current studies.

Service response: The scientific literature on the northern spotted owl is extensive. Anyone wishing a list of references pertaining to research findings on this taxon may contact the Service. Moreover, the Northern Spotted Owl 1987 Status Report, 1989 Status Review Supplement, the 1990 Status Review (prepared by the Service), and the ISC report (Thomas *et al.* 1990) provide a comprehensive report which discusses much of the scientific literature available on the owl.

Comment: Another noted that recently the eastern boundary line of habitat for the northern California province had been extended to the east to include part of Modoc County, California.

Service response: The Service has heard of several possible northern spotted owl occurrences in western Modoc County, California, as referenced by the commenter. However, further survey work has not verified the permanent status of these owls (G. Gould, pers. comm.: Don DeLorenzo, pers. comm.). Additional work may substantiate the presence of northern spotted owls in western Modoc County.

Comment: In the view of one party, if nest boxes and hunting posts were erected, there would be plenty of owls.

Service response: Suitable habitat of the northern spotted owl includes a host of characteristics, not just suitable nest sites and foraging posts. For example, quantity and quality of appropriate prey species as well as vegetation to protect against inclement weather conditions and to provide escape cover from predators are a consideration. There is no evidence that installation of nest boxes and perch sites will overcome the threats affecting the northern spotted owl.

Comment: One commenter noted a low level of infestation of a parasitic fly in spotted owls. He stated that Hippoboscid flies are known vectors of Haemoproteus, an internal blood parasite.

Service response: It is not known at this time to what extent the northern spotted owl is infected with the referenced internal blood parasite. Hence, the Service presently cannot assess the threat this possible condition may pose to the owl.

Summary of Factors Affecting the Species

The provisions of section 4 of the Act and regulations promulgated to implement the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the northern spotted owl *(Strix occidentalis caurina)* are as follows:

A. *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.* Western Oregon and Washington were covered by approximately 24 to 28 million acres of forest at the time of modern settlement (early to mid-1800s), of which about 70 percent (14 to 19 million acres) may have been old growth (Society of American Foresters Task Force 1983, Spies and Franklin 1988, Morrison 1988, Norse 1988). Historical estimates for northwestern California are not as precise, but suggest there were between 1.3 and 3.2 million acres of old-growth Douglas-fir/mixed conifer and about 2.2 million acres of old-growth coastal redwood (Society of American Foresters Task Force 1983, Laudenslayer 1985, Fox 1988, California Department of Forestry and Fire Protection 1988, Morrison 1988).

Habitat for northern spotted owls has been declining since the arrival of European settlers. Although the extent of suitable habitat before the 1800s is difficult to quantify, estimates of 17.5 million acres in 1800 and 7.1 million acres today (Thomas *et al.* 1990) suggest a reduction of about 60 percent in the past 190 years. Other estimates (Spies and Franklin 1988, Morrison 1988, Norse 1988) suggest that the reported decline in historical habitat, in fact, may have been as high as 83 to 88 percent. Habitat reduction has not been uniform throughout the range of the spotted owl, but has been concentrated at lower elevations and the Coast Ranges. Reduction of old growth is largely attributable to timber harvesting and land conversion practices, although natural perturbations, such as forest fires, have caused losses as well.

Current surveys and inventories have shown that while northern spotted owls are not found in all old-growth forests, nor exclusively in old-growth forests, they are overwhelmingly associated with forests of this age and structure (USDI 1989). It is well-established that northern spotted owls tend to be associated with forest stands in which many of the trees are more than 80 years old ("older forest") (USDI 1990, Thomas *et al.* 1990). For example, in 9 studies throughout the range of northern spotted owls, 85 percent of 81 radio-marked owls spent more time foraging in old growth than expected by chance, whereas only 4 percent spent more time foraging in young-growth stands than expected by chance (USDI 1990). Studies also show clearly that northern spotted owls preferentially select old growth for roosting (USDI 1990, Thomas *et al.* 1990).

Approximately 90 percent of suitable habitat for northern spotted owls now occurs on public land (Thomas *et al.* 1990). In Washington and Oregon less than 5 percent of the suitable habitat is in private or State ownership. Relatively speaking, little old growth presently exists on private, State, or tribal lands (Society of American Foresters Task Force 1983, Old-Growth Definition Task Group 1986, Morrison 1988, Spies and Franklin 1988, California Department of Forestry and Fire Protection 1988, Thomas *et al.* 1988, Greene 1988). In California, a significant amount of habitat may occur on private land but the exact amount is currently difficult to estimate. Historically, non-Federal lands probably contained a significant amount of owl habitat and may still offer the opportunity to provide vital linkages between islands of federally managed habitat in many areas. However, current logging practices, such as clearcutting, even-aged management, and short logging rotations, preclude development of future mature and old-growth conditions from most existing young forest stands.

The Forest Service manages 79 percent of the habitat on federal land, the Bureau of Land Management manages 14 percent, and the National Park Service manages 7 percent (Thomas *et al.* 1990). Of the 6.8 million acres of northern spotted owl habitat in government ownership, 60 percent is classified as timber production land, 28 percent is withdrawn from timber harvest (principally land in Wilderness Areas and National Parks), and 12 percent is classified as unsuitable for timber production (Thomas *et al.* 1990).

The amount of northern spotted owl habitat on land suitable for timber production has decreased rapidly since 1960 as indicated in Figure 1 for Forest Service land in Washington and Oregon. While future events are difficult to predict, past trends strongly suggest that much of the remaining unprotected spotted owl habitat could disappear within 20 to 30 years, and on some forests, the unprotected habitat could disappear within 10 years.

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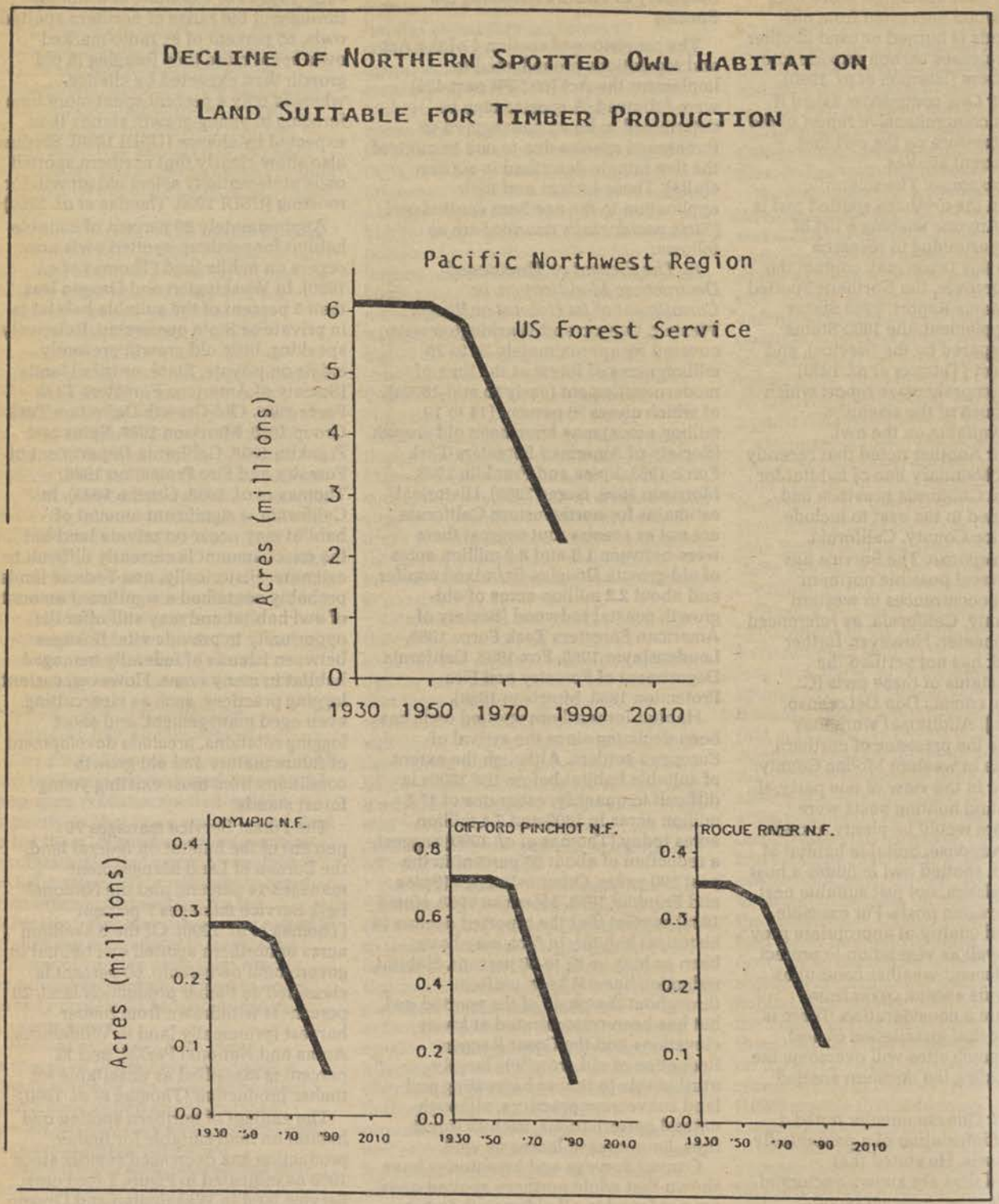

Figure 1. Decline in acreage of unprotected suitable northern spotted owl habitat on Forest Service lands also suitable for timber production. Based on information provided by the Forest Service (Pacific Northwest Region, Timber Management).

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Conversion of younger habitat to old-growth condition is not expected to be significant unless current logging practices change (Beuter *et al.* 1976, Heinrichs 1983, Society of American Foresters Task Force 1983, Harris 1984, Spies and Franklin 1988). As a result of habitat fragmentation, reduction in individual stand size, and edge effects, it has been speculated that the amount of suitable habitat presently available for the spotted owl (i.e., a matrix of patches of suitable habitat of sufficient size to support reproductively successful owls) may actually be less than 50 percent of the total habitat remaining today. This reduction in the quality of remaining forest habitat under present logging patterns will continue to the point where less than 10 percent of historical levels remains (Harris 1984; Harris *et al.* 1982; Morrison 1988, 1989; Norse 1988).

At present, a substantial amount of land on Forest Service and Bureau of Land Management land has been dedicated to spotted owl management areas. This system, however, has been called into question by Thomas *et al.* (1990), who consider it inefficient and unlikely to succeed in preserving northern spotted owls. They have urged that this approach be abandoned and have proposed a new system.

Under current management plans, the distribution of spotted owl habitat remaining in the near future will closely coincide with National Parks, reserved areas on federally managed forests, or other lands that are not considered suitable or available for timber harvest for other reasons (e.g., lands too steep or rocky for timber production, lands needed for hydrologic protection, scenic areas, etc.). These areas will contribute to maintaining spotted owl populations only to the extent that they contain suitable habitat of adequate size and quality for the birds (USDI 1989). By then, most remaining suitable habitat will no longer be continuous, but will exist as islands of varying size, spacing, and suitability spread over the range of the subspecies. Although more suitable habitat is likely to develop with time, it does not seem probable that recruitment of suitable habitat will significantly offset currently anticipated losses resulting from timber harvesting and natural events such as fire and wind storms (Thomas *et al.* 1990). With the currently anticipated timber harvest schedules, there is no assurance that this developing habitat will exist long enough to contribute significantly to northern spotted owl viability (Thomas *et al.*, letter dated December 20, 1989). Moreover, rotation age for managed forest stands is expected to be as low as 40–60 years on private land (Thomas *et al.*, letter dated December 20, 1989). Many of the current Wilderness Areas and parks are largely high-elevation lands above timberline and it is unlikely that northern spotted owl populations would be viable if their habitat were restricted to these areas (USDI 1990). These protected areas are concentrated within only about one-third of the current range (USDI 1990). Furthermore, abundance and reproductive success of northern spotted owls in these areas is much lower than in good habitat outside the protected areas. The low productivity is especially significant because it suggests strongly that reproductive success in these areas would be too low to balance mortality due to natural causes (USDI 1990). Lands unsuited for timber production may have poor soil conditions or be too steep or rocky for successful reforestation; such areas generally are not suitable habitat for spotted owls, nor are they likely to effectively support successfully reproducing pairs of owls (Meslow, pers. comm.).

To achieve the primary objective of timber management in Oregon, Washington, and northern California of producing wood at a non-declining rate, forests must be intensively managed with average cutting rotations of 70 to 120 years (USDI 1984, USDA 1988). Current preferred timber harvest systems emphasize dispersed clearcut patches for even-age management as the pattern of harvest. Thus, public forest lands that are intensively managed for timber production are, in general, not allowed to develop "old-growth characteristics," which often require about 200 years to develop. As a result, loss and fragmentation of remaining forests and old-growth stands suitable for spotted owls will continue if current management practices are unchanged. Suitable spotted owl habitat can develop in considerably less than 200 years depending on stand history, site productivity, and precipitation. There are examples of accelerated stand development in northern California, the Coast Range, and the east slope of the Cascades (Thomas *et al.* 1990).

The effect of timber harvest on northen spotted owls depends on whether even-aged, or mixed-aged techniques are used. Even-aged stands are created by clearcutting, or other methods in which only a few older trees are left, and by complete burns or blowdowns. Mixed-aged stands are created by selective cutting or partial burns or blowdowns. More than 90 percent of the timber harvest throughout the range of the northern spotted owl is accomplished using clearcutting or other methods that produce even-aged stands (USDI 1990). In considering the effect of timber harvest on northern spotted owl populations, primary attention must be given to the effects of even-aged harvest methods.

Several studies have concluded that northern spotted owls are seldom found in even-aged stands younger than currently planned rotation ages. For example, Forsman *et al.* (1977) surveyed 104 miles of roads in western Oregon and detected only one pair and four single northern spotted owls (0.06 owls/mile). In a nearby area with more abundant older forest, they detected 0.93 owls/mile. Forsman *et al.* (1987) surveyed some of the same areas lacking older forest 10 years later and obtained similar results (0.03 owls/mile). Postovit (1977) surveyed roads in Washington. He detected only 2 single birds (0.006 owls/mile) on routes lacking older forest. On nearby routes with abundant older forest he detected 0.052 owls/mile. Irwin *et al.* (1989d) surveyed 277 miles ^{2} in southwestern Washington in areas lacking older forest. They found only one pair (in one of two years) and detected 0.01 owls/mile ^{2} and 0.002 pairs/mile.^{2} Bart and Forsman (1990) tabulated data from eight surveys excluding the ones mentioned above in areas containing extensive 50 to 80 year-old stands but little older forest. The surveys covered a total of 679 miles ^{2} and were located throughout the range of northern spotted owls. The density of owls was only one per 100 miles ^{2} and of pairs was one per 300 miles ^{2}. In contrast, nearby areas with substantial areas of older forest, surveyed using similar methods, had a density of one pair per 7 miles ^{2}, approximately 40 times higher than the density reported from areas lacking older forest (Table 1) (USDI 1990).

The Service (USDI 1990) analyzed data from the Forest Service monitoring program (O'Halloran 1989, Simon-Jackson 1989). Northern spotted owl abundance and productivity decreased steadily as the amount of older forest decreased and areas with <20 percent older forest had few owls (Table 2). Meyer *et al.* (1990), in comparing habitat fragmentation at owl sites with random sites on Bureau of Land Management land in Oregon, found significantly lower levels of fragmentation at the owl sites. Bart and Forsman (1990) obtained data from 186 study areas covering 4,319 miles ^{2} located throughout the range. Their analysis demonstrated that in areas with less than 20 percent older forest, northern spotted owls were rare, and had low reproductive success

(Figure 2). Further, these trends were similar throughout the range (Figure 3).

TABLE 1.—Results of Surveys for Northern Spotted Owls in Landscapes With Abundant 50–80-YEAR-OLD STANDS BUT LITTLE OLDER FOREST (BART AND FORSMAN 1990).

Location	Area surveyed (mi²)	Percent of area covered by 50–80 yr. stands	Owls per mi²	Pairs per mi²
Washington				
Cedar R. Watershed	20	50	0.00	0.00
Packwood Ranger Dist	9	92	0.00	0.00
Randle Ranger Dist	36	75	0.00	0.00
Olympic Peninsula	16	81	0.00	0.00
Southwestern Wash	277	52	0.01	0.00
Oregon Cascades				
Oakridge Ranger Dist	21	68	0.00	0.00
Eugene District, BLM	115	57	0.04	0.02
Klamath Province				
McCloud Ranger Dist	185	59	0.00	0.00
All areas	679	67	0.009	0.003

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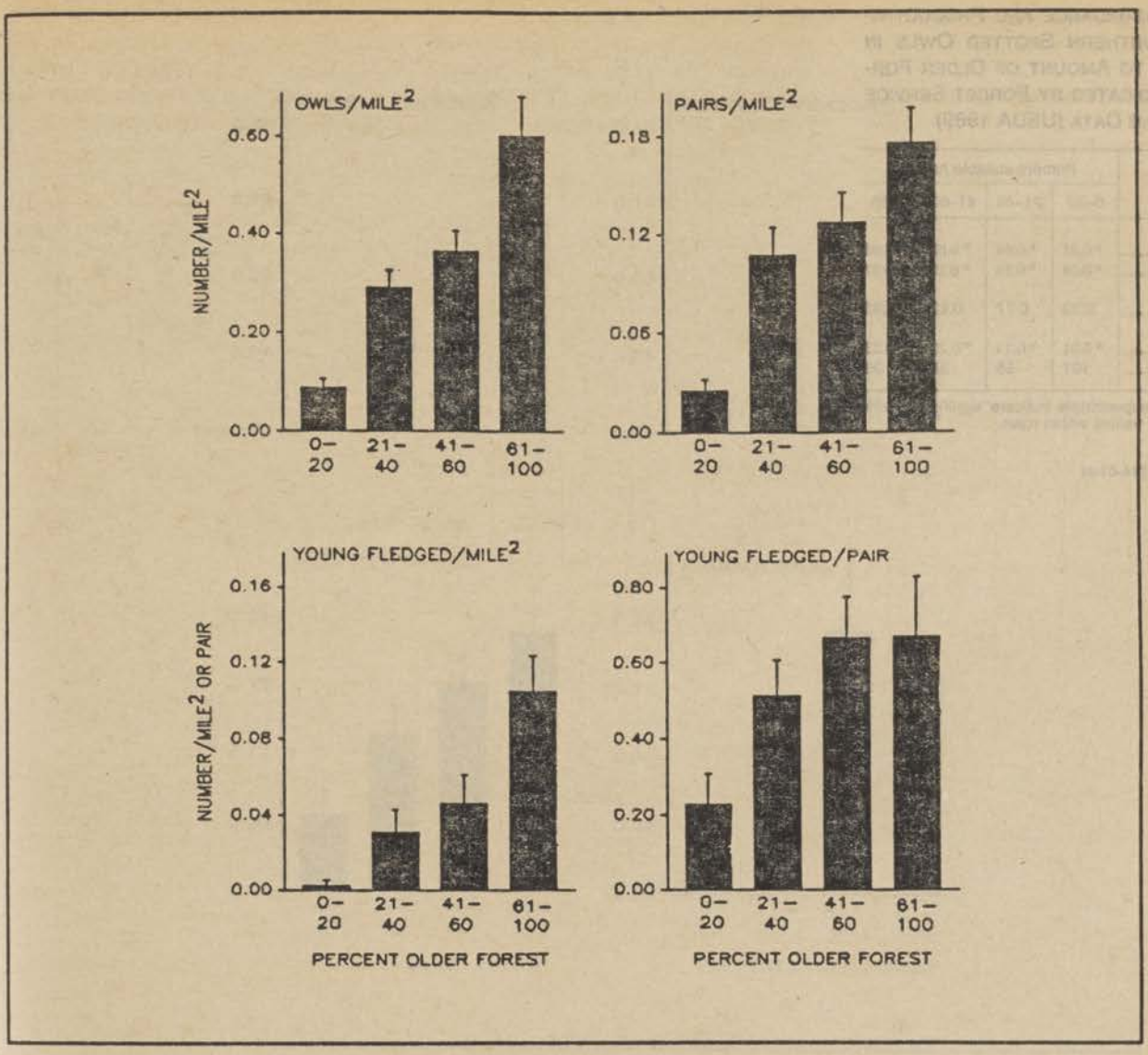

Figure 2. Abundance and productivity of northern spotted owls in relation to amount of older forest on the surveyed areas. Vertical bars indicate 1 standard error (Bart and Forsman 1990).

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TABLE 2.—ABUNDANCE AND PRODUCTIVITY OF NORTHERN SPOTTED OWLS IN RELATION TO AMOUNT OF OLDER FOREST AS INDICATED BY FOREST SERVICE MONITORING DATA (USDA 1989)

Variable	Percent suitable habitat			
	0–20	21–40	41–60	<60
Owls/site	[a]0.31	[b]0.64	[b]0.85	[b]0.95
Pairs/site	[a]0.04	[b]0.19	[b]0.29	[b]0.27
Young fledged/pair	0.33	0.77	0.67	0.93
Young fledged/site	[a]0.01	[b]0.13	[b]0.21	[b]0.22
Number of sites	101	56	58	39

[a], [b] Different superscripts indicate significantly different ($P < 0.05$) values within rows.

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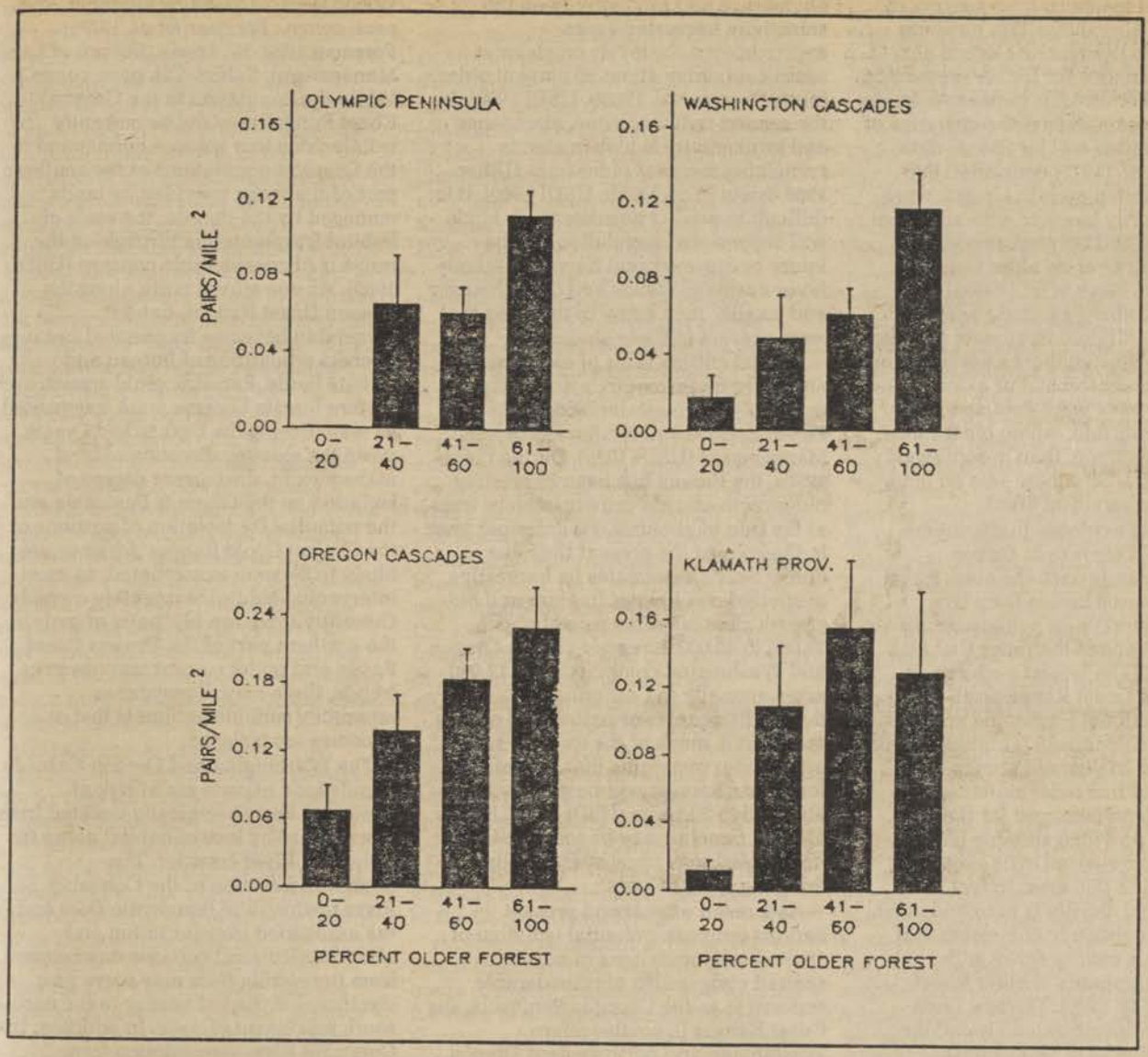

Figure 3. Abundance of spotted owls in four portions of their range in relation to amount of older forest on the surveyed area. Vertical bar indicates 1 standard error (Bart and Forsman 1990).

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Abundant evidence from surveys of large areas also shows that northern spotted owls become rare or are absent on lands managed for timber production once the older forest is harvested. In one of the first comprehensive summaries of northern spotted owl locational data, Forsman *et al.* (1977) concluded that northern spotted owls in Oregon were found primarily in areas with abundant older forest, and only occasionally in areas with little or no older forest. In Washington, Hays *et al.* (1989a) surveyed northern spotted owls in regions that differed in amount of older forest and detected more owls in regions with more older forest. For example, ten times more owls were detected in the Olympic Peninsula, where older forest was more common, than in southwest Washington where there was no older forest in the surveyed areas.

Additional evidence that northern spotted owls are rare in timber production lands once the older forest has disappeared comes from the numerous surveys on public and private land in portions of the range that lack older forest. The largest such region includes the Coast Range north of the Siskiyou National Forest and south of the Olympic Peninsula. Throughout this region, 50 to 80 year old stands are common, but few older stands are present. If land managed for timber production provided suitable habitat, then northern spotted owls should be widespread in this area. In fact, however, owl density is extremely low, and is approximately one-eighth that recorded in a nearby study with substantial amounts of older forest (Thomas *et al.* 1990). The few birds present are concentrated around the remaining blocks of older forest. Thomas *et al.* (1990) discuss several other areas of special concern where northern spotted owls have largely disappeared due to timber harvest activities.

Northern spotted owls appear to use at least some land that has been managed to produce uneven-aged stands, but this silvicultural approach is generally rare throughout the range. Land managed to produce uneven-aged stands includes small patches of older forest along streams and in areas unsuitable for timber harvest, but such lands generally comprise 20 percent or less of the area (USDI 1990). In these areas northern spotted owls are rare and have low reproductive success. The abundance and productivity of northern spotted owls in mixed-age stands has been studied on private land in California. In the interior, Douglas-fir zone, preliminary data indicate that owl abundance and productivity on the selectivity harvested areas approximated the levels on clearcut areas containing about 40 percent older forest (Irwin *et al.* 1989b, USDI 1990). In the coastal redwood zone, abundance and productivity is high in stands containing remnant older trees (Diller 1989, Irwin *et al.* 1989b, USDI 1990). It is difficult to predict whether these lands will support owl populations in the future because current harvest methods favor even-age stands and trees younger and smaller than many of the trees that were present in these studies.

Annual cutting rates of old-growth and old-growth/mature age classes of trees have been established by the Forest Service and the Bureau of Land Management (USDI 1989). During the 1980s, the Bureau has been harvesting old-growth and old-growth/mature trees at the rate of about 22,000 acres per year in Oregon. At the present time, the Forest Service estimates its harvesting of spotted owl habitat (mature and old-growth classes) at the rate of about 36,000 to 40,000 acres per year in Oregon and Washington combined, and 12,000 acres annually in California. Unless these cutting rates or patterns of cutting are altered, much of the existing spotted owl habitat remaining that is available for timber harvest will be gone within about 20 to 30 years (USDI 1990). Much of what remains may be too small and fragmented to support successfully breeding pairs of owls.

As a result of past and present harvest patterns, potential isolation of several subpopulations of northern spotted owls is also of considerable concern (e.g., the Olympic Peninsula, the Coast Ranges in southwestern Washington and northwestern Oregon, and the Marin County area in California) (USDA 1988, USDI 1989). The central problem of subpopulation isolation is one of maintaining a critical population size level in the absence of genetic or demographic contributions from other subpopulations. The smaller a population or subpopulation and the greater its isolation from other populations, the greater the risk of its elimination as a result of chance demographic and environmental events or genetic effects (Shaffer 1987).

The population of spotted owls on the Olympic Peninsula may be isolated demographically, and perhaps even genetically, from other owl populations, since there does not appear to be an effective, self-sustaining population in either southwestern Washington adjacent to the Olympic Peninsula or the northwestern Oregon Coast Ranges (Irwin *et al.* 1988, 1989d; A. Potter, Wash. Dept. of Wildlife, Olympia, WA, pers. comm.; Forsman *et al.* 1977; Forsman 1986; W. Logan, Bureau of Land Management, Salem, OR, pers. comm.). While the population in the Oregon Coast Ranges may not be currently isolated due to a tenuous connection to the Cascade populations at the southern part of the range provided by lands managed by the Bureau, the scale of habitat fragmentation throughout the range is of considerable concern (USDI 1989). As one moves north along the Oregon Coast Ranges, habitat ownership becomes fragmented because of checkerboarding of Bureau and private lands. Remaining old growth and mature forests become more fragmented as well. During the next 10 to 15 years, given the existing direction of land management, the current degree of isolation on the Olympic Peninsula and the potential for isolation of portions of the Oregon Coast Ranges province are likely to become exacerbated, as most intervening habitat is privately owned. Currently there are few pairs of owls in the northern part of the Oregon Coast Range and under current management trends, these may disappear as remaining suitable habitat is lost or becomes too isolated.

The Washington and Oregon Cascade populations of owls are at risk of becoming demographically isolated from one another by loss of habitat along the Columbia River corridor. The impounded section of the Columbia River upstream of Bonneville Dam and the associated transportation and urban/agricultural corridor downstream from Bonneville Dam may serve as a significant dispersal barrier to the north-south movement of owls. In addition, the Columbia River downstream from Portland is very wide with little or no old-growth and mature habitat adjacent to the river, nor is there a self-sustaining spotted owl population in this area (Logan, pers. comm.; Forsman *et al.* 1977; Forsman 1986; Potter, pers. comm.). No evidence exists of spotted owls moving across the Columbia River, nor have birds been observed crossing the Willamette Valley (Thomas *et al.*, letter dated December 20, 1989).

Other possible problems with isolation of populations of spotted owls, or at least areas that present possible "bottlenecks" in distribution, occur in the central Washington Cascades ("I-90 corridor"), the Santiam Pass area, the Shasta/Modoc area, the Pit River connection to the Sierras, and the juncture of the Oregon Cascades and Klamath physiographic provinces.

Northern spotted owl surveys conducted on private commercial

timberlands during 1989 documented that owls were more numerous in 30–100-year-old even-aged and mixed-age forests than had been previously reported (Irwin *et al.* 1989b; Kerns 1989a, b; Pious 1989). At the present time it is not known if this portion of the population is self-sustaining; however, these areas do represent the potential to contribute to the regional owl population. Because these lands provide a habitat link southward from Forest Service holdings and inland to National Park Service lands in Marin County, the Marin-Sonoma-Napa County northern spotted owls may not be as isolated from adjoining populations as was previously suggested (Thomas *et al.*, letter dated December 20, 1989). However, current timber management regimes indicate it is economically beneficial to harvest stands 60–90 years of age, the approximate age at which these stands are beginning to support spotted owls (Thomas *et al.*, letter dated December 20, 1989). Further, although the hardwood component of many of these stands has had little commercial value, in the future it may be removed to produce pulp (Thomas *et al.*, letter dated December 20, 1989).

Although natural habitat is never constant, the old-growth forest habitat prior to 1900 was more continuous than the present landscape. Natural perturbations have been significant in terms of the amount of area influenced as evidenced by, for example, the Tillamook Burn(s) in Oregon, the first of 1987 in the southern portion of the range, the "21 blow" in Washington, the Columbus Day storm in 1962, and the erruption of Mount St. Helens (Thomas *et al.*, letter dated December 20, 1989). However, most natural perturbations would generally have been small and localized relative to the entire Pacific Northwest. Franklin *et al.* (1988) examined the scale of 14 major fire events in Mt. Rainier National Park from 1230 to 1703 and estimated that these fires burned from 8 percent to 47 percent (median of 24 percent) of the park's reconstructed forested area. Given that these represent major fire events, it is not unreasonable to conclude that the impact of most other, nonmajor natural perturbations would be smaller and more localized. Because natural disturbances are less uniform both in effect and in time than those precipitated by broad-range timber harvest, such natural disturbances usually create more hetereogeneous forest structure throughout the landscape (Thomas *et al.*, letter dated December 20, 1989). The current habitat situation for spotted owls continues to change from the original condition where unsuitable habitat patches were small and isolated, to the reverse where suitable habitat now occurs in small and isolated patches. These factors all interact to decrease habitat suitability or effectiveness for supporting a well-distributed population of spotted owls over time (Greene 1988; Harris 1984; Meslow *et al.* 1981; Spies and Franklin 1988; Thomas *et al.* 1988).

Timber harvesting and natural perturbations result in the loss of suitable spotted owl habitat and an increase in forest fragmentation. Habitat fragmentation may be defined as the breakup of contiguous tracts of forest habitat into smaller, more isolated parcels (USDI 1989). Timber harvest, employing a pattern of small, dispersed clearcuts, eventually leads to a situation where parcel sizes are so small as to be influenced by edge effects (windthrow, invasion by alien species, microclimatic changes, etc.). As a result, the original parcels may no longer be able to sustain the species or the community originally found in the larger and contiguous tracts of habitat and the quality (i.e., effectiveness of the habitat to support successful reproduction) of remaining preferred forest stands may be lessened considerably when the effects of adjacent roads and clearcuts are considered. Impacts from edge effects and environmental disturbances may be most noticeable in areas where little old growth currently remains, for example, in the Oregon Coast Ranges.

A recent assessment of the effects of forest fragmentation suggests that in areas of highly fragmented and isolated habitats in northwestern California, there may be lower reproductive fitness among owls relative to birds in nearby, more contiguous habitat (Chavez-Leon 1989). Ripple *et al.* (1990) contrasted the percentage of cutover lands, in circles of various diameters, at 30 northern spotted owl nest sites and 30 random sites on the Willamette National Forest, Oregon. The percent cutover land was significantly lower near nest sites compared to random sites. Statistically significant differences existed at all circle sizes. They concluded that northern spotted owls appear to select for low levels of cutover land adjacent to their nests. Meyer *et al.* (1990) selected 50 owls sites and 50 random sites and compared several indices of habitat fragmentation in the two data sets. According to preliminary results, habitat at owl sites was significantly less fragmented than the habitat at random sites. The findings of Meyer *et al.* (1990) and Ripple *et al.* (1990) that areas selected by northern spotted owls have lower levels of habitat fragmentation than random sites is consistent with other studies showing lower abundance in areas with little older forest (USDI 1990).

Fragmentation of habitat also may adversely affect spotted owls by: (1) Directly eliminating key roosting, nesting, or foraging stands; (2) indirectly reducing the survival of dispersing juvenile owls; (3) perhaps increasing competition or predation, and (4) reducing population densities and interaction between individuals. These factors may interact to decrease habitat quality, suitability, or effectiveness for supporting a well-distributed population of spotted owls over time (Greene 1988, Harris 1984, Meslow *et al.* 1981, Spies and Franklin 1988, Thomas *et al.* 1988).

Fragmentation can also have harmful genetic consequences through its effect on the effective population size. Each subpopulation occupying a discrete habitat patch, such as those that result from habitat fragmentation, comprises a component of the overall population, referred to as a "metapopulation." The processes of extinction and colonization within individual patches can have deleterious genetic effects that might not be predicted by models that do not consider metapopulation structure (USDI 1989).

The patchwork pattern of even-aged, dispersed, clearcut timber harvest systems has imposed a checkerboard pattern on present old-growth and mature forests, fragmenting remaining habitat throughout the owl's range and reducing the total amount of suitable spotted owl habitat. This fragmentation of spotted owl habitat may be especially noticeable on Bureau lands which are additionally checkerboarded because of land ownership patterns. However, it should be noted that the present timber cutting pattern may provide a more persistent distribution of some relatively mature forest stands throughout the landscape (Thomas *et al.*, letter dated December 20, 1989). If a "minimal" fragmentation strategy were to be implemented using even-age forest management, more extensive areas may consist of young-growth stands (Thomas *et al.*, letter dated December 20, 1989). Relatively large areas of early young-growth forest may prevent or reduce the interaction of northern spotted owls. It is not known whether the dispersed clearcuts or broad expanses of young forest stages would provide the better situation for northern spotted owls in managed forests (Thomas *et al.*, letter dated December 20, 1989).

Although the actual numbers of owl sites and pairs on all lands is not

precisely known, recent surveys (1985–1989) indicate that there are about 2,000 known pairs of northern spotted owls within the present range of the subspecies, although 3,000–4,000 pairs are suspected (Thomas *et al.* 1990). Of these, approximately 90 percent are found on federally managed lands (USDI 1989, Thomas *et al.* 1990). Data contributing to estimates of present population size have been collected for about 20 years, with counts of owls increasing over that period as greater areas of habitat were surveyed (Gould 1985; Gould, pers. comm.; Forsman *et al.* 1987; USDA 1988; Robertson 1989; Vetterick 1989). However, the increase in numbers of spotted owls counted in these surveys reflects an increase in inventory effort and improvements in inventory methods rather than an indication of any upward population trend. Not all forest habitat has been fully surveyed, as some areas, particularly Wilderness Areas, are difficult to inventory. An estimate of population trends in relation to habitat over time is likely to provide a better understanding of the status of the population than just total numbers of individuals and pairs.

Information about population trends for spotted owls is provided by three different kinds of data: (1) Changes in spotted owl habitat; (2) changes in spotted owl population size; and (3) survival and reproductive rates. Both the close association between the spotted owl and old-growth and mature forests and the dramatic reductions in old growth that have occurred have been thoroughly discussed earlier. This loss of old-growth and mature habitat continues, with projected losses on Federal lands of about 3 percent per year on Bureau of Land Management and 1 percent per year on Forest Service land (USDI 1990). Northern spotted owls that are displaced when suitable habitat is lost within their home ranges will likely relocate into nearby remaining habitat, creating an apparent increase in densities, referred to as the "packing" phenomenon, in the remaining habitat (Thomas *et al.*, letter dated December 20, 1989). If this results in competition with owls already present in the habitat, there may be a decline in reproductive success. Hence, high owl densities in such areas must be assessed with care to determine their true significance as the same population may provide two different estimates of trend (Thomas *et al.*, letter dated December 20, 1989). The first pertains to the actual numbers of birds and may be interpreted as an indication of increasing population. However, the second estimate would be based on demographic parameters and would suggest a declining population (Thomas *et al.*, letter dated December 20, 1989). The disparate results can be reconciled by invoking recruitment from outside the population being assessed to account for the increases in numbers (Noon and Biles 1990). Finally, when the best available estimates of spotted owl survival and reproductive rates are combined and analyzed, resulting values point to a declining population (USDI 1989, USDI 1990).

The Service conducted an analysis of the effects of the substantial loss of suitable habitat an the dynamics of the spotted owl population using the results from two large demographic studies: (1) Willow Creek (113 mi.²) and surrounding Regional Study Area (3,861 mi.²) in northwest California, studied from 1984–89 (Franklin *et al.* 1990a) and (2) the Roseburg Study Area (1,200 mi.²) in southwest Oregon, studied from 1985–89 (Forsman 1989a). The study areas in northwest California were managed by the Forest Service and although these had been substantially clearcut, there were still extensive areas of suitable habitat. The Roseburg area, a checkerboard ownership pattern consisting of Bureau of Land Management and private lands, has been intensively clearcut; thus the remaining habitat is highly fragmented. These areas are the only ones currently available with adequate data (four years or more) for a thorough, comprehensive, and rigorous analysis.

Estimates of age-specific survival and fecundity of females were needed as these values were used to estimate trends in the size of the population of resident, territorial owls. Estimation of the number of immigrants were important in understanding the dynamics of the population. Further technical details of the methodology and results of the analysis of the capture-recapture data used to estimate the needed values from these areas can be found in USDI (1990). The Service's results (see USDI 1990) update all prior estimates of population parameters of the northern spotted owl for these two study areas. To eliminate any possible bias that radio transmitters may have imposed, birds equipped with radio devices were not used in these analyses. As is typical of these types of analyses, the female component of the population was emphasized.

Intensive analysis of the data for females provided the following estimates of annual survival probabilities and standard errors (a measure of precision):

Area and parameter[a]	Estimate[b]	Standard error (est.)
Northwest: Juvenile survival	0.130	0.046
California:		
Subadult survival	.903	.024
Adult survival	.903	.024
Roseburg: Juvenile survival	.219	.072
Oregon:		
Subadult survival	.588	.086
Adult survival	.812	.025

[a] Juvenile—0–12 months of age, subadult—12–24 months, and adult more than 24 months.
[b] Probability of female of that specific age class surviving until the next year.

The Service concluded that the estimated survival of adults on the Roseburg area was quite low and that there was no significant year to year variation in the survival parameters. The mean life span of adults was 9.80 years (se—2.55) and 4.79 years (se—0.71) for northwest California and Roseburg areas, respectively. Many other technical details are contained in USDI (1990).

Information on fecundity (the number of young fledged per female of age *x*) of individuals was averaged across years to provide estimates of average fecundity:

Age	Northern California			Roseburg Study Area		
	n	Fecundity	Std. error	n	Fecundity	Std. error
Subadult 1	17	0.147	0.083	23	0.0652	0.0477
Subadult 2	23	.261	.088	23	.0652	.0477
Adult	197	.376	.032	215	.3209	.0261

No significant year to year variation was found in the fecundity on either study area. The estimates of age-specific survival and fecundity (above) have little bias and are quite precise. Because these estimates employ the best and

most current data available and the analysis is based on the best statistical theory for the analysis of capture-recapture data, the Service believes these to be good estimates.

The entry of new owls into the adult female component of the population was found to be statistically significant each year on both study areas. Average annual estimates of this augmentation are summarized below:

Study area	Total entry	Internal recruits	Immigrants
Northwest CA	8	2	6
Roseburg, OR	42	3	39

These estimates clearly suggest that most new adult females entering these areas were immigrants and that relatively few young females, produced on the study areas, were recruited into the resident population of territorial females (USDI 1990). The estimates (above) made it clear that the resident population of territorial females on both study areas was being augmented each year by female owls from surrounding areas. These immigrants included "floaters" (nonterritorial subadults or adults) and perhaps dispersing juveniles and subadult birds from surrounding areas. The size of the floating component of the population was perhaps drawn down as these birds found territories and entered the resident population. Some of the immigrants were likely birds displaced by timber harvest in surrounding areas that had been clearcut and fragmented.

In its analysis, the Service found that a statistically significant number of owls entered these two study areas each year, and this by itself is strong evidence that the resident population of territorial birds was decreasing. Very substantial immigration was occurring, especially on the Roseburg area, where relatively little suitable habitat remained.

Lambda was computed from the age-specific survival and fecundity rates (above) using traditional methods (e.g., Leslie 1945). If lambda=1, the population is "stationary," but if lambda <1, then a declining population is indicated. To estimate if the owl population has declined in response to habitat loss and fragmentation from timber harvesting, the Service estimated lambda values and tested the hypothesis that lambda=1 vs. lambda <1. The estimates of survival (above) where derived from marked, territorial birds residing on the two study areas and the estimates of fecundity (above) were computed for resident females on the two study areas. Thus, lambda answers the question, "Have the resident territorial owls replaced themselves?"

The Service believes its estimates of lambda update previous estimates, including those in Thomas *et al.* (1990). The estimates of lambda are properly interpreted as the average annual rate of population change of female owls during the period of investigation and data collection (i.e., 1984–89 for northwest California and 1985–89 for the Roseburg area). No inference was made about the value of lambda prior to these studies or in the future. These estimates of lambda represent a "snapshot" of the average annual change in the resident female component of these two populations and their recruitment. Because no significant year-to-year variability in survival or fecundity rates was found in either area, interpretation of lambda is possible. Final estimates of lambda are given below with their estimated standard errors:

Area	Lambda	se (Lambda est.)
Northwest CA	0.9524	0.0284
Roseburg, OR	.8588	.0286

A one-sided test of the null hypothesis lambda=1 vs. the alternative lambda <1 was statistically significant for both areas, where z is a test statistic:

Area	z	P
Northwest CA	1.676	0.0469
Roseburg, OR	4.944	0.0000

These results indicate that the resident population of females was declining on both of these large study areas and was not able to replace itself. The declining population in northwest California was of particular interest because it occurred in an area with considerable amounts of suitable owl habitat. Here the annual rate of decline in the resident female population was approximately 5 percent. Over the five years of study, the population of territorial females declined an estimated 21.6 percent (se = 11.7 percent) per year. In contrast, the Roseburg area in southwest Oregon contained much less suitable habitat, had been extensively clearcut, and was highly fragmented. Here the estimated rate of population decline of resident females was approximately 14 percent per year. Over the four years of study, this population of territorial females declined an estimated 45.6 percent (se = 7.2 percent). Based on habitat quality and quantity, it was expected *a priori* that lambda would be smaller in the Roseburg area compared to the northwest California area and this was shown to be the case.

According to the Service's results, the resident population of owls on these areas was declining sharply and significantly in both areas but was sustained each year by owls from surrounding areas, including floaters on the areas (the "rescue effect"). Hence, the Service maintains that these areas are population sinks where mortality exceeds recruitment. Because there has been a dramatic loss of suitable habitat throughout the range of the northern spotted owl, it seems likely that the population of owls has declined substantially throughout its range. This population decline was the fundamental basis for the interagency conservation strategy (Thomas *et al.* 1990). Moreover, there is a high likelihood that the population is currently above the carrying capacity. Franklin *et al.* (1990a) provided evidence of packing where birds crowd into suitable habitat with the resulting increased competition for resources affecting both survival and fecundity rates. Floaters probably constitute most of the immigrants, and this tends to mask the drastic rates of population decline of the resident populations. Further, standard survey counts tend to remain little changed because immigrants cannot be distinguished from the resident birds in most cases. Current counts of owls may be misleading (optimistic) because the population was above the carrying capacity due to habitat loss. Thus, even if the loss of habitat were halted, these data suggest that the population would continue to decrease substantially for, at least, several generations (also see Thomas *et al.* 1990). At some future time, the population would come into a new equilibrium with the habitat and become somewhat stationary.

USDI (1990) also provides the results of a simple approach to estimating the population change for northwest California, somewhat independent from the results outlined above. Here, the estimate of average population change was even less optimistic (lambda*=0.929). The available evidence indicates sharply declining populations of owls as a result of the intensive clearcutting of suitable habitat at least in these two study areas.

Sources of bias in the estimates of lambda were reviewed in USDI (1990). First, emigration of (especially) juvenile birds that survived the year, left the study, and did not return was not accounted for by the analysis

procedures; this bias would result in an estimate of lambda that was too low (perhaps 2–3 percent). Secondly, the analysis procedures failed to account for senescence in either survival or fecundity rates; thus, providing estimates of lambda that were too high (perhaps by 2–3 percent). Little could be done to correct for either bias. Although it is unlikely that these two biases would exactly cancel each other, it appears that considered jointly, they would provide little impact to the final results. Other sources of bias were reviewed in USDI (1990) and found to be of little probable importance. In summary, the best and most current estimates of the finite rate of annual population change are those given above (e.g., 0.95 for northwest California and 0.86 for the Roseburg area in southwest Oregon). These results indicate a sharply declining population of resident, territorial owls due to habitat loss. The populations are above carrying capacity and are being temporarily maintained by immigration.

It is unknown whether the amount and distribution of spotted owl habitat remaining at the end of commercial harvest of old-growth forests on public lands (USDI 1989) will be adequate to support a viable population of the northern spotted owl. Attempts to answer this question by using the concepts and tools of population viability assessments have been undertaken by the Forest Service (USDA 1986, 1988), Lande (1987a, 1987b, 1988), and Doak (1989). Although subject to criticism on a number of grounds, the population viability assessments indicate that implementation of the Forest Service's preferred alternative for managing the spotted owl in Oregon and Washington (Alternative F, USDA 1988) will not provide a high probability of persistence for the spotted owl over the next 50 to 100 years, at least not in significant portions of its range. Litigation has been initiated regarding the Forest Service's preferred alternative. At this time it is not known whether this alternative will be implemented. Moreover, at this writing, final individual forest plans pertaining to spotted owl management based on the regional guidelines have been adopted only for the Siskiyou and Siuslaw National Forests.

Moreover, spotted owl population viability assessments performed to date (USDA 1986, 1988; Lande 1987a, 1987b, 1988) have not explicitly considered habitat differences in reproductive rates and how different fitnesses of owls in different habitats would affect population dynamics. In particular, the life table and population viability analyses that have been performed to date may present an optimistic view of the future status of spotted owl populations for two reasons (USDI 1989). First, the population viability analyses conducted by the Forest Service were based on a single frequency distribution of reproduction rates, with a mean value from owl pairs in the most preferred habitats. However, as discussed previously, theory and empirical data suggest that owl pairs in less suitable, younger habitats may have significantly lower per capita reproductive rates. Therefore, as more preferred habitat is cleared, population growth rates may be reduced to values lower than were used in existing models. Second, the Forest Service's population viability analyses assume that a given Spotted Owl Habitat Area (SOHA) will be occupied with a probability proportional to the amount of old-growth forest within the SOHA. However, the assumed relationship is based on the present landscape configuration, the existing amounts of old growth, and the current spatial relationships between old growth and young growth forests. The assumed SOHA occupancy probabilities are likely to decline as surrounding old growth is cleared and SOHAs become more isolated from other large patches of preferred habitat. These points are intended to emphasize the fact that the models should be interpreted cautiously, and that planning for the owl should include built-in safety factors to insure that future habitat requirements for a viable population are not underestimated.

Forest Service modeling (USDA 1986) predicts that the mortality of dispersing juvenile owls will increase whenever the amount of suitable habitat areas decreases. As spotted owl habitat continues to be reduced further by timber harvest, the current spotted owl population is expected to decline correspondingly, and perhaps more precipitously.

Based on ecological theory, several predictions about the effects of continued harvesting of suitable habitats on the future demographic performance of spotted owls can be made. Given the data, it is likely that continued harvest of preferred habitat will adversely affect spotted owl populations. As more of this habitat is removed and fragmented, a number of possible scenarios may occur: (1) Individual owls will have to use habitats comprised of a higher proportion of young forests, necessitating an increase in their home range size to meet their energetic and nutritional requirements and resulting in an overall decrease in density of spotted owls; (2) as more owls use less suitable habitats, there will likely be a decrease in the average reproductive success of the population as a whole; and (3) displaced individuals may be unable to encounter suitable nesting habitat. Analysis of available information for spotted owls seems to support these theoretical predictions (USDI 1989).

In a second possible scenario: (1) Displaced owls may become concentrated in the remaining suitable habitats (Thomas *et al.*, letter dated December 20, 1989); (2) thus, occupancy rates of spotted owls in such habitats may remain inordinately high or even increase ("packing") even if the total population size within a larger area is declining (Thomas *et al.*, letter dated December 20, 1989); (3) a greater proportion of the population could consist of non-territorial owls ("floaters") (Thomas *et al.*, letter dated December 20, 1989); (4) in turn, the floaters could consist of an increasing proportion of older birds, perhaps with a preponderance of males (Thomas *et al.*, letter dated December 20, 1989); (5) hence, juvenile survivorship could decrease as the periodically few vacated sites are usurped by subadult and adult floaters (Thomas *et al.*, letter dated December 20, 1989).

The reported variation in per capita reproductive rates between habitats of different suitability implies that owls using young-growth forests may actually contribute proportionately less to population recruitment than their numbers would suggest. Because of apparent differences in reproductive rates, it would be incorrect to assume that a given owl population, normally concentrated in old-growth forests, could be maintained for any length of time on a relatively larger area of less suitable, young forests. The data on spotted owls suggest that use of young forests by owls is largely dependent on the presence of old-growth stands within the home range.

The dependence of northern spotted owls on older forest, the low probability that significant amounts of suitable habitat will persist outside of preserved areas, and the inability of the protected areas to support a viable population of northern spotted owls, all indicate that the northern spotted owl is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.* Considerable research by

Federal, State, and private groups is being conducted on this subspecies. This work is providing valuable information and is not having a negative impact on the subspecies. The spotted owl is not a game bird, nor is there any known commercial or sporting use.

C. *Disease or Predation.* Predation by great horned owls (*Bubo virginianus*) has been identified as a major source of juvenile mortality in spotted owls (USDI 1987; Dawson *et al.* 1986; USDA 1986; Simberloff 1987; and USDA 1988). Concern has been expressed that increasing habitat fragmentation may be subjecting spotted owls to greater risks of predation as they move into or across more open terrain, or come into more frequent contact with forest edges where horned owls may be more numerous. Hamer (1989) has been studying spotted owl and great horned owl interactions in the north Cascades of Washington. His survey of the 145-square-mile Mt. Baker study area showed that great horned owls were more common than spotted owls in this mostly fragmented habitat. He found, with a limited sample size, that spotted owls avoided areas intensively used by pairs of great horned owls. In young-growth forests in southwestern Washington, Irwin *et al.* (1989d) reported that great horned owls, along with the western screech owl (*Otus asio*), were the most commonly found owls, and that spotted owls were frequently found. Specific impacts of great horned owl predation on the overall spotted owl population are unknown, but this remains an issue of concern.

In a recent study, the incidence of hematozoa in spotted owls was found to be one of the highest of any avian species yet examined (Gutierrez 1989). Recent research indicates there may be both long- and short-term ecological effects of hematozoa on birds such as the possibility of adversely influencing their energetics (Guiterrez 1989).

D. *The Inadequacy of Existing Regulatory Mechanisms.* Although there are numerous State and federal laws and regulations that, if enforced, may protect spotted owls and, to a lesser extent, spotted owl habitat, the implementation and effectiveness of these laws to date has been variable (Thomas *et al.* 1990). The precarious status of the northern spotted owl has been recognized in Washington where it is listed as endangered, in Oregon where it is considered threatened, and in California where it is classified as a sensitive species.

Private companies own approximately 9.7 million acres of forested land within the range of the northern spotted owl in Oregon and Washington (USDA 1984). In northern California, private companies own an additional 8.6 million acres (Thomas *et al.* 1990). This resource base is being utilized for the commercial production of timber. The actual amount of suitable owl habitat is unknown. The California Department of Forestry and Fire Protection (CDF), however, estimates that about 70 percent of the stands in private ownership are less than 16 inches dbh (diameter at breast height) (R. Tuazon, pers. comm.); these are unlikely to provide suitable spotted owl habitat. An even smaller amount of suitable habitat is estimated on private lands in Oregon and Washington. Commercial logging on private and State-owned land is regulated by forestry practice laws in each of the three states.

In Washington, logging practices on State, State Trust, and private lands are regulated by the State Department of Natural Resources. Harvest of timber on lands containing endangered species requires that an "environmental checklist" be addressed or possibly a more detailed environmental statement be written, before harvest can be approved and initiated. Timber sales with owl conflicts are decided on a case-by-case basis. In 1989 the Washington Commission on Old Growth Alternatives for Washington's Forest Trust Lands, which exist to provide revenue to trust beneficiaries, agreed to defer harvest on 15,000 acres (out of 80,000 acres) of old growth in western Washington for 15 years. This represents less than 6 percent of the land base in State ownership in the area, and would protect, at most, two of 15 pairs of spotted owls on these lands (Wash. Dept. Wild. 1989). The 15,000 acres withheld would be included in normal harvest schedules after the 15-year period specified in the agreement. However, "Implementation of the Old Growth Commission recommendations will likely result in a significant reduction in the Olympic Peninsula Spotted Owl population" (Wash. Dept. Wildl. 1989). Current management practices provide little hope for the long-term protection of spotted owl habitat on Department of Natural Resources lands.

In Oregon, logging practices on State and private lands are regulated under the Oregon Forest Practices Act (FPA), which does "not specifically mention the northern spotted owl" (Brown 1989). However, the spotted owl is listed by the Oregon Fish and Wildlife Commission as threatened within the State. Relatively new legislation (HB 3396, 1987) in Oregon directs the Oregon Department of Forestry to protect species that the State designates as endangered or threatened and develop appropriate guidelines to implement this protection. However, these guidelines are not scheduled for completion until 1991. As part of this effort, the Department of Forestry has issued "forest practices rules" that are applicable to State and private lands. However, the only protection for northern spotted owls appears to be short-term protection of nest sites that become apparent prior to or during harvesting operations (Thomas *et al.*, letter dated December 20, 1989). Most State lands in Oregon (786,000 acres) are managed by the Department of Forestry (ODF), but only 25,000 acres are reserved from timber production (Thomas *et al.* 1990). The Interagency Scientific Committee (Thomas *et al.* 1990) estimates that fewer than 20 pairs of owls are found on State land in Oregon, and that most of this habitat will be harvested within the next 20 years.

In California, decisions on timber harvest management plans for private timber land are made by the California Department of Forestry. Although harvesting plans are reviewed by the California Department of Fish and Game (CDFG), approval by that agency is not required. Despite the spotted owl being classified as a Species of Special Concern, this classification confers no special protection to either the owl or its habitat. The Department of Forestry and Fire Protection has initiated a timberlands task force to address the needs of wildlife on forest lands throughout the State. This will include consideration of a habitat conservation plan for spotted owls if the owl is listed. The California Department of Parks and Recreation currently provides protection to about 56,000 acres of suitable spotted owl habitat in its redwood parks. These areas, managed for their natural values, provide protection to a small number (five known breeding pairs) of spotted owls (USDI 1990).

Based on present State regulations and policy, clearly no State legislates adequate protection for spotted owls. Private and State-owned forest lands in Washington, Oregon, and northern California total over 21 million acres. Less than 1 percent, mostly in State parks in northern California, provides long-term protection to the northern spotted owl. Although approximately 4 percent of known reproductive pairs occur on private lands (Thomas *et al.* 1990), particularly in northern California, current regulatory mechanisms neither account for their presence, nor protect them.

The Federal Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) prohibits taking of spotted owls or their eggs or nests except as permitted by regulation, and imposes criminal penalties for unlawful taking. However, no Federal regulations deal specifically with protecting spotted owl habitat throughout its range.

The above laws and policies offer little protection for spotted owl habitat. The Endangered Species Act offers additional possibilities for protection and management of this species' habitat as discussed below in the Available Conservation Measures section.

Approximately 85–90 percent of the northern spotted owl habitat is under Federal ownership by the National Park Service, Bureau, and Forest Service. These forested lands are managed under a variety of regulations, objectives, and policies.

The National Park Service manages nine National Parks, Monuments, Seashores, and Recreation Areas containing about 8 percent (570,000 acres) of potential spotted owl habitat (USDI 1990). The National Park Service is required by statute to manage National Parks to conserve their wildlife (16 USC 1) and, hence, timber harvesting and most forms of habitat alteration are not permitted. Owl surveys on National Park Service lands are not as complete as those on lands of other Federal agencies, documenting only 28 pairs, although many more undoubtedly occur (USDI 1990). As many as 100 spotted owls could enjoy legal protection on National Park Service lands (Thomas *et al.* 1990).

The National Forest Management Act of 1976 and its implementing regulations require the Forest Service to manage National Forests to provide enough habitat to maintain viable populations of native vertebrate species, such as the spotted owl. These regulations define a viable population as one which "has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well-distributed . . ." (36 CFR 219.19).

The Forest Service manages about 70 percent of the remaining northern spotted owl habitat and is the largest Federal land-holding agency in the Pacific Northwest. Spotted owl habitat on National Forest lands in Washington, Oregon, and California is estimated to cover about 5 million acres (USDI 1990). Although Forest Service lands are managed for multiple use purposes, 63 percent of its land base within the range of the spotted owl is subject to timber harvest (USDA 1989, Table 1), whereas the remaining 37 percent of its forested lands is reserved (1.0 million acres) or unsuited to timber production (834,000 acres). In Oregon and Washington, about 64,000 acres of old-growth and mature forests suitable for spotted owls have been logged on the National Forests each year over the past nine years; this represents a decline in nonreserved owl habitat on Forest Service land of about 2.3 percent per year and a reduction of about 1.5 percent per year in the total amount of owl habitat on National Forests in Oregon and Washington (Thomas *et al.* 1990). The anticipated harvest rates for old-growth and mature forests for the next 10 years are about 39,400 acres/year, or roughly 1.4 percent of the nonreserved old-growth and mature forests on Forest Service lands annually in Oregon and Washington. About 1 percent (4,700 acres) of the suitable habitat on Forest Service lands in California will be harvested each year (Thomas *et al.* 1990). These cuts will have a significant impact because a majority of recent timber sales have occurred in or near forest stands occupied by owls (Thomas *et al.* 1990).

Spotted owl management on National Forest lands in California, Oregon, and Washington is based on regional guidelines adopted by the Pacific Southwest Region (Region 5) for California and by the Pacific Northwest Region (Region 6) for Oregon and Washington. These guidelines provide for a network of forest-wide owl sites (Spotted Owl Habitat Areas or SOHAs) containing 1,000 acres of suitable habitat in California and from 1,000 to 3,000 acres in Washington and Oregon in conjunction with existing suitable habitat in parks, wilderness, and other reserved areas. Additional acreage (about 25 percent) was added to these sites in Oregon and Washington under Section 318 of the 1990 Interior Appropriations Bill (P.L. 101–121), but for one year only. Some of these sites are located in areas not available for timber harvest (e.g., natural areas, research areas, wilderness), but the majority of the sites (60 to 70 percent) would be surrounded by commercial timber land available for logging. SOHAs, as well as the Bureau of Land Management/Oregon Department of Fish and Wildlife agreement areas discussed below, are designed to protect the habitat needs of small numbers (usually one, but sometimes two or three) of spotted owl breeding pairs by reserving from harvest an area of suitable habitat (old or mature forest) within a 1.5-mile radius circle in California and a 2.1-mile radius circle in Oregon and Washington. By the end of 1989 there were 644 SOHAs totaling 722,127 acres (USDI 1990) on the 17 National Forests containing northern spotted owls (USDA 1989, Appendix H).

To implement forest plans to manage about 375 spotted owl habitat areas within its lands in Oregon and Washington, the Forest Service prepared a Final Supplemental Environmental Impact Statement (USDA 1988) with a preferred alternative. In late 1988, the Forest Service made its final Record of Decision on spotted owl management guidelines for National Forests in Washington and Oregon. The decision provides guidance (habitat amount, location, juxtaposition) to set aside a network of selected Spotted Owl Habitat Areas, totaling approximately 374,000 to 477,000 acres in Washington and Oregon forests.

The Forest Service's Record of Decision for Oregon and Washington set a timetable of 5 years for a full review of the Forest Service's owl management program, continued implementation of a $5 million annual Research, Development, and Application Program, and reaffirmed the Forest Service's commitment to coordinate and cooperate with other agencies. In addition, the final Forest Service spotted owl decision only addresses regional standards and guidelines for spotted owl management. The actual implementation of owl management was intended to be based on individual forest plans once they are finalized. "Networks" of northern spotted owl habitat are now in place on National Forests that support northern spotted owls and fulfill the Forest Service's plan for the management of spotted owl habitat pending completion and approval of individual forest plans (Thomas *et al.*, letter dated December 20, 1989). To date, only the Siuslaw and Siskiyou National Forest Plans have been approved.

The Siuslaw and Siskiyou Forest Plans are the most recently completed planning documents from the Forest Service in Region 6 (Oregon and Washington). They clearly demonstrate that timber production will remain the primary mission of the Forest Service and that timber harvest will continue to have a major impact on spotted owl habitat. Under the Siskiyou National Forest plan, nearly 50,000 acres of mature and old-growth habitat would be cut in this decade. On the Siuslaw National Forest, the harvest of younger-aged stands (60 to 80 years) would preclude the development of habitat suitable for the spotted owl in the decades ahead. This loss of habitat, with no planned replacement, is the primary threat facing the northern spotted owl on forests currently managed for timber.

In California, the Forest Service is implementing a network system similar to that in Washington and Oregon to manage about 265 owl habitat areas within the Klamath province on both lands dedicated to multiple use management (including timber production) and lands reserved from such activities. Sites are to be selected based upon distribution of habitat and owl presence. Some sites were selected for their potential to contain owls rather than on the basis of current occupancy. The potential success of this effort cannot be determined yet, since there have been insufficient time and data to determine trends. The Forest Service in California is preparing to finalize Forest plans implementing a similar habitat management plan on the four National Forests in the northern spotted owl's range.

The intent of this system in both Forest Service Regions is to maintain the viability of the subspecies through a network system that is evenly distributed over the range of the owl. SOHAs in Region 5 tend to occur in groups of two or three, which may provide a more stable management approach than the single SOHA strategy in Region 6.

The Bureau of Land Management manages over 2.4 million acres of forest land in Oregon, of which an estimated 858,700 acres is currently suitable for spotted owls (USDI 1990). Eighty-two percent of this (701,100 acres) is suitable for harvest; most of the remaining 157,600 acres is on extended rotation (i.e., will not be reharvested for approximately 80–250 years). Bureau of Land Management forested lands represent about 11 percent of the overall spotted owl habitat. The Bureau of Land Management manages numerous small parcels of forest lands in California and none in Washington. Only 15,000 acres have been surveyed for owls in California, revealing an estimated 14 pairs (Thomas *et al.* 1990). Most Bureau forest lands in Oregon are administered under the provisions of the Oregon and California Lands Act, which mandates management of these lands for permanent forest production on a sustained yield basis. In Oregon, an average cutting rate of 23,400 acres per year is anticipated to continue. The Bureau of Land Management estimates an annual loss of owl habitat on its Oregon lands of about 3 percent, thus eliminating all northern spotted owl habitat on non-protected Bureau lands, except for the Medford District, within the next 26 years (USDI 1990). These lands cannot be withdrawn or set aside for other long-term management objectives unless other applicable statutes permit. However, short-term (10-year) restrictions can be placed on certain tracts during a 10-year planning period (W. Nietro, Bureau of Land Management, Portland, OR, pers. comm. 1989). Currently, there are timber harvesting restrictions on 109 spotted owl agreement areas that are managed by the Bureau of Land Management under a cooperative agreement with the Oregon Department of Fish and Wildlife through 1990. Twelve additional sites were added pursuant to direction given in Section 318. However, it is not known what will happen to these 12 additional sites after the dates covered in Section 318. The intent of the agreement areas is to provide linkages and habitat for pairs of owls between Forest Service lands in the Oregon Cascades and Coast Ranges and to preserve the integrity of these sites into the next planning period. As currently established, the Bureau of Land Management's network of 121 spotted owl agreement areas protects about 100 pairs of owls, approximately 25 percent of the known pairs on Bureau of Land Management lands in Oregon. Most of the remaining approximately 300 pairs (approximately 75 percent of the known population on Bureau land) are in areas subject to timber harvest.

At current logging rates all remaining suitable habitat on Bureau of Land Management lands will be eliminated in 12 (Eugene District) to 52 (Medford District) years (USDI 1990). The primary management emphasis has been, and continues to be, timber production. Because the spotted owl network is based on interim agreements (Section 318 is effective only through September 1990, and the Bureau of Land Management/Oregon Department of Fish and Wildlife agreements will persist only until the Bureau of Land Management resource plans are completed in 1992), it does not provide long-term habitat protection. Nor is there any legal requirement for the Bureau of Land Management to protect spotted owl areas beyond these dates. An estimated 14 pairs of northern spotted owls are associated with the Bureau's California land (Thomas *et al.* 1990). Although some of these pairs could be protected under proposed Wilderness Areas or as Areas of Critical Environmental Concern, such protection depends upon finalizing a Resource Management Plan. One pair of spotted owls is protected on the Northern California Coast Range Preserve, which is co-owned by the Bureau of Land Management and The Nature Conservancy.

There are 55 Wilderness Areas totaling over 4.7 million acres in the 17 National Forests on which the owl occurs (USDI 1990). Initially, the wilderness system would appear to provide a well-distributed network of owl preserves. However, this is not the case. For the most part, wilderness areas have been established on sites relatively unsuited to timber production and, therefore, generally unsuitable for spotted owls as well. As a result, less than 25 percent of wilderness lands provide suitable owl habitat, and most of that is highly fragmented by intervening areas of high elevation (USDI 1990). The fact that owl density and reproductive output are lower in reserved than nonreserved sites (USDI 1990) provides emerging evidence that Wilderness Areas, and National Parks, at best provide only marginally suitable habitat for northern spotted owls. Without a major change in policy, owl habitat on all land ownerships will be reduced to about 2.7 million acres scattered in a mosaic of fragmented habitat islands in Wilderness Areas, National Parks, and other set-aside lands, plus an unknown number of acres in SOHAs, and on an undetermined and unpredictable amount of private lands (USDI 1990). This may represent about 15 percent of the original suitable forest within the range of the northern spotted owl in Washington, Oregon, and California (USDI 1990). For the reasons discussed above, it is unlikely that the land will be capable of sustaining a viable population of spotted owls over the long-term (USDI 1990).

Both the Bureau of Land Management and Forest Service have policies regarding dispersions of clearcut areas. For example, the Forest Service requires trees in regenerating clearcut stands to attain a height of 4.5 feet and 200 trees per acre before the adjacent stand can be clearcut. Although there is no set width for leave strips (land located between adjacent harvested areas that remains uncut, at least temporarily until reforestation has been achieved at a certain level in the harvested sites), most are 200 to 300 feet wide. Regulations implementing the National Forest Management Act specify that in the Douglas-fir zone and in the mixed-conifer/pine zone, clearcuts can have a maximum size of 20 and 60 acres, respectively. However, in cases of salvage operations resulting from blowdown, fires, or extensive insect infestation, clearcuts may exceed these limits. On Forest Service lands, streamside protection zones varying from 50 to 300 feet, depending on steepness of slope, are required for

certain types of streams. Each National Forest has the latitude to develop its own requirements in the respective forest plans as long as they are no less restrictive than the regional guide (S. Paulsen, U.S. Forest Service, Portland, OR., pers. comm.).

According to Bureau of Land Management policy, cutting units generally should not exceed 40 acres. However, harvest units more than this size may be allowed for salvage operations where larger units would minimize road construction and other activities that otherwise would result in more extensive adverse environmental impacts. Streamside buffer strips along perennial and intermittent streams are necessary; however, the width varies with the steepness of the terrain, the nature of the undercover, soil type, size of the stream, the width of the riparian area, and the amount of timber that is to be removed. Although there is no requirement to leave space between clearcuts, in consideration of wildlife values, Bureau policy suggests that 10 years expire before expanding clearcuts, but only if the 10-year wait is compatible with timber management prescriptions.

In August 1988, an Interagency Agreement established in 1987 between the Fish and Wildlife Service and the Forest Service was expanded to include the Bureau of Land Management and the National Park Service. This agreement requires the four agencies to cooperate, coordinate, exchange data, and review proposals designed to manage and protect owl habitat; it also commits them to manage land to maintain viable, well-distributed spotted owl populations. However, at this time, there are no coordinated management schemes in place among the agencies; the Forest Service and Bureau have developed timber harvest proposals and spotted owl protection strategies independently of each other. On April 13, 1990, a new Interagency Agreement was signed among the four Federal agencies and the three States (California Resources Agency, Oregon Department of Fish and Wildlife, and the Washington Department of Wildlife). The anticipated role of this new group is being determined but offers hope for improved coordination and cooperation.

In 1989 an interagency committee of scientists (Interagency Scientific Committee to Address the Conservation of the Northern Spotted Owl) was established by joint agreement among the Forest Service, Bureau of Land Management, National Park Service, and Fish and Wildlife Service to prepare a conservation strategy for the northern spotted owl. This plan analyzes the current status of the owl, provides an in-depth critique of present management networks, and calls for the protection of large blocks of habitat (Habitat Conservation Areas or HCAs) from the Canadian border to Marin County, California. It recommends a change in management strategy for the Forest Service and the Bureau of Land Management and will, if implemented, require extensive revision of Forest Service regional guides and forest plans as well as Bureau of Land Management district plans. Moreover, it proposes that an interagency group implement the plan and monitor its effectiveness in managing the owl in the decades to come. The Forest Service must decide on this plan by September 30, 1990. The Bureau of Land Management may not reach a decision on the plan until its resource plans are completed in 1992. At this time, the Service is unable to speculate on whether the plan will be accepted and to what extent, if any, it will be implemented. Hence, the Service cannot consider this plan in its decision as it has been neither accepted nor implemented. Moreover, even if the plan were to be fully implemented, testing would be required to prove its success in maintaining long-term viable spotted owl populations.

The success (viability) of spotted owl pairs, in terms of survival and reproductive output, is predicated largely on the sufficiency of their habitat to support their full range of physical, behavioral, and nutritional needs as expressed by measurement of owl use. The size of the Forest Service's SOHAs and of the Bureau of Land Management/Oregon Department of Fish and Wildlife agreement areas is generally less than the mean amount of preferred habitat documented within the home ranges of paired owls studied in nearly all physiographic provinces (USDI 1989). As a consequence, some pairs may not persist in less than optimally sized habitats (Ruggiero *et al.* 1988).

The SOHA network has been criticized for many shortcomings such as inadequate size (20 percent do not have designated acreages), lack of owls, isolation of SOHAs, adjacent logging activities, fragmentation within SOHAs, shifting SOHAs at administrative discretion (which can either benefit or harm owls), lack of contiguity with other reserved lands within the National Forests or adjacent National Parks, or sporadic and irregular occupancy by owls. Because of these and other factors, it is estimated that only about 50–60 percent of SOHAs will hold pairs of owls, except in the Olympic National Forest, where the figure is 85 percent (Thomas *et al.* 1990). This suggests that this extensive network may, at best, protect about 364 pairs. SOHAs may be lost to fire, windthrow (fragmented SOHAs with much edge are particularly vulnerable), volcanic activity, or other unpredictable events. As logging proceeds to reduce the amount of suitable forest around them, options to replace or create additional SOHAs continue to decrease. In an analysis of the SOHA system, Thomas *et al.* (1990) concluded that a scheme that protects isolated pairs is flawed due to problems associated with the high probabilities of local extinctions over short periods of time, loss of social facilitation, physical and biological limits to dispersion, and the susceptibility to loss of habitat through stochastic events. In comparing the advantages and disadvantages of SOHAs and HCAs, ISC (Thomas *et al.* 1990) recommended that most of the SOHA system be abandoned in favor of HCAs. Further, ISC noted that the committee "* * * believed the SOHA network system to be a prescription for the extinction of spotted owls, at least in a large proportion of the owl's range" (Thomas *et al.* 1990, p. 36).

According to the final regional guidance, and the Record of Decision (for Oregon and Washington), the Forest Service does not quantitatively provide for long-term contingencies in the case of catastrophic environmental events. Similarly, current spotted owl habitat management by the Bureau of Land Management does not take into consideration or provide for such events.

The cumulative impact of timber-cutting practices by land managing agencies increases and exacerbates the fragmentation of existing owl habitat. The proposed spotted owl management plans of the Forest Service and Bureau of Land Management are untested. Recent legal actions aside, there is no indication from the land management agencies that the current rate of change from old growth to young, even-aged forest management will diminish. Further, as agencies concentrate their clearcutting activities outside designated spotted owl habitat management areas, future habitat management options will be lost if currently planned habitat networks prove later to be deficient. Existing regulatory mechanisms are insufficient to protect either the northern spotted owl or its habitat.

E. Other Natural or Man-Made Factors Affecting Its Continued Existence. The barred owl (*Strix varia*) has undergone rapid range expansion

over the past 20 years into the range of the spotted owl in the northwestern United States (Hamer 1988; USDI 1989). Gould (pers. comm.) indicates that the barred owl now occurs as far south as Mendocino County, California. Furthermore, it has at least replaced, and possibly displaced, the northern spotted owl in some areas (Forsman and Meslow 1986; Allen *et al.* 1985; Hamer and Samson 1987). Hamer (1988, 1989) noted that barred owls seem to be more prevalent in cut-over areas than spotted owls. On his study area in the northern Cascade Mountains of Washington, the barred owl is now 2.1 times more numerous than the spotted owl.

The barred owl's adaptability and aggressive nature appear to allow it to take advantage of habitat perturbations, such as those that result from habitat fragmentation, and to expand its range where it may compete with the spotted owl for available resources. The long-term impact to the spotted owl is unknown, but of considerable concern. Continued examination is warranted of the role and impact of the barred owl as a congeneric intruder in historical spotted owl range and its relationship to habitat fragmentation. The potential for interbreeding of the two species also merits concern and monitoring.

There are numerous examples of extrinsic factors such as fires, wind damage, and volcanic action affecting forest habitat, including known spotted owl habitat. These natural occurrences have not been factored in an objective way into any future projections of population persistence of the spotted owl, and their impact is unknown. In recent years such natural perturbations have included the Tillamook burns, fires in southern Oregon and northern California in 1987, the "21 blow" wind storm, the Columbus Day Storm, the eruption of Mount St. Helens, and various small fires. It is likely that in the future similar losses in suitable spotted owl habitat will occur from these types of occurrences. In its risk assessment, the Forest Service subjectively considered the impacts of catastrophic events on the probability of persistence of spotted owl populations. However, the Record of Decision did not incorporate provisions for replacement of habitat lost as the result of natural calamities.

Genetic problems (such as inbreeding) have not yet been considered a problem with spotted owls.

Several instances of malicious taking of spotted owls have been reported. In one case, a mutilated spotted owl was found hanging from a Forest Service kiosk. It is not known how widespread or to what extent northern spotted owls are deliberately killed or injured.

In its Status Review (USDI 1987), Supplement (USDI 1989), and 1990 Status Review (USDI 1990), the Service has compiled and carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to issue this rule. Based on this evaluation, the Service has found that listing the northern spotted owls as a threatened species throughout its range is warranted. The Endangered Species Act of 1973 (Act), as amended states that the term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range. The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Given the loss of a substantial amount (60 percent) of historical habitat from timber harvesting, and continuing and planned reduction and fragmentation of a large portion of the remaining old-growth and mature habitat, the northern spotted owl population will continue to decline unless steps are taken to offset these losses.

The northern spotted owl shows a clear preference throughout its range for old-growth forests and forests with old-growth characteristics for nesting, foraging, and roosting. Structural characteristics that provide suitable northern spotted owl habitat may occur in forests 60–200 years of age, depending on stand history, location, and site potential. As a result of historical and ongoing timber harvest the once extensive and continuous old-growth forests are being converted to a patchwork landscape dominated by young, even-aged stands. Existing timber management planning and policies offer little opportunity to generate stands with the structural characteristics of spotted owl habitat replacement because rotation periods range from about 70 to 120 years on Federal lands to as little as 40 years on private lands. The point in time at which managed stands being to acquire the structural attributes of spotted owl habitat often coincides with the rotation age and next major removal activity. Hence, there is no provision for long-term maintenance of regenerated spotted owl habitat in existing timber management planning and policies.

If current management practices continue, in the near future most commercial old-growth forests will have been logged and converted to younger, even-aged management forests. This would represent an estimated total decline of 60 percent from the amount of suitable habitat originally estimated for the western part of the Pacific Northwest, including northern California (Thomas *et al.* 1990). Impacts from timber harvesting are rangewide and, in addition to causing the direct loss of preferred habitat, appear to be affecting the quality of the remaining forest habitat throughout much of the species' range. Moreover, the total population of spotted owls is relatively low (recent surveys indicates about 2,000 known pairs, although 3,000 to 4,000 pairs are suspected) and pairs are relatively widely spaced (Thomas *et al.* 1990). This subspecies has very specific habitat requirements. With a low, variable reproductive rate and a low population density, a consequence partly of its large home range requirements, the spotted owl would be especially vulnerable to localized catastrophic events. Lastly, current and proposed management practices may not be designed for nor be sufficient to ensure long-term population viability of the spotted owl. On the basis of the best scientific and commercial data available, the Service believes that threatened status is warranted rangewide for the entire population of the northern spotted owl.

Under the Act's definition, to be considered for endangered classification, the spotted owl would have to be currently in danger of extinction throughout all or a significant portion of its range. While the available data indicate a gradual, rangewide decline in the species commensurate with habitat loss, they do not suggest that extinction is an imminent possibility. The Service recognizes that the situation is most serious in the California Cost Range (especially Marin and Sonoma Counties), the Shasta/Modoc area in California, the Oregon Coast Ranges (beginning with Coos Bay Bureau of land Management lands north to the Columbia River), and from the Olympic Peninsula south to the Columbia River. However, when the status of the entire subspecies is analyzed rangewide, it is the Service's conclusion that the likelihood of extinction of the subpopulations of the owls in these areas is not so immediate as to justify a rangewide endangered classification at this time. The Olympic Peninsula population of the northern subpsecies may be the only unit that could qualify as a distinct population under the Act. However, it was not clear that identifying this as a separate population was fully justified by the

data or that the immediacy of threat in relationship to other areas was sufficient to warrant a separate designation as endangered at this time. For the reasons given below, no critical habitat is beig designated.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act (Act), as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined as endangered or threatened.

The Service finds that critical habitat for the northern spotted owl is not presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area of critical habitat. Critical habitat includes specific areas within the geographical area currently occupied by a species on which are found the physical or biological features essential to the conservation of the species and that may require special management considerations or protection (50 CFR 424.02(d)).

The extensive range of the northern spotted owl from British Columbia to San Francisco Bay involves over 7 million acres of its preferred old-growth and mature forest habitat and an undetermined amount of other forest types that may also be of significance to the survival and recovery of the subspecies. Much of this habitat has been fragmented by logging, and many stands are isolated from each other or of such small size as not to support viable populations of spotted owls. The specific size, spatial configuration and juxtaposition of these essential habitats as well as vital connecting linkages between areas necessary for ensuring the conservation of the subpecies throughout its range have not been determined at this time. However, the Interagency Scientific Committee's (Thomas *et al.* 1990) conservation strategy, released in April 1990, includes maps outlining northern spotted owl habitat conservation areas (HCAs). The plan proposes establishment of habitat blocks containing multiple pairs of owls that are distributed throughout the range and thought to be spaced closely enough to facilitate dispersal among the HCAs (Thomas *et al.* 1990). The Service is in the process of reviewing and evaluating the HCAs described within the ISC plan to determine whether they, in addition to possibly other areas, should be proposed as critical habitat.

When a finding is made that critical habitat is not determinable at the time of listing, the Service's regulations (50 CFR 424.17(b)(2)) provide that the designation of critical habitat be completed within two years from the date of publication of the proposed rule to list the species. The Service will continue to evaluate the available information to assess whether designation of critical habitat is prudent. Should the Service decide to propose critical habitat, a proposed rule will be published in the **Federal Register**. For such a proposal, the notification process parallels that of a proposed listing and provides for a public hearing, if so requested within 45 days of the date of publication of the proposed rule. In addition, as required under Section 4(b)(2) of the Act, the Service will evaluate the economic and other relevent impacts of designating critical habitat. If a designation of critical habitat is proposed, a final determination would be published by June 23, 1991.

Available Conservation Measures

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

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

The U.S. Forest Service and Bureau of Land Management have active timber sale programs in the Pacific Northwest, including northern California, whereby private timber companies bid for the right to log Federal land. Because habitat loss and modification resulting from timber harvesting activities represents the primary threat to the northern spotted owl, the Forest Service and Bureau have reviewed and assessed the potential impacts of timber sales on this species to ensure compliance with section 7 of the Act, as described above.

Section 318 of the Interior and Related Agencies Appropriation Act for fiscal year 1990, required the sale of 5.8 billion board feet (bbf) from 13 national forests with owls in Oregon and Washington, and 1.9 bbf from Bureau of Land Management land in Oregon. These sales represent a reduction in allowable harvests of about 9 percent.

In Fiscal Year 1989, the Forest Service planned 425 timber sales containing about 48,000 acres that included at least some northern spotted owl habitat. The Forest Service had been enjoined through court action from completing 165 timber sales, totalling approximately 22,500 acres, largely because of spotted owls and old growth issues. About 52 timber sales, representing roughly 2,600 acres, were released by the Court and subsequently offered for sale (G. Gunderson, USDA Forest Service, Portland, OR, pers. comm.). The remainder were released by the Court subsequent to the passage of Section 318.

Annual logging rates of mature and old-growth forest on the owl forests are expected to decline from about 64,000 acres/year (average from the last nine years) to about 39,400 acres/year over the next 10 years in Washington and Oregon based on draft forest plans (Thomas *et al.* 1990).

On March 30, 1990, the Service issued an informal conference report to the Forest Service for its timber sale schedule in fiscal years 1989–1990 in Oregon and Washington. Section 318 mandates the sale for harvest of 7.7 bbf of timber from the 19 National Forests in the Pacific Northwest Region. Of this aggregate timber sale level, 5.8 bbf is targeted for the 13 National Forests known to contain spotted owls in Oregon (4.0 bbf) and Washington (1.8 bbf) during fiscal years 1989 and 1990. Approximately 2.3 bbf were sold by the Forest Service in fiscal year 1989. The Service conferred with the Forest Service on timber sales totaling 24,940 acres and 68,140 acres for fiscal years

1989 and 1990, respectively in Region 6. Under section 318, the Forest Service's timber harvest schedule consists of 1,295 sales. Sales are primarily to clearcut green timber. Partial cut harvests include shelterwood cuts, selective cuts, and salvage of both green and dead timber. The Service concluded that 716 pairs or 64.4 percent of the estimated 1,113 pairs of owls on the 13 National Forests are likely to be affected by the section 318 timber sale schedule. Of these, 235 pairs are likely to be subject to the most significant (level 1) impacts (*e.g.*, sales would remove owl habitat within 0.5 miles of a pair activity center; reducing the amount of suitable habitat within the 2.1/2.5 mile radius of a pair below the minimum known to be used by pairs in each respective province, and removing owl habitat from an area of concern). Moreover, 116 sales are within areas of special concern and are considered to represent level 1 impacts. Approximately 93,080 acres (2.2 percent) of suitable habitat on the 13 National Forests in Oregon and Washington will be harvested as per the Forest Service's Section 318 timber sale schedule. Within non-reserved lands, this results in a reduction of 4.2 percent of suitable owl habitat.

In California, the Fish and Wildlife Service and Forest Service informally conferred on 165 timber projects. The Service recommended no modification in 130 of these, some modification for 24, reduction in volume of timber for 9 projects, and deferral on two projects. It is anticipated that about 1 percent of suitable owl habitat will be logged on Forest Service lands annually.

Section 318 of Public Law 101–121 (1989) mandates the sale for harvest of 1.9 billion board feet (bbf) of timber from Bureau lands within Oregon during fiscal years 1989–1990. About 0.8 bbf were sold in fiscal year 1989, thus, an additional 1.1 bbf must be sold during fiscal year 1990. Prior to this amendment, about 1.18 bbf were authorized for harvest annually from 1987 through 1990. The Bureau of Land Management manages more than 2.4 million acres of timber land in Oregon and about 19,000 acres in northern California of which an estimated 858,700 acres is forest land suitable for spotted owls. Of this, 82 percent (701,100 acres) is subject to harvest (USDI 1990).

In 1988, the Bureau of Land Management advertised 229 timber sales for a total of 29,798 acres. Of these planned sales, 41 (5,330 acres) were involved in a lawsuit. During 1989, the Bureau of Land Management planned to advertise 190 timber sales to harvest 24,655 acres; a lawsuit was initiated involving 75 of these sales, covering 9,750 acres (Nietro, pers. comm.). these sales also were released by the Court subject to passage of Section 318. On an annual basis, the Bureau of Land Management awards contracts to harvest 32,940 acres, of which 22,800 acres are clearcut and 10,140 acres are partially cut. Of the acreage cut, approximately 66 percent of the harvest is in forests over 200 years old (Nietro, pers. comm.). On Bureau of Land Management lands in Oregon, an average cutting rate of 23,400 acres/year is expected to continue. This would eliminate all northern spotted owl habitat on non-protected Bureau of Land Management lands, except for the Medford District, within the next 26 years (USDI 1990). At current logging rates all remaining suitable habitat will be eliminated in 12 (Eugene District) to 52 (Medford District) years (USDI 1990). In fiscal year 1989, the Bureau of Land Management offered sales totaling 0.745 bbf and 0.451 bbf through March 1990. The Service, after screening 314 proposed timber sales for Bureau of Land Management land in western Oregon, prepared 79 informal conference reports following the Section 7 conferencing procedures.

This rule brings Section 5 and 6 of the Act into effect with respect to the northern spotted owl. Section 5 authorizes the acquisition of lands for the purpose of conserving endangered and threatened species. Pursuant to Section 6, the Fish and Wildlife Service would be able to grant funds (should they become available) to the States of California, Oregon, and Washington for management actions aiding the protection and recovery of the northern spotted owl.

Listing the northern spotted owl as threatened allows for development of a recovery plan which will draw together the State, Federal, and local agencies having responsibility for conservation of the spotted owl. The recovery plan will outline an administrative framework, sanctioned by the Act, for agencies to coordinate activities and cooperate in their conservation efforts. Habitat conservation plans (HCPs) and other comprehensive plans may be a part of any coordinated effort through the recovery plan process. The recovery plan will describe recovery priorities and estimate the costs of various tasks necessary to accomplish them. It will recommend appropriate functions to each agency and a time frame within which to implement them.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that generally apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing threatened species permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

The northern spotted owl is not used for economic purposes, is not a commercial species, and is not legally hunted, sold, or traded. Only a few requests for taking permits are anticipated. This bird is presently protected under 50 CFR parts 10 and 20 as a migratory bird.

On June 28, 1979, the order Strigiformes, which includes all owls, was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that export permits are generally required before international shipment may occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Effective Date

The Administrative Procedure Act (5 U.S.C. 553(d)) requires the effective date of a rule to be no less than 30 days after the "publication or service" of the rule, except "as otherwise provided by the agency for good cause" (5 U.S.C. 553(d)(3)). In this case, the Service is submitting the signed rule to the **Federal Register** over 30 days prior to the July 23, 1990 effective date. More importantly, the Service is extensively publicizing the signing of the rule both in the Pacific Northwest and Washington, DC. The Service therefore believes that it is giving actual notice of the availability of the rule within the meaning of 5 U.S.C. 553(d) at least 30 days prior to the effective date. Alternatively, this extensive publicizing of the rule over 30 days prior to the effective date is good cause for allowing less than 30 days between the date of **Federal Register** publication and the July 23, 1990, effective date.

References Cited

A complete list of all references cited herein is available upon request from the Regional Director (Attention: Spotted Owl Coordinator), U.S. Fish and Wildlife Service, 1002 NE. Holladay Street, Portland, Oregon 97232.

Authors

The primary author of this final rule is Dr. Kathleen E. Franzreb, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 1002 NE. Holladay St., Portland, Oregon 97232–4181 (503/231–6150 or FTS 429–6150), with the assistance of the other members of the Service's Northern Spotted Owl Listing Review Team.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Birds, to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Birds:							
Owl, northern spotted.	Strix occidentalis caurina	U.S.A. (CA, OR, WA), British Columbia.	Entire	T	393	NA	NA
*	*	*	*	*	*	*	

Dated: June 22, 1990.

John F. Turner,

Director, Fish and Wildlife Service.

[FR Doc. 90–14889 Filed 6–22–90; 3:50 pm]

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federal register

Tuesday,
June 26, 1990

Part VII

The President

Proclamation 6150—Korean War Remembrance Day, 1990

Federal Register
Vol. 55, No. 123
Tuesday, June 26, 1990

Presidential Documents

Title 3—

The President

Proclamation 6150 of June 22, 1990

Korean War Remembrance Day, 1990

By the President of the United States of America

A Proclamation

Forty years ago, American men and women were asked to make a stand for freedom in behalf of those who lived in a country about which many of our young citizens probably knew very little. They did know that liberty was in jeopardy, and so these brave young men and women joined United Nations forces from around the world to stop communist aggression in the Republic of Korea.

The immensity of what they undertook may have been best expressed by President Truman when he stated, "In the simplest terms, what we are doing in Korea is this: We are trying to prevent a third World War." Over 5,700,000 Americans were involved directly or indirectly in the conflict. The lives of 54,246 of our soldiers were lost, we saw 103,000 wounded, and 8,000 are still listed as missing in action—all to prevent the world from plunging into the abyss of another World War. After 38 months of bitter combat, the victory was won, and the communists were driven out of the Republic of Korea. It was not only a victory for the South Koreans, but for all those who cherish liberty and self-determination.

After World War II, the world was weary of war, and with an economic recovery in full bloom, many Americans gradually put the memory of the struggle for freedom in Korea behind them. The immense achievement in the cause of freedom was all but forgotten.

Looking back at the Korean conflict, we recognize that our defense of freedom in this early struggle of the Cold War helped lay the foundation for the march of democracy we see today around the world. This new dawning of freedom is the marvelous legacy of all those who fought and died in the Korean War. Soon a magnificent monument—38 figures that will march silently toward a United States flag—will be raised on the grounds of the Mall in Washington in tribute to all who served in the Korean War.

On this 40th anniversary of the Korean War, we resolve as a Nation to sanctify and preserve the memory of all those who, through their courage, dedication, and sacrifice, helped secure the blessings of freedom for the people of the Republic of Korea and kept freedom's light burning brightly.

In respect and recognition of those Americans who served in the armed forces during the Korean War, the Congress, by House Joint Resolution 575, has requested the President to issue a proclamation calling upon the people of the United States to observe the day of June 25, 1990, as "Korean War Remembrance Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 25, 1990, as Korean War Remembrance Day. I ask all Federal departments and agencies, interested groups, organizations, and individuals to fly the flag of the United States at half-staff on June 25, 1990, in honor of the Americans who died as a result of service in the Korean War.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 90-15074
Filed 6-25-90; 1:53 pm]
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Tuesday, June 26, 1990

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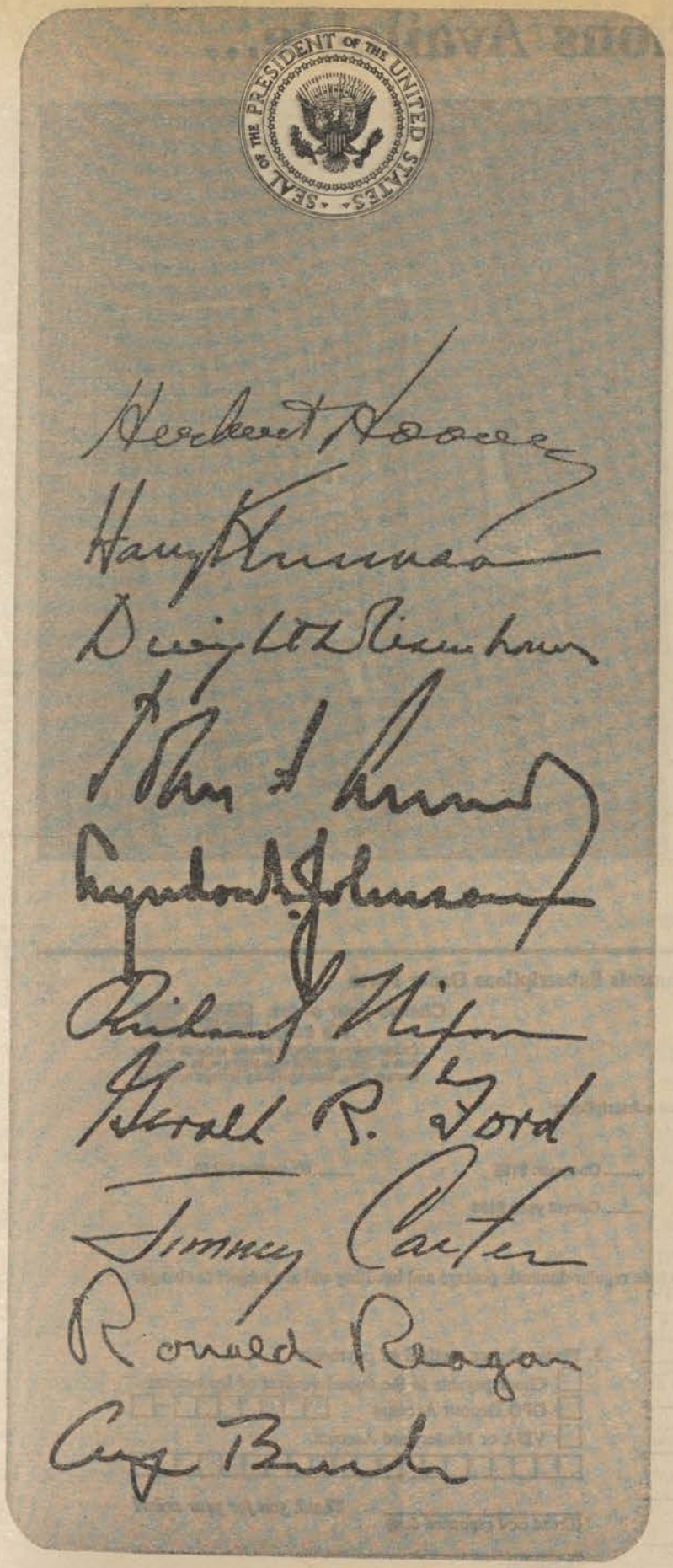

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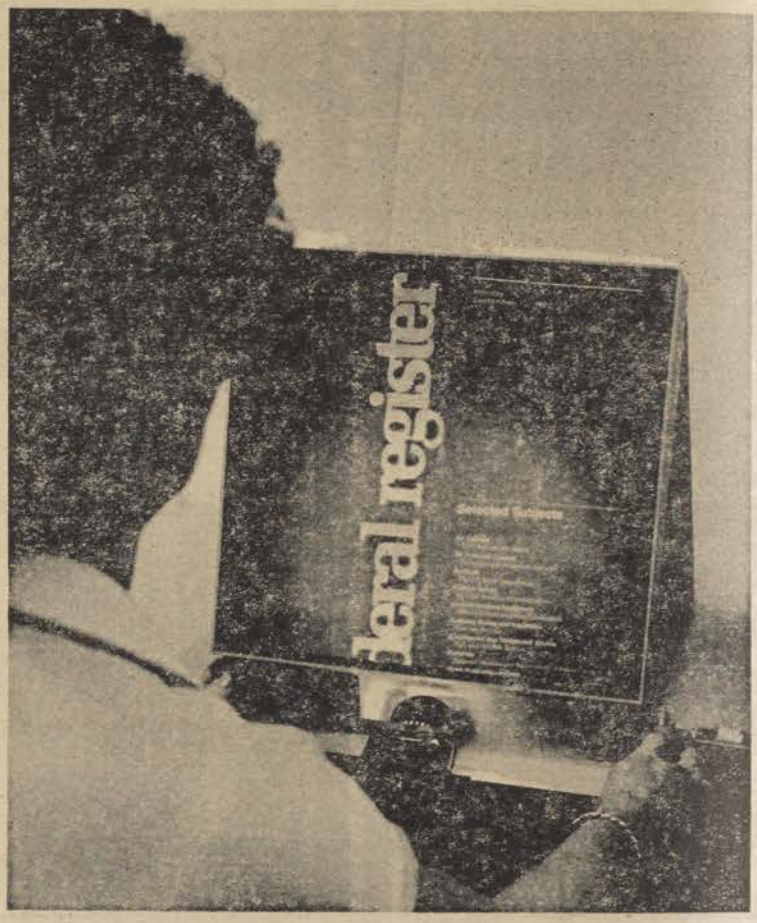

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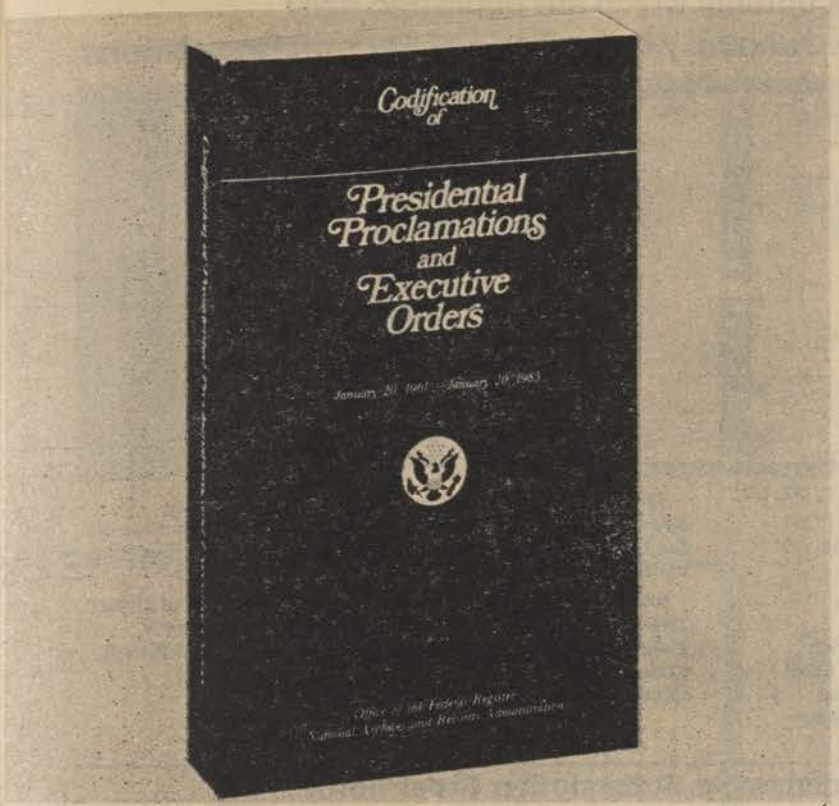

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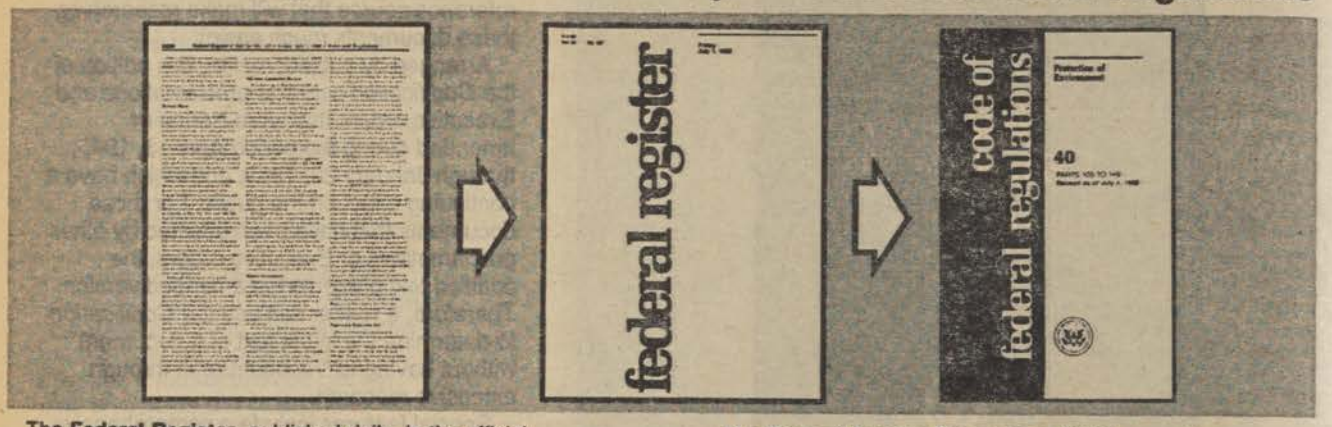

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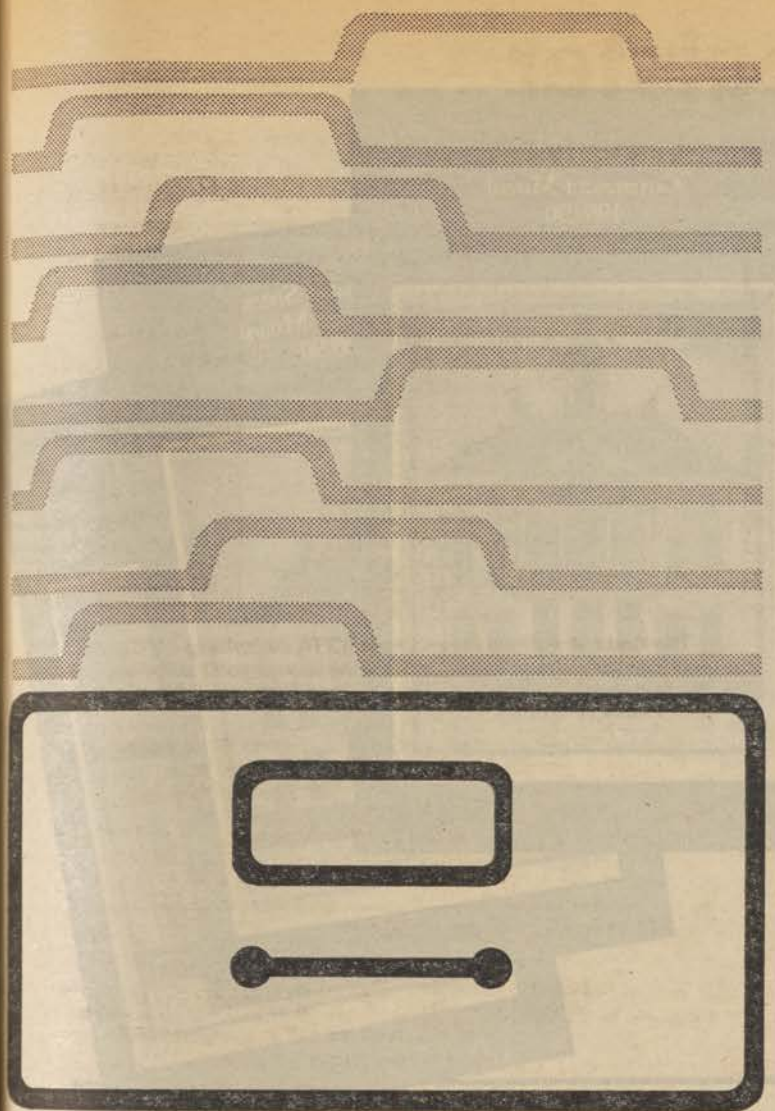

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in the Code of Federal Regulations (CFR)

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SUPPLEMENT: Revised January 1, 1990

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