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November 13, 1996

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AEA–08]

Establishment of Class E Airspace; Saluda, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Saluda, VA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Hummel Field Airport, Saluda, VA has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Hummel Field Airport.

EFFECTIVE DATE: 0901 UTC. January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Frances T. Jordan, Airspace Specialist, Operations Branch, AEA–530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On September 17, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a Class E airspace area at Hummel Field Airport, Saluda, VA (61 FR 48870). The development of a GPS RWY 1 SIAP at Hummel Field Airport has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes a Class E airspace area at Saluda, VA. The development of a GPS RWY 1 SIAP at Hummel Field Airport has made this action necessary. The intended effect of this action is to provide adequate Class E airspace for aircraft executing the GPS RWY 1 SIAP at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendment are necessary to keep them operationally current. Therefore, this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; 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 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

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Saluda, VA [New]

Hummel Field Airport, VA
(Lat. 37°36′01″ N, 76°26′59″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Hummel Field Airport and within 4 miles either side of the 176° bearing from the Hummel Field Airport extending from the 6-mile radius to 9 miles south of the airport.

* * * * *

Issued in Jamaica, New York on October 25, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–29071 Filed 11–12–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

RIN 0648–AE13

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: Section 1006(e)(1) of the Oil Pollution Act of 1990 requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to promulgate regulations for the assessments of natural resource damages resulting from the discharge of oil. The National Oceanic and Atmospheric Administration (NOAA) promulgated final regulations on January 5, 1996. As part of the development of the regulations, NOAA has developed five natural resource damage assessment guidance documents. These documents are not regulatory in nature, but are designed to

provide guidance to natural resource trustees using the natural resource damage assessment regulations.

DATES: The five guidance documents are available as of November 13, 1996.

ADDRESSES: Written inquiries are to be submitted to: NOAA, Damage Assessment Center, Attn: Eli Reinharz, 1305 East-West Highway, SSMC #4, N/ORCAx1, Workstation #10218, Silver Spring, MD 20910–3281.

FOR FURTHER INFORMATION CONTACT: Eli Reinharz, 1305 East-West Highway, SSMC #4, N/ORCAx1, Workstation #10218, Silver Spring, MD 20910–3281, phone: (301) 713–3038, ext. 193; facsimile: (301) 713–4387, e-mail: ereinharz@spur.nos.noaa.gov.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides for the prevention of, liability for, removal of, and compensation for the discharge, or substantial threat of discharge, of oil into or upon the navigable waters of the United States, adjoining shorelines, or the Exclusive Economic Zone. Section 1006(e) requires the President, acting through the Under Secretary of Commerce of Oceans and Atmosphere, to develop regulations establishing procedures for natural resource trustees to use in the assessment of damages for injury to, destruction of, loss of, or loss of use of natural resources covered by OPA. The National Oceanic and Atmospheric Administration (NOAA) published the final natural resource damage assessment regulations on January 5, 1996 (61 FR 440). A major goal of OPA is to make the environment and public whole for injury to natural resources and their services as a result of an incident. The OPA regulations provide a framework for conducting sound natural resource damage assessments that achieve this OPA goal. Under the regulations, assessments are conducted in the open, with responsible parties and the public involved in the planning process so that restoration may be achieved more quickly, transaction costs may decrease, and litigation may be avoided. Restoration plans developed with input from the public and responsible parties form the basis of a claim for natural resource damages, with final restoration plans presented to responsible parties for funding or implementation.

NOAA also has developed guidance documents as part of, and in support of, the rulemaking effort. Five guidance documents were made available in draft form when the OPA regulations were first proposed January 7, 1994 (59 FR 1061). These guidance documents are now available in final form. The guidance documents are:

Natural Resource Damage Assessment Guidance Document: Preassessment Phase (Oil Pollution Act of 1990). National Oceanic and Atmospheric Administration, Damage Assessment and Restoration Program, Silver Spring, MD. Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96–199419; ph: (703) 487–4650.

Natural Resource Damage Assessment Guidance Document: Injury Assessment (Oil Pollution Act of 1990). National Oceanic and Atmospheric Administration, Damage Assessment and Restoration Program, Silver Spring, MD. Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96–199427; ph: (703) 487–4650.

Natural Resource Damage Assessment Guidance Document: Specifications for Use of NRDAM/CME Version 2.4 to Generate Compensation Formula (Oil Pollution Act of 1990). National Oceanic and Atmospheric Administration, Damage Assessment and Restoration Program, Silver Spring, MD. Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96–199435; ph: (703) 487–4650.

Natural Resource Damage Assessment Guidance Document: Primary Restoration (Oil Pollution Act of 1990). National Oceanic and Atmospheric Administration, Damage Assessment and Restoration Program, Silver Spring, MD. Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96–199443; ph: (703) 487–4650.

Natural Resource Damage Assessment Guidance Document: Restoration Planning (Oil Pollution Act of 1990). National Oceanic and Atmospheric Administration, Damage Assessment and Restoration Program, Silver Spring MD. Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96–199450; ph: (703) 487–4650.

Although the guidance documents were prepared primarily to provide guidance to natural resource trustees using the OPA regulations, other interested persons may also find the information contained in these documents useful.

Injury Assessment: The purpose of the Injury Assessment Guidance Document is to provide trustees with general approaches for identifying and evaluating injuries to natural resources resulting from incidents. This document provides guidance on conducting injury assessment studies based upon careful consideration of preassessment information and the need to restore natural resources and compensate for interim lost services. This document does not direct the user in the selection of specific procedures, but describes a logical, flexible, and cost-effective approach that can accommodate varied circumstances of incidents under OPA.

Preassessment Phase: The purpose of the Preassessment Phase Guidance Document is to provide trustees with general guidance for early assessment activities required under the Preassessment Phase of the OPA regulations. The Preassessment Phase is a preliminary fact-finding exercise that provides the information to determine if trustees have the jurisdiction to pursue restoration under OPA, and, if so, whether it is appropriate to do so. The information gained through preassessment activities should serve as the foundation for a more detailed assessment of injuries to natural resources and services.

Primary Restoration: The purpose of the Primary Restoration Guidance Document is to provide trustees with a review of the state of the art for restoration of certain habitats and biological natural resources and an evaluation of potential restoration actions following injury to natural resources resulting from incidents. This document focuses on the procedures that may be used to restore or replace natural resources injured as a result of an oil incident. The guidance in this document is meant to summarize existing information and methods so that informed decisions can be made in the restoration planning and implementation process.

Restoration Planning: The purpose of the Restoration Planning Guidance Document is to provide trustees with general guidance for developing restoration plans under OPA that comply with the National Environmental Policy Act (NEPA) procedural requirements. Federal agencies who must comply with the requirements of NEPA are encouraged to integrate those requirements with the restoration planning procedures required by OPA. Therefore, the focus of this document is to more fully describe the processes and products required for restoration planning under the OPA regulations and how the NEPA requirements can be integrated into the OPA process.

Specifications for Use of NRDAM/CME Version 2.4 to Generate Compensation Formulas: The purpose of the Specifications for Use of NRDAM/CME Version 2.4 to Generate Compensation Formulas document is to provide trustees with guidance and data to use with the Natural Resource

Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME), Version 2.4, developed by the Department of the Interior. Using the NRDAM/CME Version 2.4 and the information contained in this document, trustees will have a simplified, cost-effective tool to use in estimating expected impacts of most incidents involving oil. This information also can be used to evaluate the possible development of a simplified method, such as a compensation formula, that could be developed through the use of the NRDAM/CME Version 2.4.

NOAA plans to have these documents available on the Internet at http://www.darcnw.noaa.gov/opa.htm and on CD–ROM by the end of the calendar year. NOAA would appreciate any suggestion on how these documents could be made more practical and useful in the future. Persons wishing to make any suggestions are referred to the address at the front of this Notice.

Dated: November 7, 1996.

Terry D. Garcia,

General Counsel.

[FR Doc. 96–29047 Filed 11–12–96; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 644

Real Estate Handbook

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers has rescinded Subpart E—Homeowners Assistance Program. The Homeowners Assistance Program has undergone substantial revision in the last few years since the enactment of Appendix E, Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (Public Law 100–526). As published, subpart E bears no resemblance to the internal Engineer Regulation (ER) 405–1–12, Chapter 7. It is anticipated that ER 405–1–12 will continue to be revised as needed to better serve the interests of applicants under the program. Copies of ER 405–1–12 may be obtained by contacting any Corps of Engineers District office having responsibility for the Homeowners Assistance Program.

EFFECTIVE DATES: November 13, 1996.

ADDRESSES: HQUSACE, ATTN: CERE–RP, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Downey at (202) 761–8987.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 1013 of Public Law 89–754, as amended and DoD Directive 4165.50, The Corps removes and reserves 32 CFR, Part 644, Subpart E.

Economic Assessment and Certification

This deletion is issued with respect to the administration of the Homeowners Assistance Program. There will be no negative impacts on potential applicants to the Homeowners Assistance Program and no impacts on small businesses or governments in the areas of the approved programs.

I hereby certify the deletion of this subpart will have no significant impact on a substantial number of small entities.

List of Subjects in 32 CFR Part 644

Administrative practice and procedure, Government employees, and Military personnel.

Accordingly, part 644 of title 32 Code of Federal Regulations is amended as set forth below:

PART 644—[AMENDED]

1. The authority citation for part 644 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 3012, unless otherwise noted.

Subpart E—[Removed and Reserved]

2. Subpart E, consisting of §§ 644.181 through 644.242, is removed and reserved.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–28990 Filed 11–12–96; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 079–3–002; FRL–5640–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the Federal Register on October 31, 1995. The revisions concern new source review (NSR) rules from the Mojave Desert Air Quality Management District (MDAQMD or the District). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate air pollution in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control emissions of air pollutants from new and modified stationary sources. Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on December 13, 1996.

ADDRESSES: Copies of the submitted rules and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

New Source Section (A–5–1), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

Mojave Desert AQMD, 15428 Civic Drive, suite 200, Victorville, CA 92932.

Air Resources Board, 2020 L Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Steve Ringer, Permits Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1260.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1995 at 60 FR 55355, EPA proposed to approve MDAQMD rules 1301–1308, and 1310–1312 into the California SIP, contingent upon the District's adoption (and submittal as a SIP revision) of corrections to a number of deficiencies in the rules. On March 25, 1996, MDAQMD adopted the following rules as the corrections required in the October 1995 proposed approval: MDAQMD Rule 1300, General; MDAQMD Rule 1301, Definitions; MDAQMD Rule 1302, Procedure; MDAQMD Rule 1303, Requirements; MDAQMD Rule 1304, Emissions Calculations; MDAQMD Rule 1305, Emission Offsets; MDAQMD Rule 1306, Electric Energy Generating Facilities. On March 25, 1996,

MDAQMD also rescinded rules 1307–1313 and incorporated the substantive provisions of those rules into rules 1300–1306. Rules 1300–1306 (adopted) and rules 1307–1313 (rescinded) were submitted by the California Air Resources Board to EPA on July 23, 1996, as an amendment to the SIP (rules 1300–1306, as submitted on July 23, 1996, will hereafter be referred to as ''the submitted rules''). In the technical support document (TSD) that EPA prepared for the October 1995 proposed approval, EPA discussed the consolidation of the substantive portions of rules 1307–1313 into rules 1300–1306, and the manner in which rules 1300–1306 would, upon consolidation, contain all of the necessary NSR elements and make all of the corrections necessary for final SIP approval.

EPA has evaluated the submitted rules to ensure that these rules contain the changes that were listed as contingencies for final approval in the October 1995 proposed approval. The submitted rules contain the changes necessary for approval, in a manner that is identical to that described in the TSD for the proposed approval. Because the submitted rules meet the contingencies for final approval, EPA is now promulgating final approval of rules 1300–1306, as submitted on July 23, 1996. EPA is also rescinding the proposed approval of rules 1307, 1308, 1310, 1311, and 1312, because the substantive portions of these rules have been consolidated in the submitted rules.

For a detailed description of how the submitted rules contain the changes that were listed as contingencies for final approval in the October 1995 proposed approval, please see the TSD for the proposed approval. The TSD for the proposed approval is available at EPA's Region IX office at the location listed under the Addresses section of this Federal Register document.

EPA has also evaluated the submitted rules for consistency with the requirements of sections 172 and 173 of the CAA and EPA's NSR regulations at 40 CFR 51.160 through 51.165. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in the TSD for the proposed approval.

Response to Public Comments

A 30-day public comment period was published in the Federal Register on October 31, 1995 at 60 FR 55355. EPA received no comments on the proposed approval of these rules.

EPA Action

EPA is finalizing action to approve rules 1300–1306 as described above for inclusion into the California SIP, and to rescind the proposed approval of rules 1307, 1308, and 1310–1312, as described above. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate the submitted rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of air pollution in accordance with the requirements of the CAA.

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

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 16, 1996.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) New and amended regulations for the following APCDs were submitted on July 23, 1996, by the Governor's designee:

(i) Incorporation by reference.

(A) Mojave Desert Air Quality Management District.

(*1*) Rules 1300–1306, adopted on March 25, 1996.

* * * * *

[FR Doc. 96–28477 Filed 11–12–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300441; FRL–5572–9]

RIN 2070–AB78

Propiconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of the fungicide propiconazole in or on the raw agricultural commodity sorghum in connection with EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of propiconazole on sorghum in Texas. This regulation establishes maximum permissible levels for residues of propiconazole in this food pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and be revoked automatically without further action by EPA on October 31, 1998.

DATES: This regulation becomes effective November 13, 1996. This regulation expires and is revoked automatically without further action by EPA on October 31, 1998. Objections and requests for hearings must be received by EPA on or before January 13, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300441], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, [OPP–300441], must also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300441]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8337, e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the fungicide propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole, in or on grain sorghum at 0.1 part per million (ppm) and grain sorghum stover at 1.5 ppm. These tolerances will expire and be revoked automatically without further action by EPA on October 31, 1998.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures.

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Section 408(b)(2)(D) specifies factors EPA is to consider in establishing a tolerance. Section 408(b)(3) requires EPA to determine that there is a practical method for detecting and measuring levels of the pesticide chemical residue in or on food and that the tolerance be set at a level at or above the limit of detection of the designated method. Section 408(b)(4) requires EPA to determine whether a maximum residue level has been established for the pesticide chemical by the Codex Alimentarius Commission. If so, and EPA does not propose to adopt that level, EPA must publish for public comment a notice explaining the reasons for departing from the Codex level. Section 408(c) governs EPA's establishment of exemptions from the requirement for a tolerance using the same safety standard as section 408(B)(2)(A) and incorporating the provisions of section 408(b)(2)(C) and (D).

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166. Generally, these regulations allow a State or Federal agency to apply for an exemption to allow use of a pesticide for which that pesticide is not registered to alleviate an emergency condition. The regulations set forth information requirements, procedures, and standards for EPA's approval or denial of such exemptions.

Prior to FQPA, when EPA granted an emergency exemption under section 18 in connection with use of a pesticide that could result in residues of the pesticide chemical in or on food, EPA did not establish a tolerance or exemption from the requirement for a tolerance under FFDCA. Rather, EPA advised the Food and Drug Administration (FDA) of the emergency exemption and of the level of residues that EPA concluded would be present in or on affected foods as a result of the

emergency use. However, new section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(e) gives EPA general authority to establish tolerances and exemptions from the requirement for a tolerance through notice and comment rulemaking procedures upon EPA's initiative. Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking. The other procedures set out in section 408(e) and (g) are applicable to these tolerances and exemptions. Tolerances and exemptions issued under section 408(l)(6) must be consistent with the safety standards in section 408(b)(2) and (c)(2), respectively, that are applicable to all tolerances and exemptions under section 408, and with FIFRA section 18. Section 408(l)(6) specifies that such tolerances and exemptions must have an expiration date but does not specify how EPA is to set such an expiration date.

In light of FQPA, EPA is engaged in an intensive process, including consultation with registrants, States, and other interested stakeholders, to make decisions on the new policies and procedures that will be appropriate as a result of enactment of FQPA. This process will generally delay the review of food use applications, particularly those involving exposure to children. However, recognizing the importance of FIFRA section 18 emergency exemptions and their time sensitive nature, EPA will continue to process section 18 applications for food uses which clearly are emergencies and which clearly are consistent with the new FFDCA section 408 safety standard and with FIFRA section 18. EPA will issue a notice in the Federal Register soon summarizing the requirements of FQPA, indicating how EPA intends to meet those requirements, and describing actions necessary to assure that EPA complies with the law. EPA intends to promulgate the procedural rule required under section 408(l)(6) by August 3, 1997, but EPA also intends to continue to grant appropriate section 18 emergency exemptions and issue the associated tolerances and exemptions in the interim pending promulgation of that rule. EPA also intends to issue interim guidance to States and others on how EPA will implement section 18 of FIFRA and section 408(l)(6) in the near future.

EPA intends to address how it will provide an expiration date for section 408(l)(6) tolerances and exemptions in the general procedural rule to be promulgated by August 3, 1997. In the interim, EPA has decided to proceed as follows. Section 408(l)(5) specifies that, if a tolerance or exemption from the requirement for a tolerance for a pesticide chemical residue in or on a food has been revoked under section 408, food containing the residue is not unsafe (and thus subject to action by FDA as ''adulterated'') if ''the residue is present as the result of an application or use of a pesticide at a time and in a manner that was lawful'' under FIFRA and ''the residue does not exceed a level that was authorized at the time of that application or use to be present on the food under a tolerance. . . .'' Taking section 408(l)(5) and (6) together, EPA has concluded that the best way to effect an ''expiration date'' during this interim period for a tolerance or exemption established in connection with EPA's grant of a FIFRA section 18 emergency exemption is to specify that the tolerance or exemption will expire and be revoked automatically, without further action by EPA, as of a specified date. That date will generally be approximately 1 year from the date of issuance of the emergency exemption. Under section 408(l)(5), food that contains residues of the pesticide chemical as a result of lawful use under the terms of the section 18 emergency exemption, and at levels that are authorized at the time of that application or use under the tolerance or exemption that was established under section 408(l)(6) in connection with the section 18 action, would remain lawful after the tolerance or exemption is automatically revoked. EPA believes that handling the section 18-related tolerances and exemptions in this manner will allow EPA to respond promptly to emergency conditions during this interim period and will ensure that food containing pesticide residues as a result of use under an emergency exemption will not be considered ''adulterated.''

In deciding to continue to act on section 18 emergency exemptions and to issue the associated tolerances and exemptions early in the process of FQPA implementation, EPA recognizes that it will be necessary to make decisions about the new FFDCA section 408, including the new safety standard. In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemption for Propiconazole on Sorghum and FFDCA Tolerances

On September 4, 1996, the Texas Department of Agriculture availed of itself the authority to declare the existence of a crisis situation within the state, thereby authorizing use under FIFRA section 18 of propiconazole on sorghum for control of northern leaf blight. Texas stated that unusually wet weather conditions this summer have resulted in an increase of this disease above normally occurring levels. It is estimated that as much as 90% of all the world's grain sorghum grown for seed production is grown in the requested site of this section 18 application. Due to the high market prices for grain sorghum, acreage has increased this last year and reserves of certified seed for planting have been exhausted. If northern leaf blight significantly reduces yield and seed quality of the sorghum grown for seed in this area, there may not be enough available seed for planting in the 1997 season. This could result in an economic disaster affecting grain sorghum producers everywhere.

As part of its assessment of this crisis declaration, EPA assessed the potential risks presented by residues of propiconazole in or on sorghum. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18

exemptions only after concluding that the necessary tolerances under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. These tolerances for propiconazole will permit the marketing of sorghum treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although these tolerances will expire and be revoked automatically without further action by EPA on October 31, 1998, under FFDCA section 408(l)(5), residues of propiconazole not in excess of the amounts specified in the tolerances remaining in or on sorghum after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether propiconazole meets the requirements for registration under FIFRA section 3 for use on sorghum, or whether a permanent tolerance for propiconazole for sorghum would be appropriate. This action by EPA does not serve as a basis for registration of propiconazole by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any State other than Texas to use this product on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for propiconazole, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered by EPA to pose a reasonable certainty of no harm.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Propiconazole is already registered by EPA for use on apricots, bananas, barley, celery, corn, grass, nectarines, peaches, peanuts, pecans, pineapple, plums, rice, rye, wheat, and wild rice (see 40 CFR 180.434 for specific tolerances). Tolerances exist for meat, milk, poultry and eggs to address the potential for secondary residues resulting from the use of treated commodities as feed. Secondary residues in animal commodities from this section 18 use, resulting from the use of grain sorghum stover as feed, are not expected to exceed existing tolerances. At this time, EPA is not in possession of a registration application for propiconazole on sorghum. However, based on information submitted to the Agency, EPA has sufficient data to assess the hazards of propiconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of propiconazole on grain sorghum at 0.1 ppm and grain sorghum stover at 1.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity*. Based on the available chronic toxicity data, EPA has established the RfD for propiconazole at 0.013 milligrams(mg)/kilogram(kg)/day. This RfD is based on a 1 year dog

feeding study with a NOEL of 1.25 mg/kg/day and an uncertainty factor of 100. The uncertainty factor of 100 was applied to account for inter-species extrapolation (10) and intra-species variability (10). Mild irritation of the gastric mucosa was the effect observed at the lowest effect level (LEL) of 6.2 mg/kg/day.

2. *Acute toxicity*. Agency toxicologists have recommended that the developmental NOEL of 30 mg/kg/day from the rat developmental toxicity study be used for acute dietary risk calculations. The LEL of 90 mg/kg/day is based on the increased incidence of unossified sternebrae, rudimentary ribs, and shortened or absent renal papillae. The population of concern for this risk assessment is females 13+ years old.

3. *Carcinogenicity*. Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified propiconazole as Group ''C'' for carcinogenicity (possible human carcinogen). The Cancer Peer Review Committee recommended the RfD approach for quantitation of human risk. Therefore, the RfD is deemed protective of all chronic human health effects, including cancer.

B. Aggregate Exposure

Tolerances have been established (40 CFR 180.434) for the residues of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid (expressed as parent compound) in or on various raw agricultural commodities ranging from 0.05 ppm in milk to 60.0 ppm in grass seed screenings.

1. *Chronic exposure*. For the purpose of assessing chronic dietary exposure from propiconazole, EPA assumed anticipated residue and percent of crop treated refinements to estimate the Anticipated Residue Contribution (ARC) from the proposed and existing food uses of propiconazole. The use of anticipated residues and/or percent of crop treated data for several of the existing food uses in this analysis results in a more refined estimate of exposure than the TMRC.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Review of terrestrial field dissipation data by the Environmental Fate and Effects Division indicates that propiconazole is persistent and leaches into groundwater (Pesticides in Groundwater Database (EPA 734-12-92-001, September 1992). There is no established Maximum Concentration Level for residues of propiconazole in drinking water. No drinking water health advisory levels have been established for propiconazole.

The Agency does not have available data to perform a quantitative drinking water risk assessment for propiconazole at this time. Previous experience with more persistent and mobile pesticides for which there have been available data to perform quantitative risk assessments have demonstrated that drinking water exposure is typically a small percentage of the total exposure when compared to the total dietary exposure. This observation holds even for pesticides detected in wells and drinking water at levels nearing or exceeding established MCLs. Based on this experience and the OPP's best scientific judgement, EPA concludes that it is not likely that the potential exposure from residues of propiconazole in drinking water added to the current dietary exposure will result in an exposure which exceeds the RfD.

Propiconazole is currently registered for residential use as a preservative treatment for wood and for lawn and ornamental uses. At this time, the Agency does not have reliable data which would allow quantitative incorporation of risk from these uses into a human health risk assessment.

Of residential uses, EPA believes that the lawn use poses the greatest potential for chronic exposure. According to lawn care usage data, there is no reported usage by homeowners. Two sources report usage by lawn care operators and landscapers. Based on acres treated information, between 3,850 to 6,725 households are estimated to be potentially treated with propiconazole. This would represent between 0.004% to 0.007% of all households nationally. This calculation does not include propiconazole use on golf courses.

2. *Acute exposure*. In assessing acute dietary exposure for propiconazole, EPA assumed tolerance level residues, 100 percent crop treated, and individual, single-day consumption information for ''females, 13+ years old'', the population of concern.

EPA has not estimated non-occupational exposures other than dietary for propiconazole. Though the Agency acknowledges that there may be short-term residential or drinking water exposure scenarios, no acceptable reliable data to assess these potential risks are available at this time. Propiconazole is registered for residential uses. While dietary and residential scenarios could possibly occur in a single day, propiconazole would rarely be present on both the food eaten and the lawn on that single day. Even assuming this were the case, it is yet more unlikely that residues would be present at tolerance level on all food eaten that day for which propiconazole tolerances exist, as is assumed in the acute dietary risk analysis, and on the lawn that same day. Because the acute dietary exposure estimate assumes tolerance level residues and 100% crop treated for all crops evaluated it is a large over-estimate of exposure and it is considered to be protective of any acute exposure scenario.

At this time, the Agency has not made a determination that propiconazole and other substances that may have a common mode of toxicity would have cumulative effects. For purposes of this tolerance only, the Agency is considering only the potential risks of propiconazole in its aggregate exposure.

C. Determination of Safety for U.S. Population

1. *Chronic risk*. Based on the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to propiconazole will utilize 6% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD. Acceptable, reliable data are not available to quantitatively assess risk from drinking water. However, EPA concludes that there is a reasonable certainty that no harm to the U.S. population will result from aggregate exposure to propiconazole residues.

2. *Acute risk*. For the population subgroup of concern, females 13+ years old, the calculated Margin Of Exposure (MOE) value is 3000. This MOE does not exceed the Agency's level of concern for acute dietary exposure.

D. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of propiconazole, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-year reproductive toxicity study in rats. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproductive toxicity studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Based on current toxicological data requirements, the data base for propiconazole relative to pre- and post-natal toxicity is complete. EPA notes developmental toxicity NOELs of 30 mg/kg/day in rats and 400 mg/kg/day

(HDT) in rabbits. Developmental toxicity was observed in rats at 90 mg/kg/day; these effects occurred in the presence of maternal toxicity. In rabbits, no developmental delays or alterations were noted; increased abortions were observed at the maternally toxic dose of 400 mg/kg/day. The developmental NOELs are more than 24- and 320-fold higher in the rats and rabbits, respectively, than the NOEL of 1.25 mg/kg/day from the 1-year feeding study in dogs, which is the basis of the RfD.

In the two-generation reproductive toxicity study in the rat, the reproductive/developmental toxicity NOEL of 25 mg/kg/day was greater than the parental (systemic) toxicity NOEL (<5 mg/kg/day; LDT). EPA notes that the NOEL of 25 mg/kg/day, for reproductive (pup) toxicity, was 20-fold higher than the NOEL of 1.25 mg/kg/day from the 1-year feeding study in dogs, which is the basis of the RfD. The reproductive (pup) LEL of 125 mg/kg/day was based on decreased offspring survival of second generation (F2) pups, and on decreased body weight throughout lactation, and an increase in the incidence of hepatic cellular swelling for both generations of offspring (F1 and F2 pups). Because these reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest an increased post-natal sensitivity to children and infants (that infants and children might be more sensitive than adults) to propiconazole exposure.

1. *Chronic risk*. Based on ARC exposure estimates, EPA has concluded that the percentage of the RfD that will be utilized by dietary exposure to residues of propiconazole ranges from 8% for children 7-12 years old, up to 20% for non-nursing infants.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety is appropriate. Based on current toxicological data requirements, the data base for propiconazole relative to pre- and post-natal toxicity is complete. As mentioned above, because reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest an increased post-natal sensitivity of children and infants to propiconazole exposure, and therefore an additional safety factor was not applied.

The ARC value for the most highly exposed infant and children subgroup (non-nursing infants <1 year old) occupies 20 percent of the RfD. This calculation assumes anticipated residue and percent of crop treated refinements for some commodities. Acceptable, reliable data are not available to quantitatively assess risk to this subgroup from drinking water. However, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to propiconazole residues.

2. *Acute risk*. At present, the acute dietary MOE for females 13+ years old is 3000. This MOE calculation was based on the developmental NOEL of 30 mg/kg/day from the rat study. This risk assessment assumed 100% crop treated with tolerance level residues on all treated crops consumed, resulting in a significant over-estimate of dietary exposure. The large acute dietary MOE calculated for females 13+ years old provides assurance that there is a reasonable certainty of no harm for both females 13+ years and the pre-natal development of infants.

V. Other Considerations

The nature of the residue in plants and animals is adequately understood for this tolerance. There are no Codex maximum residue levels established for residues of propiconazole on sorghum. Adequate enforcement methodology, GC/ECD, is available to enforce the tolerance expression. Analytical methodologies for the determination of propiconazole and its metabolites in plant and animal commodities (Ciba-Geigy Analytical Methods AG-454 and AG-517, respectively) have been successfully validated by the Agency's Analytical Chemistry Laboratory and have been approved for publication in PAM II for enforcement purposes. These methods have not as of this time appeared in PAM II, but a copy of the methods may be obtained from the Public Response and Program Resources Branch at the location listed under the ADDRESSES unit.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of propiconazole in grain sorghum at 0.1 ppm and grain sorghum stover at 1.5 ppm. These tolerances will expire and be automatically revoked without further action by EPA on October 31, 1998.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 13, 1997 file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300441]. A public version of this record, which does not include any information

claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines ''a significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled *Enhancing the Intergovernmental Partnership*, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: October 31, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. In § 180.434, by adding a new paragraph (d) to read as follows:

§ 180.434 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.

* * * * *

(d) Time-limited tolerances are established for residues of the fungicide propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. Each tolerance expires and is automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/ revocation date
Grain sorghum	0.1	October 31, 1998
Grain sorghum stover	1.5	October 31, 1998

[FR Doc. 96–29020 Filed 11–12–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 431

Administration for Children and Families

45 CFR Part 205

RIN 0970–AB32

Medicaid and Aid to Families With Dependent Children; Certain Provisions of the National Voter Registration Act of 1993

AGENCIES: Administration for Children and Families (ACF), and Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These final rules would remove certain regulatory restrictions that conflict with implementation of the National Voter Registration Act of 1993 (NVRA), Pub. L. 103–31. The NVRA provisions will make it easier for individuals to vote in elections for Federal office.

EFFECTIVE DATE: November 13, 1996.

FOR FURTHER INFORMATION CONTACT: AFDC: Mr. Mack A. Storrs, ACF/OFA 5th floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401–9289.

Medicaid: Mr. Marinos T. Svolos, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850, telephone (410) 786–4582.

SUPPLEMENTARY INFORMATION:

Background

The NVRA contains three provisions which will make it easier for individuals to register to vote in elections for Federal office. These include: (1) The simultaneous application for or renewal of drivers licenses and voter registration (the motor voter part of the bill); (2) the adoption and use of a ''mail'' application form for voter registration;

and (3) the designation of State voter registration agencies, including among others all offices in a state that provide ''public assistance'' and ''State-funded programs primarily engaged in providing services to persons with disabilities.''

As defined in the conference report, dated February 2, 1993, the term ''public assistance agencies'' includes ''* * * those State agencies in each State that administer or provide services under the Food Stamp, Medicaid, the Women, Infants and Children (WIC) and the Aid to Families with Dependent Children (AFDC) programs'' (H. Rep. No. 103–66 (1993), p. 19).

According to section 7(a)(4) of the NVRA, public assistance offices shall: Distribute mail voter registration forms; provide assistance in forms completion; and provide a service to accept completed forms and to transmit them to appropriate authorities. These services are to be available at the time of application, recertification, or renewal or when a change in address is reported. The NVRA also contains provisions addressing how applicants and or recipients of public assistance are to be informed to their right to request or decline this assistance.

Section 7(a)(5) of the NVRA indicates that these offices shall not: Seek to influence a party preference; display party-affiliated materials; discourage registration; or imply in any way that the availability of services or benefits is dependent upon a decision to register or not to register to vote.

States that have continuously permitted voter registration at polling places at the time of voting in a general election for Federal office (since March 11, 1993, or pursuant to State law enacted on or before that date) or States with no voter registration requirements for any voter in the State with respect to an election for Federal office continuously since March 11, 1993, are exempt from NVRA requirements.

State agencies responsible for the administration of the AFDC and Medicaid programs have already been advised of the availability of Federal financial participation (FFP) necessary to conduct voter registration assistance in public assistance offices in accordance with section 7 of the NVRA. The Administration for Children and Families and the Health Care Financing Administration will issue further guidance in program instructions as needed to AFDC and Medicaid agencies regarding the implementation of these provisions. All relevant Federal agencies will continue to work closely with each other and with State public assistance agencies toward the successful implementation of this Act.

Under section 9 of the NVRA the Federal Election Commission (FEC), in consultation with the chief election officers of the States, is required to develop a national mail voter registration application form for elections to Federal office and to submit reports to Congress assessing the impact of the legislation during the preceding 2-year period for each odd-numbered year beginning June 30, 1995. The FEC published a Final Rule related to these provisions in the Federal Register on June 23, 1994 (59 FR 32311–32325).

The Department regards the NVRA as an integral feature of its goal to reform the welfare system. Our present initiative encourages States to change welfare agency culture from one that focuses primarily on issuing checks and monitoring eligibility to one that provides an array of services in support of family responsibility and financial independence. These NVRA provisions promote family responsibility by empowering the client population to exercise the essential democratic right to participate in the electoral process.

Notice of Proposed Rulemaking

Current regulatory provisions at 45 CFR 205.50(a)(4) and 42 CFR 431.307(a)(2), (b), and (c) result in barring the distribution of voter registration materials to AFDC and Medicaid applicants and recipients. Enactment of the NVRA mandates that State and local public assistance offices conduct such activities. In order to comply with these statutory requirements, we proposed amending the aforementioned regulations to remove the bar from the States subject to the NVRA. An NPRM was published in the Federal Register on November 22, 1994 (59 FR 60109).

As originally written, the NPRM would continue the bar on distribution of voter registration materials by State public assistance and Medicaid agencies in States that are exempt from the NVRA. This position was questioned by a number of commenters. We agree with the commenters that exempt States should not be barred from conducting voter registration activities as provided under the NVRA. We, therefore, have eliminated language that would prohibit such discretionary activities by those States. This is discussed in greater detail in the following section.

We also have made a minor, clarifying change in §§ 431.307(d) and 205.50(a)(4)(iv).

Response to Comments

We received six comments on the proposed rules. Four were from advocacy groups, one was from a State government agency, and one was from a real estate agency. A discussion of these comments and our response follows:

Comment: We received four comments indicating that State welfare offices should be required to use a single form which would allow AFDC applicants to register to vote at the same time they apply for AFDC. This single form would ensure that the voter registration is not overlooked by the worker handling the AFDC/Medicaid application. The commenters believe that, among other benefits, the combined voter registration/AFDC/Medicaid application form would lead to a greater number of people registering to vote than if the forms were separated. They contend that combining the registration form with the application for services is the single most effective way to offer registration services, and that using separate forms for voter registration purposes results in significantly lower registration rates.

Response: We acknowledge that a single form that combines the AFDC/Medicaid and voter applications may better facilitate the voter registration process. Accordingly, we encourage State agencies to adopt this solution. However, the statute does not mandate that a combined application/registration form be used.

Consequently, each state has the latitude to use a combined AFDC/Medicaid/voter registration form or not to use such a form, whichever is deemed most practical for that particular State.

Accordingly, we have not adopted the commenters' suggestion but feel that States should seriously consider the merits of utilizing a single form that combines the AFDC/Medicaid voter registration applications. When using a combined form, workers must inform clients, as required by section 7(a)(5) of the NVRA, that their receipt of AFDC/Medicaid benefits is not dependent upon a decision to register or not to register to vote.

Comment: Although the Federal Election Commission (FEC) final rule requires States to submit statistical data on registrations that are received from agencies in the States, four commenters suggested that the HHS final rules also provide for some sort of data collection to help evaluate the implementation of the NVRA. The commenters suggested that HHS would find it useful to compile some statistics of its own to

facilitate program improvements and cost efficiency measures.

Response: Under section 9 of the NVRA the FEC is required to submit reports to Congress to assess the impact of the NVRA each odd-numbered year beginning June 30, 1995. The FEC final rules describe the extensive recordkeeping and reporting requirements that must be maintained by the chief election official of each State. According to the FEC final rules, among other data, reports must include the statewide number of registration applications that were received from all public assistance agencies. While more data might prove useful in the evaluation of program operations, these final rules do not seek or require the compilation of additional information. We have not adopted the commenters' suggestion because additional recordkeeping and reporting requirements above those already required by the FEC would negatively impact State welfare agency staff who are providing voter registration services in conjunction with other caseload priorities.

Comment: The NPRM proposed to continue to apply the bar against registering voters in States that are exempt from the NVRA. Specifically, those States that permit voter registration at polling places (since March 11, 1993 or pursuant to State law enacted on or before that date) or States with no voter registration for any voter in the State with respect to an election for Federal office (since March 11, 1993) are exempt from NVRA requirements and are currently prohibited from conducting voter registration activities at the welfare office level. Three commenters objected to continuing this bar and requested that it be stricken from the final rule. These commenters indicated that no State should be barred from conducting such registration activities and recommended that States exempt from the NVRA be allowed the discretion to determine whether they will offer voter registration by public assistance agencies.

Response: We agree with the recommendation. Neither the NVRA nor the Social Security Act expressly prohibit an exempt State from assisting clients to register to vote. Accordingly, we believe that States exempt from the NVRA should have the discretion to allow their AFDC/Medicaid population to register to vote so long as the provisions of section 7(a)(5) of the NVRA are followed. These provisions contain a number of protections to ensure that the registration process will be fair and non-partisan. Specifically, offices shall not: Seek to influence a party preference; display party-affiliated materials; discourage registration; or imply in any way that the availability of services or benefits is dependent upon the applicant's or recipient's decision to register or not to register to vote. The final regulation has been modified to expressly prohibit the mailing or distribution of partisan voting information. We added the word ''partisan'' because we believe it will be helpful to State agencies in implementing their voter registration activities. We also removed redundant references to the NVRA.

Comment: One commenter objected to employees' assisting applicants in the completion of voter registration application forms because this would impose a burden unrelated to the employees' basic work. The commenter also questioned the possibility of an employee influencing the applicant to register for the employee's choice of political parties.

Response: We do not agree. The statute requires that public assistance offices make available assistance to AFDC/Medicaid applicants and recipients in registering them to vote. According to section 7(a)(4)(A) of the NVRA, public assistance offices shall make the following services available: ''(i) Distribution of mail voter registration application forms.* * *; (ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance;'' and, ''(iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.'' Therefore, staff must make available to applicants the same level of assistance in completing voter registration application forms as they do in assisting applicants completing AFDC/Medicaid forms.

Regarding the commenter's concern about an employee's influencing a client to register for one particular party, the statute provides a safeguard. Section 7(a)(5) of the NVRA states that an employee who provides voter registration services *shall not* ''seek to influence an applicant's political preference or party registration'' or ''display any such political preference or party allegiance.'' We are confident that State welfare agencies have instituted the proper safeguards to prevent abuse.

Comment: One commmenter was concerned because the HHS regulations are silent as to the obligation to comply with the Voting Rights Language Assistance Act of 1992, in particular section 203. This section enables a community to receive bilingual voting assistance if more than 10,000 voting age citizens in a jurisdiction belong to a single language minority with limited English proficiency and the illiteracy rate of the citizens in the language minority is higher than the national illiteracy rate. It was also suggested that HHS take a greater role in support of bilingual voting assistance.

Response: We do not feel that it is necessary for DHHS to regulate in this area. The regulatory requirements implementing the Language Assistance Act of 1992 can be found at 28 CFR Part 55. State election officials and AFDC/Medicaid agency staff should work together to implement these regulatory requirements.

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles.

Paperwork Reduction Act

These final regulations do not require any information collection activities, and therefore no approval is necessary under the Paperwork Reduction Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these proposed rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant economic impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

List of Subjects

45 CFR Part 205

Computer technology, Grant programs—social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

42 CFR Part 431

Aid to families with dependent children, Aliens, Contracts (agreements)—State plan), Eligibility, Grant-in-Aid Program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments-Maintenance Assistance; Program No. 93.778, Medical Assistance Program)

Dated: June 6, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Dated: June 14, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Approved: July 26, 1996.

Donna E. Shalala,

Secretary, Health and Human Services.

For the reasons explained in the preamble, part 431 of Chapter IV, Title 42, Code of Federal Regulations, is amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 431.307 is amended by revising paragraph (a)(2) and (b) and by adding a new paragraph (d) to read as follows:

§ 431.307 Distribution of information materials.

(a) * * *

(2) Have no political implications except to the extent required to implement the National Voter Registration Act of 1993 (NVRA) Pub. L. 103–31; for States that are exempt from the requirements of NVRA, voter registration may be a voluntary activity so long as the provisions of section 7(a)(5) of NVRA are observed;

* * * * *

(b) The agency must not distribute materials such as ''holiday'' greetings, general public announcements, partisan voting information and alien registration notices.

* * * * *

(d) Under NVRA, the agency must distribute voter information and registration materials as specified in NVRA.

For the reasons explained in the preamble, Part 205 of Chapter II, Title 45, Code of Federal Regulations, is amended as set forth below:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for Part 205 is revised to read as follows:

Authority: 42 U.S.C. 602, 603, 606, 607, 1302, 1306(a), and 1320b–7: 42 U.S.C. 1973gg–5.

2. Section 205.50 is amended by revising paragraphs (a)(4), introductory text, and (a)(4)(i), adding a new paragraph (a)(4)(iv), and adding paragraph (b) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) * * *

(4) All materials sent or distributed to applicants, recipients, or medical vendors, including material enclosed in envelopes containing checks, will be limited to those which are directly related to the administration of the program and will not have political implications except to the extent required to implement the National Voter Registration Act of 1993 (NVRA), Pub. L. 103–31. Under this requirement:

(i) Specifically excluded from mailing or distribution are materials such as ''holiday'' greetings, general public announcements, alien registration notices, and partisan voting information.

* * * * *

(iv) Under NVRA, the agency must distribute voter information and registration materials as specified in NVRA.

(b) *Voluntary voter registration activities.* For States that are exempt from the requirements of NVRA, voter registration may be a voluntary activity so long as the provisions of section 7(a)(5) of NVRA are observed.

* * * * *

[FR Doc. 96–28939 Filed 11–12–96; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 150

Compatibility of Cargoes

CFR Correction

In title 46 of the Code of Federal Regulations, parts 140 to 155, revised as of October 1, 1995, on page 46, in the second column, in part 150, appendix I (a), the entry for ''Ethyl alcohol (20)'' was inadvertently omitted in the ''Compatible with'' column for the entry ''Caustic soda, 50% or less (5)'' in the ''Member of reactive group'' column, preceding the entry for ''Ethyl alcohol (40%, whiskey) (20).

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 61, No. 220
Wednesday, November 13, 1996

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 THE TREASURY

Office of Thrift Supervision

12 CFR Part 575

[No. 96–105]

RIN 1550–AB04

Mutual Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS), is issuing this advance notice of proposed rulemaking to solicit comments on amending the regulations regarding Mutual Savings and Loan Holding Companies to permit the establishment of a mutual holding company (''MHC'') structure that includes an intermediate stock holding company. The OTS will consider the comments received in determining whether to proceed with the development of a proposed rule to permit the formation of intermediate stock holding companies by MHCS. The OTS solicits comments on the specific questions set forth below and on all aspects of permitting MHCs to form intermediate holding companies.

DATES: Comments must be received on or before December 13, 1996.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 96–105. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: James H. Underwood, Special Counsel (202/906–7354), Dwight C. Smith, Deputy Chief Counsel (202/906–6990), Business Transactions Division, Chief Counsel's Office; Gary Masters, Financial Analyst (202/906–6729), Corporate Activities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The OTS has received several inquiries from MHCs and mutual savings associations contemplating conversion to stock and reorganization into MHC form concerning whether an MHC can form an intermediate state-chartered stock holding company to hold the stock of its insured savings association subsidiary. The MHC would hold at least a majority of the stock of the intermediate holding company. The intermediate holding company could issue a minority of its shares of stock to the public and would hold 100% of the stock of the insured savings association subsidiary. The intermediate holding company would be a state-chartered corporation, unlike the MHC, which has a federal charter.

Under current mutual holding company regulations (12 CFR part 575), a mutual savings association may reorganize into a MHC by forming a stock savings association which assumes the liabilities and assets of the mutual savings association and issues at least a majority of its stock to the MHC. Depositors of the mutual association continue to maintain a deposit-creditor relationship with the stock savings association subsidiary while retaining their other indicia of ownership, *eq.*, voting rights, liquidation rights, with the MHC. The stock savings association subsidiary may issue up to 49 percent of its shares to the public.

In a previous legal opinion, the OTS' staff declined to concur with a request to permit the formation of a multi-tier mutual holding company structure. Upon further consideration of this issue, the OTS has determined to solicit comments from the public on whether Section 10(o) of the Home Owners Loan Act and the regulations promulgated thereunder should be read to permit the formation of a multi-tier mutual holding company structure, and if so, what restrictions should apply to such a structure.

Entities interested in forming multi-tier MHCs have indicated that the primary purpose is to permit the intermediate stock holding company, which would issue shares to minority stock holders, to engage in a stock repurchase program without the potential negative tax consequences that would ensue if such a program were engaged in by the insured savings association subsidiary. Under the current MHC regulations, 12 CFR 575.11(c), a savings association subsidiary is permitted to engage in a stock repurchase program subject to certain restrictions. It is the OTS' current view that the current repurchase restrictions at § 575.11(c) would apply to the intermediate holding company.

Entities seeking to form a multi-tier mutual holding company structure also have suggested other reasons for its creation: the presence of an intermediate stock holding company would facilitate acquisitions; and the intermediate holding company may have greater powers than the MHC.

Questions on Which Comment is Sought

The OTS is hereby requesting comment during a 30-day comment period on the following questions and issues:

(1) Assuming the mutual holding company statute and the OTS' implementing regulations can be read to permit the formation of an intermediate stock holding company, should that holding company be subject to the same activities limitations as a MHC or may it be treated as a unitary savings and loan holding company?

(2) The MHC regulations impose various restrictions and limitations on the MHC and the savings association subsidiary of the MHC. These limitations include restrictions on pledges of the subsidiary savings association's stock by a MHC, waiver of dividends, and limitations on indemnification and employment contracts. It is not clear that these restrictions would be directly applicable to the intermediate stock holding company. Should these restrictions be applicable to an intermediate stock holding company in the same manner in which they are applicable to the MHC? Commenters should discuss any reasons for not applying the restrictions and the consequences of such.

(3) Should the intermediate stock holding company be required to obtain the approval of the OTS prior to issuing any debt or equity security to any person other than its parent MHC? Should a subsidiary stock thrift be able to issue minority voting stock or other

classes of securities? If so, under what circumstances? How should any such stock be treated in a conversion of the MHC to stock form?

(4) The OTS is the sole chartering authority for MHCs that are subject to part 575. Since both the parent MHC and the savings association subsidiary of an intermediate holding company are chartered by the OTS as special limited purpose corporations, to what extent should the charter and bylaws (and any amendments) of the intermediate holding company be subject to review and approval by the OTS? Should the OTS require that provisions of the intermediate company's charter be consistent with the Federal MHC charter?

(5) The savings association subsidiary of a MHC is subject to various restrictions on stock issuances, including a requirement that all stock issuances generally be structured in a manner that is similar to a stock conversion offering under 12 CFR part 563b. Should these restrictions also be applicable to the intermediate holding company? If not, why not? Should all other provisions of 12 CFR part 575 governing minority stock issuances be applicable to minority stock issuances by intermediate holding companies? If not, why not?

(6) What are the consequences to the MHC of permitting the intermediate holding company to retain capital generated by the savings association subsidiary?

(7) Other than permitting stock repurchases and, perhaps, facilitating acquisitions and expanding the powers in the MHC structure, are there other reasons for creating a multi-tier structure? Commenters should identify any additional potential benefits of a multi-tier holding company structure and address any necessary regulatory changes that would facilitate the use of the multi-tier structure consistent with the MHC statute.

Dated: November 1, 1996.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 96–28989 Filed 11–12–96; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–25–AD]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R2160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Avions Pierre Robin Model R2160 airplanes. The proposed action would require repetitively inspecting the weld area between the strut and the lower plate of the nose landing gear leg for cracks, and replacing the strut when cracks are found. The proposed AD is the result of several reports of cracks in the weld securing the nose wheel steering bottom bracket to the nose landing gear leg on the affected airplanes. The actions specified by the proposed AD are intended to prevent nose landing gear failure caused by cracks in the weld area between the strut and the lower plate of the nose landing gear leg, which could result in loss of control of the airplane during landing operations.

DATES: Comments must be received on or before January 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Avions Pierre Robin, 1, Route de Troyes, 21121 Darois France; telephone: 80 35 61 01; facsimile: 80 35 60 80. This information also may be examined at the Rules Docket at the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Program Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (32 2) 513.2692; facsimile (32 2) 230.6899; or Mr. Roman T. Gabrys, Project Officer, Small Airplane Directorate, Aircraft Certification Office, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 92–CE–25–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Avions Pierre Robin Model R2160 airplanes. The DGAC reports that cracks in the weld securing the nose wheel steering bottom bracket to the nose landing gear leg have been found on several of the affected airplanes. This condition, if not detected and corrected, could lead to nose landing gear failure, which could result in loss of control of the airplane during landing operations.

Applicable Service Information

Avions Pierre Robin Service Bulletin (SB) No. 101, Revision 3, dated March 5, 1992, specifies a dye penetrant inspection of the welding area between the strut and lower plate of the bottom bracket of the nose landing gear leg. This SB also includes a figure that depicts the inspection area, and includes crack limitations for when the strut needs repairs.

The DGAC classified this service bulletin as mandatory and issued DGAC AD 83–206(A)R3, dated March 18, 1992, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other Avions Pierre Robin Model R2160 airplanes of the same type design registered in the United States, the proposed AD would require repetitively inspecting the weld area between the strut and the lower plate of the nose landing gear leg for cracks, and replacing the strut when cracks are found.

Differences Between the Proposed AD, Service Bulletin, and DGAC AD

Both Avions Pierre Robin SB No. 101, Revision 3, dated March 5, 1992, and DGAC AD 83–206(A)R3, dated March 18, 1992, specify repetitive inspection intervals of 25 hours time-in-service if a crack in the weld area is found that is within a certain limit. The limit is ''if the crack runs along the circumference and is less than 15 mm long max. or/and radial crack is less than 8 mm max.'' The proposed AD, if adopted, would not allow continued flight if any crack is found. FAA policy is to disallow airplane operation when known cracks exist in primary structure (the nose landing gear leg is considered primary structure).

Cost Impact

The FAA estimates that 10 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $600. This figure does not take into account the number of repetitive inspections each airplane owner/operator would incur over the life of the airplane, or the number of airplanes that would have cracked weld areas and would need the strut replaced. The FAA has no way of determining the number of repetitive inspections each owner/operator would incur over the life of the airplane or the number of nose landing gear leg struts that would need to be replaced because of cracks in the weld area.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Avions Pierre Robin: Docket No. 92–CE–25–AD.

Applicability: Model R2160 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required initially within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter as follows, as applicable:

1. If the width of the lower plate of the bottom bracket of the nose landing gear leg is 84 millimeters: at intervals not to exceed 500 hours TIS; or

2. If the width of the lower plate of the bottom bracket of the nose landing gear leg is less than 84 millimeters: at intervals not to exceed 100 hours TIS.

To prevent nose landing gear failure caused by cracks in the weld area between the strut and the lower plate of the nose landing gear leg, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Inspect, using dye penetrant methods, the weld area between the strut and the lower plate of the nose landing gear leg for cracks. Use the figure in Avions Pierre Robin Service Bulletin (SB) No. 101, Revision 3, dated March 5, 1992, as a guide in accomplishing this inspection.

(b) If any crack is found during any inspection required by this AD, prior to further flight, replace the strut with a new or serviceable strut.

(1) If the replacement strut is not new, prior to further flight after installing it, accomplish the inspection specified in paragraph (a) of this AD.

(2) Replacing the strut with a new or serviceable strut does not eliminate the repetitive inspection requirement of this AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division.

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

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Avions Pierre Robin, 1, Route de Troyes, 21121 Darois France; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 5, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–28945 Filed 11–12–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–ANE–56]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB.211–524 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Rolls-Royce plc RB.211–524 series turbofan engines. This proposal would require initial and repetitive borescope inspections of the head section and meterpanel assembly of the combustion liner, and replacement, if necessary, with serviceable parts. In addition, this AD would propose an optional installation of a front combustion liner with a strengthened head section as a terminating action to the inspection requirements. This proposal is prompted by reports of engine fires due to premature engine combustor distress. The actions specified by the proposed AD are intended to prevent engine combustor liner deterioration due to thermal fatigue, which can result in combustor liner and case burn-through and engine fire.

DATES: Comments must be received by January 13, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–56, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone (317) 230–3995, fax (317) 230–4743. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–56.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–56, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce plc (R–R) RB.211–524 series turbofan engines. The CAA received three reports of engine fires during takeoff and climb. The investigation revealed that the engine combustor liners had deteriorated, due to thermal fatigue of either the head section or meterpanels. In addition, the CAA received reports of premature engine combustor distress found during routine borescope inspections. This condition, if not corrected, could result in engine combustor liner deterioration due to thermal fatigue, which can result in combustor liner and case burn-through and engine fire.

Rolls-Royce plc has issued Service Bulletin (SB) No. RB.211–72–B482, Revision 2, dated March 11, 1996, that specifies procedures for borescope inspections; and SB No. RB.211–72–9764, Revision 2, dated November 10, 1995, that specifies procedures for installing a front combustion liner with a strengthened head section manufactured of C263 material. The CAA classified SB No. RB.211–72–B482, Revision 2, dated March 11, 1996, as mandatory and issued AD 005–07–95, dated March 11, 1996, in order to assure the airworthiness of these engines in the United Kingdom.

This engine model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would require initial and repetitive borescope inspections of the head section and meterpanel assembly of the combustion liner, and replacement, if necessary, with serviceable parts. In addition, this AD would propose an optional installation of a front combustion liner with a strengthened head section C263 material as a terminating action to the inspection requirements. The actions would be required to be accomplished in accordance with the SB's described previously.

There are approximately 250 engines of the affected design in the worldwide fleet. There are currently no domestic operators of Rolls-Royce plc RB.211–524G or –524H series turbofan engines. The FAA estimates that it would take approximately 8 work hours per engine to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact per engine per inspection is estimated to be $480.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. 95–ANE–56.

Applicability: Rolls-Royce plc (R–R) Models RB.211–524G and –524H turbofan engines that have not been modified in accordance with R–R Service Bulletin (SB) No. RB.211–72–9764, Revision 2, dated November 10, 1995, installed on but not limited to Boeing 747–400 and 767–300 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously. To prevent engine combustor liner deterioration due to thermal fatigue, which can result in combustor liner and case burn-through and engine fire, accomplish the following:

(a) Perform initial and repetitive borescope inspections of the engine combustor liner head section in accordance with the intervals listed in Section 1.C. Compliance (1), and the procedures described in Section 1.D. Action (1) of R–R SB No. RB.211–72–B482, Revision 2, dated March 11, 1996. Prior to further flight, remove combustors that do not meet the return to service criteria specified in Section 1.E. Acceptance Limits of the SB and replace with serviceable parts.

(b) Perform initial and repetitive borescope inspections of the meterpanel in accordance with the intervals listed in Section 1.C. Compliance (2), and the procedures described in Section 1.D. Action (2) of R–R SB No. RB.211–72–B482, Revision 2, dated March 11, 1996. Prior to further flight, remove combustors that do not meet the return to service criteria specified in Section 1.E. Acceptance Limits of the SB and replace with serviceable parts.

(c) Installation of a front combustion liner with a strengthened head section in C263 material in accordance with R–R SB No. RB.211–72–9764, Revision 2, dated November 10, 1995, constitutes terminating action to the inspection requirements of this AD.

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

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

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

Issued in Burlington, Massachusetts, on October 30, 1996.

James C. Jones,

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

[FR Doc. 96–28983 Filed 11–12–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–ANE–25]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. T5311, T5313, T5317, and T53 (Military) Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. (formerly Textron Lycoming) T5311, T5313, T5317, and T53 series military engines approved for installation on aircraft certified in accordance with Section 21.25 of the Federal Aviation Regulations (FAR). This proposal would require removal and replacement of the N2 spur gear nut retainer (lock cup). This proposal is prompted by reports of N2 spur gear nut retainer (lock cup) separation. The actions specified by the proposed AD are intended to prevent N2 accessory drive assembly disengagement due to N2 spur gear nut retainer (lock cup) separation, which could result in an uncommanded engine acceleration.

DATES: Comments must be received by January 13, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England

Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–25, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5262; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–25.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–25, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA has received reports of N2 spur gear nut retainer (lock cup), P/N 1–070–066–01, separation on AlliedSignal Inc. (formerly Textron Lycoming) T53 turboshaft engines. Separation of the retainer can cause the N2 accessory drive assembly to disengage. The investigation revealed that the sheet metal retainer tab was found separated in fatigue. This condition, if not corrected, could result in N2 accessory drive assembly disengagement due to N2 spur gear nut retainer (lock cup) separation, which could result in an uncommanded engine acceleration.

The FAA has reviewed and approved the technical contents of AlliedSignal Aerospace Service Bulletin (SB) No. T5311/T53–L–11–0080, dated May 28, 1996, SB No. T5313B/T5317–0081, Revision 1, dated May 28, 1996, SB No. T53–L–13B–0082, dated May 28, 1996, SB No. T53–L–13B/D–0083, dated May 28, 1996, and SB No. T53–L–703–0084, dated May 28, 1996, that describe procedures for removal and replacement of the N2 spur gear nut retainer (lock cup).

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal and replacement of the sheet metal lock cup with a more durable machined lock cup. The actions would be required to be accomplished in accordance with the SBs described previously.

There are approximately 450 (excluding military) engines of the affected design in the worldwide fleet. The FAA estimates that 125 (excluding military) engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $75 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $31,875.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

39.13 [Amended]

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

AlliedSignal Inc.: Docket No. 96–ANE–25.

Applicability: AlliedSignal Inc. (formerly Textron Lycoming) T5311, T5313, T5317, and T53 (military) series turboshaft engines, installed on but not limited to Bell Helicopter Textron 209, 205, and 204 series, and Kaman K–1200 series aircraft, and the following military aircraft: Bell Helicopter Textron AH–1 and UH–1, and Grumman OV–1 (turboprop installation), certified in accordance with Section 21.25 or 21.27 of the Federal Aviation Regulations (FAR).

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of

compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent N2 accessory drive assembly disengagement due to N2 spur gear nut retainer (lock cup) separation, which could result in an uncommanded engine acceleration, accomplish the following:

(a) Within 300 hours time in service, or 2 years after the effective date of this AD, whichever occurs first, remove from service N2 spur gear nut retainers (lock cups), Part Number (P/N) 1–070–066–01, and replace with N2 spur gear nut retainers P/Ns 1–070–066–02 or 1–070–066–03, in accordance with the following applicable AlliedSignal Aerospace Service Bulletins (SBs):

(1) For retainers installed on T5311 and T53–L–11 (military) series engines, in accordance with SB No. T5311/T53–L–11–0080, dated May 28, 1996.

(2) For retainers installed on T5313B and T5317 series engines, in accordance with SB No. T5313B/T5317–0081, Revision 1, dated May 28, 1996.

(3) For retainers installed on T53–L–13B/SSA/SSB (military) series engines, in accordance with SB No. T53–L–13B–0082, dated May 28, 1996.

(4) For retainers installed on T53–L–13B/SSD (military) series engines, in accordance with SB No. T53–L–13B/D–0083, dated May 28, 1996.

(5) For retainers installed on T53–L–703 (military) series engines, in accordance with SB No. T53–L–703–0084, dated May 28, 1996.

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

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

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

Issued in Burlington, Massachusetts, on October 30, 1996.

James C. Jones,

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

[FR Doc. 96–28985 Filed 11–12–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–ANM–010]

Proposed Amendment of Class E Airspace; Holyoke, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would amend the Holyoke, Colorado, Class E airspace to provide additional controlled airspace to accommodate Global Positioning System (GPS) and Nondirectional Beacon (NDB) standard instrument approach procedures (SIAP) at the Holyoke Airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before December 31, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–010, 1601 Lind Avenue, SW, Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James C. Frala, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–010, 1601 Lind Avenue, SW, Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ANM–010.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above 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 NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue, SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Holyoke, Colorado, to provide additional controlled airspace for GPS and NDB SIAP's at the Holyoke Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule,

when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Holyoke, CO [Revised]

Holyoke Airport, CO
(Lat. 40°34′37″N, long.102°16′42″W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Holyoke Airport, and within 4.5 miles west and 8 miles east of the 023° bearing from the Holyoke Airport extending from the 7.5-mile radius to 17 miles north, and within 5 miles west and 8 miles east of the 180° bearing from the Holyoke Airport extending from the 7.5-mile radius to 22 miles south.

* * * * *

Issued in Seattle, Washington, on October 29, 1996.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–29068 Filed 11–12–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 96N–0244]

Food Labeling: Declaration of Free Glutamate in Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to March 12, 1997, the comment period for the advance notice of proposed rulemaking (ANPRM) on the declaration of free glutamate in food. The ANPRM appeared in the Federal Register of September 12, 1996. The agency is taking this action in response to requests for an extension of the comment period. This extension is intended to allow interested persons additional time to submit comments to FDA on the declaration of free glutamate in foods.

DATES: Written comments by March 12, 1997.

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

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 12, 1996 (61 FR 48102), FDA issued an ANPRM announcing that it is: (1) Considering establishing labeling requirements to alert MSG-intolerant consumers to the presence of free glutamate in a food when the amount of free glutamate in a serving of the food may contribute to the occurrence of adverse reactions, and (2) intending to establish formal criteria for the use of claims about the absence of MSG to ensure that labels bearing such claims are not misleading. The agency asked a series of questions on both issues. In particular, the agency requested data on the levels of glutamate in foods to determine how many and what kinds of foods would be affected by various regulatory approaches and the associated costs of requiring free glutamate labeling. Interested persons were given until November 12, 1996, to comment on the ANPRM.

FDA received two requests for a 120-day extension of the comment period on its ANPRM on declaration of free glutamate. The requests were from trade associations that collectively represent more than 90 percent of the food industry. Both requests indicated that industry representatives would need to collect and analyze relevant data before comments could be compiled. One request further explained that the data requested by the agency in the ANPRM are not readily available, and that the food industry began collecting this data only after the September 12, 1996, publication of the ANPRM. Furthermore, because of the unanticipated demand for the test kits necessary to measure the glutamate content in foods and the limited number of suppliers of the test kits, the delivery of the kits has been delayed. As further discussed in the second request for an extension, it is expected that the collection and analysis of the preliminary data to identify foods that would be affected by a labeling policy would require an additional 45 days. Once such data have been analyzed it is expected that an additional 60 days will be required to collect and analyze cost estimate data to address analytical costs, administrative costs, potential reformulation costs, label redesign costs, printing costs, and the value of any discarded label and package inventory. Following analysis of the data, a few additional days will be needed to prepare final comments.

After careful consideration, FDA has decided to extend the comment period to March 12, 1997, to allow additional time for the submission of comments on whether the agency should establish labeling requirements to alert MSG-intolerant consumers to the presence of free glutamate in food and whether the agency should establish formal criteria for the use of claims about the absence of MSG. In the ANPRM, the agency asked a series of questions and requested data, as discussed above, because the agency did not have sufficient information on which to base a labeling policy for free glutamate or establish criteria for a ''No MSG'' claim. Consequently, the agency believes that extending the comment period to allow the requested data to be collected is prudent and in the consumer's best interest, because any labeling policy that the agency develops should be based on data that are sound, valid, and that accurately reflects the free glutamate content of foods.

Interested persons may, on or before March 12, 1997, submit to the Dockets

Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 8, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–29237 Filed 11–8–96; 2:56 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–251520–96]

RIN 1545–AU70

Classification of Certain Transactions Involving Computer Programs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the tax treatment of certain transactions involving the transfer of computer programs. The proposed regulations provide rules for classifying such transactions as sales, licenses, leases, or the provision of services or of know-how under certain provisions of the Internal Revenue Code and tax treaties. This document also provides notice of a public hearing on the proposed regulations.

DATES: Comments must be received by February 11, 1997. Requests to speak (with outlines of oral comments) at a public hearing scheduled for March 19, 1997, at 10 a.m. must be submitted by February 26, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–251520–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–251520–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternately, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http:\\www.irs.ustreas.gov\prod\tax__regs\comments.html. The public hearing will be held in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, William H. Morris, (202) 622–3880 or Carol P. Tello, (202) 622–3880; concerning submissions and the hearing, Christina Vasquez, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

These regulations are proposed to clarify the treatment under certain provisions of the Internal Revenue Code (Code) and tax treaties of income from transactions involving computer programs.

I. Introduction

Computer programs are generally protected by copyright law. Typically the protection afforded by copyright law is a principal source of the value of a computer program to the owner of the copyright. Conversely, the principal source of the value of a computer program to the purchaser of a copy of the program is not the protection afforded by copyright law, but the right to use or sell the copy. In this regard, computer programs are similar to other copyrighted works such as books, records, motion pictures, etc. For example, when a copy of a book is purchased, the purchaser does not thereby also acquire any copyright rights. Accordingly, the proposed regulations generally distinguish between transactions in a copyright and in the subject of the copyright.

In developing regulations addressing the treatment of computer programs, the IRS and Treasury generally have been guided by the following principles: (i) the rules should take into account the special features of computer programs, such as the ability to deliver copies electronically as well as physically, and to make perfect copies at little or no cost, and (ii) wherever possible, transactions that are functionally equivalent should be treated similarly. For example, a transaction that involves the transfer for internal use only of fifty copies of a computer program should generally be treated the same as a transfer of one copy (for internal use) with the right to make forty-nine other copies all for internal use. Similarly, if the right to use a computer program is limited in time, the transaction should generally be treated the same irrespective of whether, at the end of the period of permitted use, a disk containing the computer program must be returned, or the program automatically deactivates itself.

II. Copyright Law Principles

Distinguishing between transactions in a copyright and in the subject of the copyright requires an examination of U.S. and foreign copyright law (e.g. EC Directive on Legal Protection of Computer Programs, 1991 (91/250/EEC); and the Berne Convention (Paris Text, July 24, 1971)). An overview of U.S. copyright law as it relates to computer programs is set forth below. However, the IRS and the Treasury do not purport in these regulations to interpret U.S. copyright law and these proposed regulations should not be taken as an expression of the legal or policy views of the U.S. Copyright Office.

The Copyright Act of 1976, as amended (17 U.S.C. 101 et seq.), provides protection against infringement of the exclusive rights of the owner of a copyright in original works of authorship, fixed in any tangible medium of expression, including literary works. (17 U.S.C. 102.) The term *literary works* is defined to include: ''* * * numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.'' (17 U.S.C. 101.) Thus, computer programs are literary works for purposes of the Copyright Act.

The Copyright Act grants five exclusive rights to a copyright owner. Of these, three are most relevant in the case of computer programs: the right to reproduce copies of the copyrighted work (17 U.S.C. 106(1)); the right to prepare derivative works, which may themselves be separately copyrighted, based upon the copyrighted work (17 U.S.C. 103 and 106(2)); and the right to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease or lending (17 U.S.C. 106(3)). Additionally, in certain circumstances, the right to publicly perform the copyrighted work (17 U.S.C. 106(4)) and the right to publicly display the copyrighted work may also be relevant (17 U.S.C. 106(5)).

Thus, under U.S. copyright law, the user of a computer program who does not possess any of those five rights (or parts of them) has obtained only rights to use the copyrighted article it possesses. Generally, that user is treated

only as having received a copy of the copyrighted work. Under U.S. copyright law, a copy is a material object in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device (17 U.S.C. 101.). In these proposed regulations a copy is also referred to as a ''copyrighted article.'' The distinction between copies and copyrights is made most clearly in section 202 of the Copyright Act which provides:

> Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phonorecord in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.

Certain rights pass to the purchaser of a copy of a computer program. The most important of these is the right to sell (but not, without permission, to lease, rent, or lend) the copy to another person. (17 U.S.C. 109.) Additionally, the owner of a copy of a computer program has the right to make a copy of that copy as an essential step in the utilization of the program (e.g., copying to the memory of the computer) and may also make a copy for archival purposes. (17 U.S.C. 117.) If, however, the owner of the copy sells that copy, all copies made pursuant to the 17 U.S.C. 117 right must be destroyed.

III. The Proposed Regulations and Copyright Law Principles

Although the proposed regulations are guided by copyright law principles in determining whether a copyright right or copyrighted article has been transferred, the regulations depart in some cases from a strict reliance on copyright law in order to take into account the special nature of computer programs and to treat functionally equivalent transactions in the same way. For example, the proposed regulations do not treat the transfer of a right to copy as the transfer of a copyright right, unless it is accompanied by the right to distribute the copies to the public.

Thus, where a corporation obtains the right, under an agreement, to make fifty copies of a program for use by its employees at one location (a site license) the transaction is not, for all practical purposes, any different from a transaction in which fifty individual disks are purchased. Accordingly, the proposed regulations treat the transaction as the transfer of a copyrighted article, rather than of a copyright right, despite a copyright law requirement that the corporation receive a ''license'' to make those fifty copies. Similarly, under the proposed regulations, the transfer of a computer program in perpetuity for internal use only on a single disk or set of disks in return for a one-time payment, in a transaction styled as a license of copyright rights (a so-called shrink wrap license), is treated as the sale of a copyrighted article and not the transfer of a copyright right. Therefore, such a transfer is classified solely as the sale of a copyrighted article for the purposes of the proposed regulations.

IV. Explanation of Provisions

Section 1.861–18(a)(1) of the proposed regulations describes the scope of the proposed regulations. These proposed regulations provide rules for classifying transfers of computer programs for the purposes of subchapter N of chapter 1 of the Internal Revenue Code, sections 367, 404A, 482, 551, 679, 1057, 1059A, chapter 3, chapter 5, sections 842 and 845 (to the extent involving a foreign person), and transfers to foreign trusts not covered by section 679.

Section 1.861–18(a)(2) describes the categories of transactions relating to computer programs. In particular, a transfer of a copyright right may be either a sale or license of that right and a transfer of a copyrighted article may be either a sale or lease of that copyrighted article. Section 1.861–18(a)(3) defines the term *computer program*.

Section 1.861–18(b)(1) provides that a transaction involving the transfer of a computer program will be classified as either the transfer of a copyright right, the transfer of a copyrighted article, the provision of services relating to the development of a computer program, or the provision of know-how.

Section 1.861–18(b)(2) provides that a transaction involving computer programs which consists of more than one of the categories in paragraph (b)(1), is treated as separate transactions. Any resulting transaction that is de minimis, however, taking into account all facts and circumstances, will not be treated as a separate transaction.

Section 1.861–18(c)(1)(i) provides that the transfer of a computer program will be classified as the transfer of a copyright right if the transferee acquires one or more of the rights set forth in paragraph (c)(2).

Section 1.861–18(c)(1)(ii) provides that if such rights are not transferred and the transaction does not involve, or involves to only a de minimis extent, the provision of services or know-how, then the transaction will be classified solely as the transfer of a copyrighted article.

Section 1.861–18(c)(2) identifies those rights that will be treated as copyright rights for purposes of the proposed regulations. This list differs from the list of rights set out in the Copyright Act to take into account the special nature of computer programs. Specifically, the copyright law right to copy will only be treated as a copyright right for the purposes of the proposed regulations if it is accompanied by the right to distribute such copies to the public. The copyright rights that apply for purposes of this section are, in addition to the right to copy and distribute to the public, the right to prepare derivative computer programs, the right to make a public performance of the computer program, and the right to publicly display the computer program. The list of rights contained in § 1.861–18(c)(2) rather than those contained in the Copyright Act will apply for the purposes of the proposed regulations.

Section 1.861–18(c)(3) defines a copyrighted article as a copy of a computer program from which the work can be perceived, reproduced or otherwise communicated.

Section 1.861–18(d) of the proposed regulations provides rules for determining whether a transaction involving a newly-developed or modified computer program will be treated as the provision of services or another transaction described in paragraph (b)(1) of this section. The determination is based on all facts and circumstances, including how risk of loss is allocated and the intent of the parties as to ownership of the copyright. See, e.g., *Boulez* v. *Commissioner,* 83 T.C. 584 (1984); Rev. Rul. 74–555 (1974–2 C.B. 202); Rev. Rul. 84–78 (1984–1 C.B. 173).

Section 1.861–18(e) provides rules for determining whether a transfer of information related to a computer program will be considered the provision of know-how. A provision of know-how will not be considered to occur unless a party transfers information that (i) relates to computer programming techniques, (ii) is not capable of being copyrighted, and (iii) is protected by trade secret protection.

Under § 1.861–18(f)(1), if a transfer involves copyright rights, it will be further classified as either a sale or a license of copyright rights. This classification will be made by

examining whether, taking into account all facts and circumstances, all substantial rights, under the principles of sections 1222 and 1235, have passed to the transferee.

Under § 1.861–18(f)(2), if a transfer involves a copyrighted article, it will be further classified as either a sale or a lease of a copyrighted article. This classification will be made by examining whether the benefits and burdens of ownership have passed to the transferee. See, e.g., *Grodt & McKay Realty, Inc.* v. *Commissioner,* 77 T.C. 1221, 1237–38 (1981); *Torres* v. *Commissioner,* 88 T.C. 702, 720–27 (1987); *Estate of Thomas* v. *Commissioner,* 84 T.C. 412, 431–40 (1985).

Under § 1.861–18(f)(3), the determination of the classification of a transfer involving a copyright right or copyrighted article must appropriately consider the special nature of computer programs in transactions that take advantage of those characteristics. For example, a transaction in which a person acquires a copyrighted article on disk subject to a requirement that the disk be destroyed after a specified period is generally the equivalent of a requirement that the disk be returned after such period. Similarly, a transaction in which the program deactivates itself after a specified period may also be treated as the equivalent of returning the copy.

Section 1.861–18(g) of the proposed regulations provides certain additional rules of operation. Section 1.861–18(g)(1) provides that neither the form adopted by the parties to a transaction nor the classification of a transaction under copyright law are determinative for tax purposes. Therefore, as illustrated in Example 1, a transfer of a computer program on a disk subject to a shrink-wrap license will generally be a sale of a copyrighted article.

Section 1.861–18(g)(2) provides that the method of transferring the computer program, for example by disk or electronically, shall not be relevant in determining whether a copyright right or a copyrighted article has been transferred.

The foregoing rules are illustrated by a number of examples contained in § 1.861–18(h).

Under § 1.861–18(i), these regulations are proposed to apply to all transactions occurring on or after the date that is 60 days after the date the final regulations are published in the Federal Register. No inference should be drawn from the proposed effective date concerning the treatment of transactions involving computer programs entered into before the regulations are applicable.

The application of these rules for purposes of the affected Internal Revenue Code sections may result in a change in the method of accounting for certain transactions involving computer programs by certain taxpayers. If the final regulations are adopted, the IRS will consider issuing an automatic change revenue procedure to address the situation where the taxpayer is required to change its method of accounting to comport with the new regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely (in the manner described in the **ADDRESSES** caption) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 19, 1997, at 10 a.m. in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments by February 11, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic (in the manner described in the **ADDRESSES** caption) by February 26, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are William H. Morris and Carol P. Tello, of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.861–18 is added to read as follows:

§ 1.861–18 Classification of transactions involving computer programs.

(a) *General*—(1) *Scope.* This section provides rules for classifying transactions relating to computer programs for purposes of subchapter N of chapter 1 of the Internal Revenue Code, sections 367, 404A, 482, 551, 679, 1057, 1059A, chapter 3, chapter 5, sections 842 and 845 (to the extent involving a foreign person), and transfers to foreign trusts not covered by section 679.

(2) *Categories of transactions.* This section generally requires that such transactions be treated as being solely within one of four categories (described in paragraph (b)(1) of this section) and provides certain rules for categorizing such transactions. In the case of a transfer of a copyright right, this section provides rules for determining whether the transaction should be classified as either a sale or exchange, or a license generating royalty income. In the case of a transfer of a copyrighted article, this section provides rules for determining whether the transaction should be classified as either a sale or exchange, or a lease generating rental income.

(3) *Computer program.* For purposes of this section, a computer program is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result. For purposes of this paragraph (a)(3), a computer program includes any data base or similar item if the data base or similar item is incidental to the operation of the computer program.

(b) Categories of transactions—(1) *General.* Except as provided in paragraph (b)(2) of this section, a transaction involving the transfer of, or the provision of services or of know-how with respect to, a computer program (collectively, a transfer of a computer program) is treated as being solely one of the following—

(i) A transfer of a copyright right in the computer program;

(ii) A transfer of a copy of the computer program (a copyrighted article);

(iii) The provision of services for the development or modification of the computer program; or

(iv) The provision of know-how relating to computer programming techniques.

(2) *Transactions consisting of more than one category.* Any transaction involving computer programs which consists of more than one of the transactions described in paragraph (b)(1) of this section shall be treated as separate transactions, with the appropriate provisions of this section being applied to each such transaction. However, any transaction that is de minimis, taking into account the overall transaction and the surrounding facts and circumstances, shall not be treated as a separate transaction, but as part of another transaction.

(c) *Transfers involving both a copyright right and a copyrighted article*—(1) *Classification*—(i) *Transfers treated as transfers of copyright rights.* A transfer of a computer program is classified as a transfer of a copyright right if, as a result of the transaction, a person acquires any one or more of the rights described in paragraphs (c)(2)(i) through (iv) of this section. For example, if a person receives a disk containing a copy of a computer program which enables it to exercise, in relation to that program, a non-de minimis right described in paragraphs (c)(2)(i) through (iv) of this section (and the transaction does not involve, or involves only a de minimis provision of services as described in paragraph (d) of this section or of know-how as described in paragraph (e) of this section), then, under paragraph (b)(2) of this section, the transfer is classified solely as a transfer of a copyright right.

(ii) *Transfers treated solely as transfers of copyrighted articles.* If a person acquires a copy of a computer program but does not acquire any of the rights described in paragraphs (c)(2)(i) through (iv) of this section (and the transaction does not involve, or involves only a de minimis provision of services as described in paragraph (d) of this section or of know-how as described in paragraph (e) of this section), the transfer of the copy of the computer program is classified solely as a transfer of a copyrighted article.

(2) *Copyright rights.* The copyright rights referred to in paragraph (c)(1) of this section are as follows—

(i) The right to make copies of the computer program for purposes of distribution to the public by sale or other transfer of ownership, or by rental, lease or lending;

(ii) The right to prepare derivative computer programs based upon the copyrighted computer program;

(iii) The right to make a public performance of the computer program; or

(iv) The right to publicly display the computer program.

(3) *Copyrighted article.* A copyrighted article is a copy of a computer program from which the work can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device. The copy of the program may be fixed in the magnetic medium of a floppy disk or in the main memory or hard drive of a computer.

(d) *Provision of services.* The determination of whether a transaction involving a newly developed or modified computer program is treated as either the provision of services or another transaction described in paragraph (b)(1) of this section is based on all the facts and circumstances of the transaction, including, as appropriate, the intent of the parties (as evidenced by their agreement and conduct) as to which party is to own the copyright rights in the computer program and how the risks of loss are allocated between the parties.

(e) *Provision of know-how.* The provision of information with respect to a computer program will not be treated as the provision of know-how for the purposes of this section unless the information is—

(1) Information relating to computer programming techniques;

(2) Not capable itself of being copyrighted; and

(3) Subject to trade secret protection.

(f) *Further classification of transfers involving copyright rights and copyrighted articles*—(1) *Transfers of copyright rights.* The determination of whether a transfer of a copyright right is a sale or exchange of property is made on the basis of whether, taking into account all facts and circumstances, there has been a transfer of all substantial rights in the copyright. A transaction that does not constitute a sale or exchange because not all substantial rights have been transferred will be classified as a license generating royalty income. For this purpose, the principles of sections 1222 and 1235 shall apply.

(2) *Transfers of copyrighted articles.* The determination of whether a transfer of a copyrighted article is a sale or exchange is made on the basis of whether, taking into account all facts and circumstances, the benefits and burdens of ownership have been transferred. A transaction that does not constitute a sale or exchange because insufficient benefits and burdens of ownership of the copyrighted article have been transferred, such that a person other than the transferee is properly treated as the owner of the copyrighted article, will be classified as a lease generating rental income.

(3) *Special circumstances of computer programs.* In connection with determinations under this paragraph (f), consideration must be given as appropriate to the special characteristics of computer programs in transactions that take advantage of these characteristics (such as the ability to make perfect copies at minimal cost). For example, a transaction in which a person acquires a copy of a computer program on disk subject to a requirement that the disk be destroyed after a specified period is generally the equivalent of a transaction subject to a requirement that the disk be returned after such period. Similarly, a transaction in which the program deactivates itself after a specified period is generally the equivalent of returning the copy.

(g) *Rules of operation*—(1) *Term applied to transaction by parties.* Neither the form adopted by the parties to a transaction, nor the classification of the transaction under copyright law, shall be determinative. Therefore, for example, if there is a transfer of a computer program on a single disk for a one-time payment with restrictions on transfer and reverse engineering, which the parties characterize as a license (generally referred to as a shrink-wrap license), application of the rules of paragraphs (c) and (f) of this section may nevertheless result in the transaction being classified as the sale of a copyrighted article.

(2) *Means of transfer not to be taken into account.* The rules of this section shall be applied irrespective of the physical or electronic medium used to effectuate a transfer of a computer program.

(h) *Examples.* The provisions of this section may be illustrated by the following examples. All of the following examples assume that all parties are unrelated to each other:

Example 1. (i) *Facts.* Corp A, a U.S. corporation, owns the copyright in a computer program, Program X. It copies Program X on to disks. The disks are placed in boxes covered with a wrapper on which is printed what is generally referred to as a shrink-wrap license. The license is stated to be perpetual. Under the license no reverse engineering of the computer program is permitted. The transferee receives, first, the right to use the program on two of its own computers (for example, a laptop and a desktop) provided that only one copy is in use at any one time, and, second, the right to make one copy of the program on each machine as an essential step in the utilization of the program. The transferee is permitted by the shrink-wrap license to sell the copy so long as it destroys any other copies it has made and imposes the same terms and conditions of the license on the purchaser of its copy. These disks are made available for sale to the general public in Country Z. In return for valuable consideration, P, a Country Z resident, receives one such disk.

(ii) *Analysis.* (A) Under paragraph (g)(1) of this section, the label license is not determinative. None of the copyright rights described in paragraph (c)(2) of this section have been transferred in this transaction. P has received a copy of the program, however, and, therefore, under paragraph (c)(1)(ii) of this section, P has acquired solely a copyrighted article.

(B) Taking into account all of the facts and circumstances, P is properly treated as the owner of a copyrighted article. Therefore, under paragraph (f)(2) of this section, there has been a sale of a copyrighted article rather than the grant of a lease.

Example 2. (i) *Facts.* The facts are the same as those in *Example 1,* except that instead of selling disks, Corp A, the U.S. corporation, decides to make Program X available, for a fee, on a World Wide Web home page on the Internet. P, the Country Z resident, in return for payment made to Corp A, downloads Program X (via modem) onto the hard drive of his computer. As part of the electronic communication, P signifies his assent to a license agreement with terms identical to those in *Example 1,* except that in this case P may make a back-up copy of the program on to a disk.

(ii) *Analysis.* (A) None of the copyright rights described in paragraph (c)(2) of this section have passed to P. Although P did not buy a physical copy of the disk with the program on it, paragraph (g)(2) of this section provides that the means of transferring the program is irrelevant. Therefore, P has acquired a copyrighted article.

(B) As in *Example 1,* P is properly treated as the owner of a copyrighted article. Therefore, under paragraph (f)(2) of this section, there has been a sale of a copyrighted article rather than the grant of a lease.

Example 3. (i) *Facts.* The facts are the same as those in *Example 1,* except that Corp A only allows P, the Country Z resident, to use Program X for one week. At the end of that week, P must return the disk with Program X on it to Corp A. P must also destroy any copies made of Program X. If P wishes to use Program X for a further period he must enter into a new agreement to use the program for an additional charge.

(ii) *Analysis.* (A) Under paragraph (c)(2) of this section, P has received no copyright rights. Because P has received a copy of the program under paragraph (c)(1)(ii) of this section, he has, therefore, received a copyrighted article.

(B) Taking into account all of the facts and circumstances, P is not properly treated as the owner of a copyrighted article. Therefore, under paragraph (f)(2) of this section, there has been a lease of a copyrighted article rather than a sale. Taking into account the special characteristics of computer programs as provided in paragraph (f)(3) of this section, the result would be the same if P were required to destroy the disk at the end of the one-week period instead of returning it since Corp A can make additional copies of the program at minimal cost.

Example 4. (i) *Facts.* The facts are the same as those in *Example 2,* where P, the Country Z resident, receives Program X from Corp A's home page on the Internet, except that P may only use Program X for a period of one week at the end of which an electronic lock is activated and the program can no longer be accessed. Thereafter, if P wishes to use Program X, it must return to the home page and pay Corp A to send an electronic key to reactivate the program for another week.

(ii) *Analysis.* (A) As in *Example 3,* under paragraph (c)(2) of this section, P has not received any copyright rights. P has received a copy of the program, and under paragraph (g)(2) of this section, the means of transmission is irrelevant, P has, therefore, under paragraph (c)(1)(ii) of this section, received a copyrighted article.

(B) As in *Example 3,* P is not properly treated as the owner of a copyrighted article. Therefore, under paragraph (f)(2) of this section, there has been a lease of a copyrighted article rather than a sale. While P does retain Program X on its computer at the end of the one week period, as a legal matter P no longer has the right to use the program (without further payment) and, indeed, cannot use the program without the electronic key. Functionally, Program X is no longer on the hard drive of P's computer. Instead, the hard drive contains only a series of numbers which no longer perform the function of Program X. Although in *Example 3,* P was required to physically return the disk, taking into account the special characteristics of computer programs as provided in paragraph (f)(3) of this section, the result in this *Example 4* is the same as in *Example 3.*

Example 5. (i) *Facts.* Corp A, a U.S. corporation, transfers a disk containing Program X to Corp B, a Country Z corporation, and grants Corp B an exclusive license for the remaining term of the copyright to copy and distribute an unlimited number of copies of Program X in the geographic area of Country Z, prepare derivative works based upon Program X, make public performances of Program X, and publicly display Program X. Corp B will pay Corp A a royalty of $y a year for three years, which is the expected period during which Program X will have commercially exploitable value.

(ii) *Analysis.* (A) Although Corp A has transferred a disk with a copy of Program X on it to Corp B, under paragraph (c)(1)(i) of this section because this transfer is accompanied by a copyright right identified in paragraph (c)(2)(i) of this section, this transaction is a transfer solely of copyright rights, not of copyrighted articles. For purposes of paragraph (b)(2) of this section, the disk containing a copy of Program X is a de minimis component of the transaction.

(B) Applying the all substantial rights test under paragraph (f)(1) of this section, Corp A will be treated as having sold copyright rights to Corp B. Corp B has acquired all of the copyright rights in Program X, has received the right to use them exclusively within a geographic area, and has received the rights for the remaining life of the copyright in Program X. Under paragraph (g)(1) of this section, the fact that the agreement is labelled a license is not controlling (nor is the fact that Corp A receives a sum labelled a royalty). (This would also be the case if the copy of Program X to be used for the purposes of reproduction were transmitted electronically to Corp B, as a result of the application of the rule of paragraph (g)(2) of this section.)

Example 6. (i) *Facts.* Corp A, a U.S. corporation, transfers a disk containing Program X to Corp B, a Country Z corporation, and grants Corp B the non exclusive right to reproduce and distribute for sale to the public an unlimited number of disks at its factory in Country Z in return for a payment related to the number of disks copied and sold. The term of the agreement is two years, which is less than the remaining life of the copyright.

(ii) *Analysis.* (A) As in *Example 5,* the transfer of the disk containing the copy of the program does not constitute the transfer of a copyrighted article under paragraph (c)(1) of this section because Corp B has also acquired a copyright right under paragraph (c)(2)(i) of this section. For purposes of paragraph (b)(2) of this section, the disk containing Program X is a de minimis component of the transaction.

(B) Taking into account all of the facts and circumstances, there has been a license of Program X to Corp B, and the payments made by Corp B are royalties. Under paragraph (f)(1) of this section, there has not been a transfer of all substantial rights in the copyright to Program X because Corp A has the right to enter into other licenses with respect to the copyright of Program X, including in Country Z (or even to sell that copyright, subject to Corp B's interest). Corp B has acquired no right itself to license the copyright rights in Program X. Finally, the term of the license is for less than the remaining life of the copyright in Program X.

Example 7. (i) *Facts.* Corp C, a distributor in Country Z, enters into an agreement with Corp A, a U.S. corporation, to purchase as many copies of Program X on disk as it may from time-to-time request. Corp C will then sell these disks to retailers. The disks are shipped in boxes covered by shrink-wrap licenses (identical to the license described in *Example 1*).

(ii) *Analysis.* (A) Corp C has not acquired any copyright rights under paragraph (c)(2) of this section with respect to Program X. It has acquired individual copies of Program X,

which it may sell to others. The use of the term license is not dispositive under paragraph (g)(1) of this section. Under paragraph (c)(1)(ii) of this section, Corp C has acquired copyrighted articles.

(B) Taking into account all of the facts and circumstances, Corp C is properly treated as the owner of copyrighted articles. Therefore, under paragraph (f)(2) of this section, there has been a sale of copyrighted articles.

Example 8. (i) *Facts.* Corp A, a U.S. corporation, transfers a disk containing Program X to Corp D, a foreign corporation engaged in the manufacture and sale of personal computers in Country Z. Corp A grants Corp D the non-exclusive right to copy Program X onto the hard drive of computers which it manufactures, and to distribute those copies (on the hard drive) to the public. The term of the agreement is two years, which is less than the remaining life of the copyright in Program X. Corp D pays Corp A an amount based on the number of copies of Program X it loads on to computers.

(ii) *Analysis.* The analysis is the same as in *Example 6.* Under paragraph (c)(2)(i) of this section, Corp D has acquired a copyright right enabling it to exploit Program X by copying it on to the hard drives of the computers that it manufactures and then sells. For purposes of paragraph (b)(2) of this section, the disk containing Program X is a de minimis component of the transaction. Taking into account all of the facts and circumstances, Corp D has not, however, acquired all substantial rights in the copyright to Program X (for example, the term of the agreement is less than the remaining life of the copyright). Under paragraph (f)(1) of this section, this transaction is, therefore, a license of Program X to Corp D rather than a sale and the payments made by Corp D are royalties.

Example 9. (i) *Facts.* The facts are the same as in *Example 8*, except that Corp D, the Country Z corporation, receives physical disks. The disks are shipped in boxes covered by shrink-wrap licenses (identical to the licenses described in *Example 1*). Corp D uses each individual disk only once to load a single copy of Program X onto each separate computer. Corp D transfers the disk with the computer when it is sold.

(ii) *Analysis.* (A) As in *Example 7* (unlike *Example 8*) no copyright right identified in paragraph (c)(2) of this section has been transferred. Corp D acquires the disks without the right to reproduce and distribute publicly further copies of Program X. This is therefore the transfer of copyrighted articles under paragraph (c)(1)(ii) of this section.

(B) Taking into account all of the facts and circumstances, Corp D is properly treated as the owner of copyrighted articles. Therefore, under paragraph (f)(2) of this section, the transaction is classified as the sale of a copyrighted article.

Example 10. (i) *Facts.* Corp A, a U.S. corporation, transfers a disk containing Program X to Corp E, a Country Z corporation, and grants Corp E the right to load Program X onto 50 individual workstations for use only by Corp E employees at one location in return for a one-time per-user fee (generally referred to as a site license). If additional workstations are subsequently introduced, Program X may be loaded on to those machines for additional one-time per-user fees. The license which grants the rights to operate Program X on 50 workstations also prohibits Corp E from selling the disk (or any of the 50 copies) or reverse engineering the program. The term of the license is stated to be perpetual.

(ii) *Analysis.* (A) The grant of a right to copy, unaccompanied by the right to distribute those copies to the public, is not the transfer of a copyright right under paragraph (c)(2) of this section. Therefore, under paragraph (c)(1)(ii) of this section, this transaction is a transfer of copyrighted articles (50 copies of Program X).

(B) Taking into account all of the facts and circumstances, P is properly treated as the owner of a copyrighted article. Therefore, under paragraph (f)(2) of this section, there has been a sale of copyrighted articles rather than the grant of a lease. Notwithstanding the restriction on sale, other factors such as, for example, the risk of loss and the right to use the copies in perpetuity outweigh, in this case, the restrictions placed on the right of alienation.

Example 11. (i) *Facts.* The facts are the same as in *Example 10*, except that Corp E, the Country Z corporation, acquires the right to make Program X available to workstation users who are Corp E employees by way of a local area network (LAN). The number of users that can use Program X on the LAN at any one time is limited to 50. Corp E pays a one-time fee for the right to have up to 50 employees use the program at the same time.

(ii) *Analysis.* Under paragraph (g)(2) of this section the mode of transmission is irrelevant. Therefore, as in *Example 10*, under paragraph (c)(2) of this section, no copyright right has been transferred and thus, under paragraph (c)(1)(ii) of this section, this transaction will be classified as the transfer of a copyrighted article. Under the benefits and burdens test of paragraph (f)(2) of this section, this transaction is a sale of copyrighted articles.

Example 12. (i) *Facts.* The facts are the same as in *Example 11*, except that Corp E pays a monthly fee to Corp A, the U.S. corporation, calculated with reference to the permitted maximum number of users (which can be changed) and the computing power of Corp E's server. In return for this monthly fee, Corp C receives the right to receive upgrades of Program X when they become available. The agreement may be terminated by either party at the end of any month. When the disk containing the upgrade is received, or if the contract is terminated, Corp E must return the disk containing the earlier version of Program X to Corp A, and delete (or otherwise destroy) any copies made of the current version of Program X. The agreement specifically provides that Corp E has not thereby been granted an option to purchase Program X.

(ii) *Analysis.* (A) Corp E has received no copyright rights under paragraph (c)(2) of this section. Under paragraph (d) of this section, based on all the facts and circumstances of the transaction, Corp A has not provided services to Corp E. Therefore, under paragraph (c)(1)(ii) of this section, the transaction is a transfer of a copyrighted article.

(B) Taking into account all facts and circumstances, under the benefits and burdens test Corp E is not properly treated as the owner of the copyrighted article. Corp E does not receive the right to use Program X in perpetuity, but only for so long as it continues to make payments. Corp E does not have the right to purchase Program X on advantageous (or, indeed, any) terms once a certain amount of money has been paid to Corp A or a certain period of time has elapsed (which might indicate a sale). Once the agreement is terminated, Corp E will no longer possess any copies of Program X, current or superseded. Therefore under paragraph (f)(2) of this section there has been a lease of a copyrighted article.

Example 13. (i) *Facts.* The facts are the same as in *Example 12*, except that while Corp E must return copies of Program X as new upgrades are received, if the agreement terminates, Corp E may keep the latest version of Program X (although Corp E is still prohibited from selling or otherwise transferring any copy of Program X).

(ii) *Analysis.* For the reasons stated in *Example 10*, the transfer of the program will be treated as a sale of a copyrighted article rather than as a lease.

Example 14. (i) *Facts.* Corp G, a Country Z corporation, enters into a contract with Corp A, a U.S. corporation, for Corp A to modify Program X so that it can be used at Corp G's facility in Country Z. Under the contract, Corp G is to acquire one copy of the program on a disk and the right to use the program on 5,000 workstations. The contract requires Corp A to rewrite elements of Program X so that it will conform to Country Z accounting standards. The services required to perform this task are de minimis taking into account the facts and circumstances of this transaction. The agreement between Corp A and Corp G is otherwise identical as to rights and payment terms as the agreement described in *Example 10.*

(ii) *Analysis.* (A) As in *Example 10*, no copyright rights are being transferred under paragraph (c)(2) of this section. Under paragraph (b)(2) of this section, the services provided are de minimis. This transaction will be classified, therefore, as a transfer of copyrighted articles under paragraph (c)(1)(ii) of this section.

(B) Taking into account all facts and circumstances, Corp G is properly treated as the owner of copyrighted articles. Therefore, under paragraph (f)(2) of this section, there has been the sale of a copyrighted article rather than the grant of a lease.

Example 15. (i) *Facts.* Corp H, a Country Z corporation, enters into a license agreement for a modified version of Program X only if Corp A, a U.S. corporation, makes substantial modifications to the program. Only the core idea of Program X will be used and a considerable amount of labor will be expended in rewriting Program X, which under applicable copyright law as a derivative work will be a separate, new program. Corp A and Corp H agree that Corp A is modifying Program X for Corp H and that, when modified Program X is completed, the copyright in the modified program will belong to Corp H. Corp H gives instructions

to Corp A programmers regarding program specifications. Corp H agrees to pay Corp A a fixed monthly sum during development of the program. If Corp H is dissatisfied with the development of the program it may cancel the contract at the end of any month. In the event of termination, Corp A will retain all payments, while any procedures, techniques or copyrightable interests will be the property of Corp H. All of the payments are labelled royalties. There is no provision in the agreement for any continuing relationship between Corp A and Corp H, such as the furnishing of updates of the program, after completion of the modification work.

(ii) *Analysis.* Taking into account all of the facts and circumstances, Corp A is treated as providing services to Corp H. Under paragraph (d) of this section, Corp A is treated as providing services to Corp H because Corp H bears all of the risks of loss associated with the development of modified Program X and is the owner of all copyright rights in modified Program X. Under paragraph (g)(1) of this section, the fact that the agreement is labelled a license is not controlling (nor is the fact that Corp A receives a sum labelled a royalty).

Example 16. (i) *Facts.* Corp A, a U.S. corporation, and Corp I, a Country Z corporation, agree that a development engineer employed by Corp A will travel to Country Z to provide know-how relating to certain techniques which are not generally known to computer programmers which will enable Corp I to more efficiently create computer programs. These techniques represent the product of experience gained by Corp A from working on many computer programming projects. Such information is not capable of being copyrighted, but it is subject to trade secret protection.

(ii) *Analysis.* This transaction contains the elements of know-how specified in paragraph (e) of this section. Therefore, this transaction will be classified as the provision of know-how.

(i) *Effective date.* This section applies to transactions occurring on or after the date that is sixty days after the date final regulations are published in the Federal Register.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–29055 Filed 11–7–96; 3:11 pm]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[AD–FRL–5645–2]

Proposed Conditional Special Exemption From Requirements of the Clean Air Act for the Territory of American Samoa, the Commonwealth of the Northern Mariana Islands, and the Territory of Guam

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 13, 1995 (60 FR 47515), EPA proposed to grant the Territory of American Samoa (American Samoa) and the Commonwealth of the Northern Mariana Islands (CNMI) a conditional exemption from title V requirements and to grant the Territory of Guam (Guam) an extension of time in which to adopt a title V permit program. EPA proposed these conditional exemptions and this extension under the authority of section 325 of the Clean Air Act. EPA received comments during the public comment period requesting that EPA grant a permanent exemption to Guam. EPA also received a letter on December 18, 1995 from the Administrator of the Guam Environmental Protection Agency stating that Guam would develop an alternate local permitting program in exchange for a permanent exemption. In response to these comments and this commitment, EPA is proposing to conditionally exempt Guam, as well as American Samoa and CNMI, from title V of the Clean Air Act.

In a separate part of this Federal Register, EPA is promulgating this action as a direct final rule without a prior proposal because the public comments received to date support granting a permanent exemption. A detailed rationale and conditions for this approval are set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, the direct final rule will take effect on January 13, 1997. If adverse comments are received during the comment period, EPA will publish timely notice in the Federal Register withdrawing the direct final rule for Guam, American Samoa and CNMI, and all public comments will be addressed in a subsequent final rule based on this proposal. The EPA will not institute an additional comment period on this action and any parties interested in commenting should do so at this time.

DATES: Comments on this proposed rule must be received in writing by December 13, 1996.

ADDRESSES: Written comments on this action should be addressed to: Norm Lovelace, Chief, Office of Pacific Islands and Native American Programs, US EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105. Supporting information used to develop the proposed conditional exemptions, including copies of the petitions, all comments received, and the response to comments document, are available for inspection during normal business hours at this location.

FOR FURTHER INFORMATION CONTACT: Norm Lovelace (telephone 415/744–1599, fax 415/744–1604), Chief, Office of Pacific Islands and Native American Programs or Sara Bartholomew (telephone 415/744–1250, fax 415/744–1076), Operating Permits Section, Air and Toxics Division, at the address above.

SUPPLEMENTARY INFORMATION: For additional information, please see the direct final rulemaking located in a separate part of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

List of Subjects in 40 CFR Part 69

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous air pollutants, Intergovernmental relations, Nitrogen oxides, Operating permits, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: October 28, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–28431 Filed 11–12–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 121

Organ Procurement and Transportation Network; Organ Allocation Policies

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Request for additional public comment on proposed rule; notice of public hearings.

SUMMARY: This document announces that the Secretary of Health and Human Services is formally inviting additional

public comment on the Notice of Proposed Rulemaking (NPRM) published on September 8, 1994, to establish rules governing the operation of the Organ Procurement and Transportation Network (OPTN). The Secretary is seeking additional comments on policies affecting the allocation of human livers for transplantation. In addition, this document announces that a public hearing will be held at which interested individuals may submit oral comments regarding such policies as well as regarding methods to increase organ donation.

DATES:

Hearing: The hearing will be held on December 10–11, 1996, beginning at 9 a.m. each day. Requests to testify must be submitted by December 2, 1996.

Comments: For those who choose to send written comments only, comments must be submitted by December 13, 1996 in order to ensure full consideration. Because the issue of organ donation is not part of the rulemaking process, we will accept comments and suggestions on this issue at any time.

ADDRESSES: Written requests to testify and written comments on allocation policies should be transmitted to: Ms. Judith Braslow, Director, HRSA Division of Transplantation, Room 7–29, 5600 Fishers Lane, Rockville, Maryland 20857.

In light of the short period for submitting requests to testify, such requests may also be submitted by telefax to Ms. Braslow at (301) 594–6095.

Comments will be available for public inspection three business days after their receipt in Room 7–29, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, Monday through Friday of each week from 8:00 a.m. to 4:30 p.m. To view public comments in Washington, D.C., call (202) 690–7890 to make an appointment for inspection in Room 309 G of the Hubert Humphrey Building, 200 Independence Avenue, S.W.

The hearing will be held at the Natcher Center on the National Institutes of Health campus in Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Ms. Braslow at the address listed above. Telephone: (301) 443–7577.

SUPPLEMENTARY INFORMATION: Allocation of human livers for transplantation has been debated within the transplant community for several years. On September 8, 1994, the Department published an NPRM to establish rules governing the operation of the OPTN (59 FR 46482–99). The public comment period expired on December 7, 1994, although additional comments were received and accepted after that date.

As part of the preamble to the NPRM, the Department solicited comments on the organ-allocation policies used to distribute organs by the OPTN (59 FR 46487). Since that time, the OPTN has undertaken a major review of its policies governing the allocation of livers, and the Board of Directors of the OPTN has proposed a revised policy to allocate livers. The revisions proposed by the Board have generated considerable controversy within the transplant community. In view of sections 372–375 of the Public Health Service Act, 42 U.S.C. 274–274c, which vest responsibility in the Secretary of Health and Human Services for oversight of the OPTN, the Department has concluded that further public participation in the development of allocation policies related to livers is desirable. Accordingly, we have decided to seek additional comments on the NPRM and to accept oral testimony and written comments on liver allocation policies and the processes by which they may be developed.

In addition, we recognize that the difficult issues associated with establishing allocation policies stem from a central problem: the medical need for organs far exceeds organs donated. Accordingly, we have decided to use a public hearing as an opportunity to solicit public comments on methods to increase organ donation and general awareness of organ transplantation as a therapeutic alternative for end-stage organ disease.

Participants in the hearing will be limited to ten minutes per individual (or institution). Those requesting to testify should indicate whether their comments will address allocation policies, organ donation, or both. We are particularly interested in comments addressing the following issues:

1. Allocation of Human Livers for Transplantation

The Organ Procurement and Transplantation Network (OPTN) currently allocates human livers for transplantation in accordance with the following policy:

To local Status 1 patients first in descending point order; then to

local Status 2 patients in descending point order; then to

all other local patients in descending point order; then to

Status 1 patients in the Host OPO's (organ procurement organization) region in descending point order; then to Status 2 patients in that region in descending point order; then to

all other regional patients in descending point order; then to

Status 1 patients in all other regions in descending point order; then to

Status 2 patients in all other regions in descending point order; and finally to

all other patients in all other regions in descending point order.

The Status definitions, in pertinent part, are as follows:

A patient listed as Status 1 is in a hospital's Intensive Care Unit (ICU) due to acute or chronic liver failure with a life expectancy without a liver transplant of less than 7 days.

A patient listed as Status 2 is continuously hospitalized in an acute care bed for at least five days, or is ICU bound.

A patient listed as Status 3 requires continuous medical care.

A patient listed as Status 4 is at home and functioning normally.

A patient listed as Status 7 is temporarily inactive—patients who are temporarily unsuitable for transplant are listed as Status 7.

The OPTN Board's proposed policy would revise the definitions of several of the status groups and would revise the ''local'' area which constitutes the first allocation area. In seeking additional comment, the Secretary invites comments on the following questions:

a. Does the OPTN Board's policy achieve the best outcome that can reasonably be expected for the patients of America? If not, what revisions to the policy, alternative policy, or combination of policies would yield a superior result?

Please present data and other information that support your view; for example, success measures or factors mentioned in the NPRM which include (1) equitable distribution of organs; (2) improvement in graft and patient survival, and (3) enhanced patient choice among transplant programs. In particular, please indicate the measures you considered most important in assessing the relative efficacy of various policy options.

b. Would changes in other OPTN policies related to liver allocation, such as those noted below, yield a better outcome for the patients of America than the present system? Should such changes be implemented in addition to a change in the OPTN Board's allocation policy or phased in with a change?

- Criteria for entering patients on the waiting list for liver transplant.
- Definition of the status categories for patients on the waiting list for liver transplant.
- Procedures for ensuring compliance with OPTN policies affecting liver allocation.

• Use of performance measures, e.g., quality of transplant outcomes and annual number of transplants performed, in determining the eligibility of transplant centers to receive donor livers.

2. Donation of Organs for Transplantation

The medical need for livers and other human organs for transplantation continues to exceed the number of donor organs by a considerable margin. No organ allocation policies, no matter how well crafted or effectively implemented, can be expected to compensate for serious short-falls in the supply of organs relative to the demand.

a. What are the major impediments to organ donation?

b. How can the Department, organ procurement organizations, hospitals, and other entities improve current efforts to promote organ donation?

c. Where and to what extent are further initiatives necessary to ensure that members of racial and ethnic minority groups are appropriately apprised regarding such matters as the role of organ transplantation within the health-care system, the unique health benefits that can ensue from successful transplantation, the limitations associated with transplant procedures, and the challenges involved in recruiting organ donors?

Dated: November 6, 1996.

Ciro V. Sumaya,

Administrator.

Approved: November 7, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–29145 Filed 11–8–96; 10:52 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1600, 1820, 1840, 1850, 1860, 1880, 2090, 2200, 2300, 2520, 2540, 2560, 2620, 2720, 2800, 2810, 2880, 2910, 2920, 3000, 3100, 3120, 3150, 3160, 3180, 3200, 3240, 3250, 3260, 3280, 3410, 3420, 3430, 3450, 3470, 3480, 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3590, 3710, 3730, 3740, 3800, 3810, 3830, 3870, 4200, 4300, 4700, 5000, 5470, 5510, 8370, 9180 and 9230

[WO–130–1820–00 24 1A]

RIN 1004–AC99

Appeals Procedures; Hearings Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed regulations, extension of comment period.

SUMMARY: On October 17, 1996, the Bureau of Land Management (BLM) published a document in the Federal Register announcing a proposed rule to revise and consolidate existing procedures for hearings and appeals into a single, streamlined administrative review process covering most of BLM's decisions (61 FR 54120). The 30-day comment period for the proposed rule expires on November 18, 1996. BLM has received several requests from the public for additional time to comment and is extending the comment period for an additional 60 days.

DATES: Submit comments by January 17, 1997.

ADDRESSES: If you wish to comment, you may:

(a) Hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC.;

(b) Mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240; or

(c) Send comments through the Internet to WOComment@wo.blm.gov. Please include ''attn: AC99'', and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, please contact us directly at (202)452–5030.

You will be able to review comments at BLM's Regulatory Affairs Group office, Room 401, 1620 L Street, N.W., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren 202–452–7779, or Bernie Hyde 202–452–5057.

Dated: November 6, 1996.

Annetta Cheek,

Regulatory Affairs Group Manager.

[FR Doc. 96–29028 Filed 11–12–96; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 96–20]

Port Restrictions and Requirements in the United States/Japan Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission, in response to apparent unfavorable conditions in the foreign oceanborne trade between the United States and Japan, proposes the imposition of fees on liner vessels operated by Japanese carriers calling at United States ports. The effect of the rule will be to adjust or meet unfavorable conditions caused by Japanese port restrictions and requirements by imposing countervailing burdens on Japanese carriers.

DATES: Comments due on or before January 13, 1997.

ADDRESSES: Send comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Background

Information Demand Orders

On September 12, 1995, the Federal Maritime Commission (''Commission'' or ''FMC'') issued information demand orders to carriers in the U.S./Japan trade,[1] inquiring about certain restrictions and requirements for the use

[1] NYK Line (North America) Inc.; Mitsui O.S.K. Lines (America), Inc.; K Line America Inc.; Sea-Land Service, Inc.; American President Line; Westwood Shipping Lines; Evergreen Line; Hanjin Shipping Co. Ltd.; Maersk Inc.; China Ocean Shipping Co.; Hyundai Merchant Marine; Orient Overseas Container Line (''OOCL''); Yangming Marine Line; Neptune Orient Lines; Senator Linie (USA) Inc.; Mexican Line (TMM); Hapag-Lloyd (America) Inc.; Zim Container; and Cho Yang Line.

of port and terminal facilities in Japan. Four issues of concern were addressed by the information demand orders: (1) The ''prior consultation'' system, a process of mandatory discussions and operational approvals involving port and terminal management, unions, and ocean carriers serving Japan; (2) restrictions on the operation of Japanese ports on Sunday; (3) the requirement that all containerized cargo exported from Japan be weighed and measured by harbor workers, regardless of commercial necessity; and (4) the disposition of the Japanese Harbor Management Fund, which was the subject of Docket No. 91–19, *Actions to Address Conditions Affecting U.S. Carriers Which do not Exist for Foreign Carriers in the U.S./Japan Trade.* The Commission observed that these practices may result in conditions unfavorable to shipping in the United States/Japan trade, and may constitute adverse conditions affecting U.S. carriers that do not exist for Japanese carriers in the United States.

Prior Consultation

Many of the questions in the information demand orders centered on the prior consultation system and how it is administered by the Japan Harbor Transportation Association (''JHTA''). JHTA is an association of companies providing harbor transportation services, including terminal operators, stevedores, and sworn measurers. Under this system, carriers serving Japan must consult with JHTA about operational matters involving Japanese ports or harbor labor. After JHTA consults with a carrier, it may conduct consultations with labor interests, then approve or deny the line's request.

The responses to the Commission's orders indicated that virtually all operational plans and changes made by carriers serving Japan must be submitted for prior consultation. These include: any changes in berth, route, or port calls; inauguration of new services or new vessels; the addition of extra port calls (either permanently or temporarily), or calls by non-container ships at container berths; jumboization of vessels or changes in vessel technology which affect stevedoring or terminal operations; temporary assignment of vessels as substitutes (even if only for one voyage) or the renaming of vessels; rationalization agreements between carriers involving vessel sharing or berthing changes; the assignment of a stevedoring contractor or terminal operator to a carrier and any subsequent change in assignment; requests for Sunday work; changes in mandatory weighing and measuring arrangements; or any other changes which affect stevedoring or terminal operations.

The comments shed light on the complex and opaque procedural aspects of the prior consultation system. According to several respondents, if a carrier wants to take one of the above-described actions, it first submits a draft written request for prior consultation outlining its proposal to JHTA. If the matter is deemed to be important, a meeting is then scheduled for a carrier representative to explain its request to JHTA chairman Shiroo Takashima. Often, the carrier executive is accompanied by an official of the stevedoring company used by that line. At this stage, the JHTA chairman may refuse to accept the request, or require changes or impose conditions for acceptance.

According to several respondents, if the carriers' request is acceptable to the JHTA chairman, it is taken up at a formal ''pre-prior consultation'' meeting. These meetings, generally held monthly, are attended by the JHTA chairman, vice-chairman, secretary, prior consultation administrator, a representative from the carrier, and often a representative of its affected stevedore or terminal operator. If the request is accepted at this stage, the matter is deliberated at formal prior consultation meetings between JHTA and union officials, both in Tokyo and at the local level. Carrier representatives do not attend the JHTA-union meetings.

A number of respondents suggested that the final prior consultation meetings are simply formalities. It appears that if a carrier's request is unacceptable to JHTA, this is conveyed early in the process, often in the carrier's initial meeting with the JHTA chairman. If JHTA takes an unfavorable view of a request, there is no formal rejection; instead, it simply is not accepted for consideration at the formal prior consultation meetings. In contrast, if a request has been accepted by the JHTA chairman, it is almost assured to be approved at the formal meetings.

Beyond the above-described procedures, JHTA's decision-making process in prior consultation appears to be characterized by a total lack of transparency. The respondents indicated that there are almost no written rules, either substantive or procedural, nor are there written reasons for decisions or an appeal process; JHTA appears to have absolute discretion over the terms and conditions imposed in the prior consultation process.

Many respondents suggested that JHTA uses prior consultation to prevent competition and maintain an agreed-upon allocation of work among the JHTA member companies. Several carriers recounted instances where prior consultation requests were held up until the carriers agreed to take on additional, unnecessary stevedoring companies or contractors. A number of carriers observed that JHTA may require that, when carriers consolidate terminal operations, the benefitting stevedore must reach an agreement with the losing one to take on some of the latter's workers, thereby insuring that there is still income passing to the losing stevedoring company. These practices, according to a number of commenters, prevent any real competition and undermine attempts to increase the efficiency of port operations, with the result that Japan has port costs that far exceed those of its Asian neighbors and other major trading nations.

Much of JHTA's ability to compel participation in prior consultation appears to stem from its relationship with, and support of, organized labor. Some respondents explained that, if they did not participate in prior consultation or comply with JHTA's requests, they would be subject to retaliation, such as work stoppages or labor disruptions. Some respondents recounted an instance in 1985 when JHTA, in response to an investigation by the Japanese Fair Trade Commission (''FTC''), announced that it was abandoning the carrier-JHTA component of the prior consultation system. When the now-defunct Yamashita Shiminon Kaisha Line attempted to go ahead with changes in its operations, two of its vessels reportedly were boycotted by the unions, on the grounds that there had been no prior consultation. In order to prevent any further disruptions, respondents stated, carriers had no choice but to request that JHTA reestablish its prior consultation system.

Japanese Government Oversight

Respondents confirmed that the agency with direct authority over harbor services is the Ministry of Transport (''MOT''). Persons wishing to perform harbor transportation services must obtain a license from MOT, in accordance with the Port Transportation Business Law. Also, under the Law Establishing the Ministry of Transportation, MOT is invested with authority over, inter alia, the development, improvement and coordination of the harbor transportation business. MOT reportedly can give oversight or guidance relating to the conduct of the Prior Consultation System if a national

policy (i.e., the development, improvement and coordination of the harbor transport business) is sought to be furthered. Respondents also indicated that administrative guidance, or gyoseishido, is practiced by governmental bodies in Japan, to secure cooperation of affected parties to further an administrative purpose.[2]

MOT appears to have given guidance or otherwise become involved with prior consultation on at least a few occasions. In 1986, MOT signed, as a witness, the Letter of Confirmation on New Prior Consultation, an agreement between JHTA and carriers establishing the current version of the system. More recently, in 1992, MOT reportedly issued a ministerial view to JHTA and the Japanese Shipowners Ports Council setting forth basic principles for prior consultation regarding container terminal disputes.[3] In that document (a translation of which was provided by respondents), MOT directed that, if carriers make changes to their operations, these changes must be submitted for prior consultation. It was also stated in the Ministerial View that if a shipping company changes the consortium with which it is affiliated, or reorganizes its service, it will give explanations to JHTA and obtain its understanding as early as possible. While the Ministerial View was addressed specifically to the Japanese shipowners, it appears that its principles are applied uniformly to all shipping companies.

JHTA's operations also fall within the jurisdiction of the Japanese Fair Trade Commission (''FTC''). The Japanese respondents explained that Article 8 of the Law Relating to the Prohibition of Private Monopoly and Methods of Preserving Fair Trade of Japan (''Antimonopoly Law'') prohibits trade associations from engaging in certain activities, including restricting competition, limiting the number of entrepreneurs, restricting unduly the activities of constituent entrepreneurs, and causing entrepreneurs to engage in unfair business practices. As the agency responsible for administering the Antimonopoly Law, the FTC has the authority to investigate JHTA and its activities.

This FTC authority has been invoked on occasion. In June, 1985, a complaint was filed with the Fair Trade Commission against JHTA, reportedly alleging that JHTA was restricting the activities of carriers and the competition among terminal operators. However, respondents stated that the complaint was later withdrawn and the FTC suspended its investigation.

Another FTC complaint was filed late last year. Apparently, a dispute erupted between JHTA and one of its members, Sankyu, Inc. Sankyu filed a complaint with the FTC, alleging that JHTA was violating Japanese antitrust laws, allocating work among operators. In response, according to published reports, JHTA began exerting considerable pressure on one of Sankyu's clients, OOCL. JHTA reportedly refused to permit prior consultation and approve the carrier's space sharing and terminal reorganization plans. In February, according to press reports and other sources, Sankyu acquiesced to JHTA pressure and withdrew its FTC complaint. While the FTC has not formally dismissed or terminated its investigation, it does not appear to have taken any further action in this area since Sankyu's withdrawal.

Mandatory Weighing and Measuring

The respondents uniformly confirmed that mandatory weight and measure data for all cargo is not required for any administrative functions or documentary procedures in Japan, nor do carriers require measurement of export box load cargo. Some carriers stated that they have attempted unsuccessfully to refuse sworn measurement services and charges; however, JHTA and union representatives threatened work delays, stoppages, and other retaliation if these efforts continued. The majority of carriers have not attempted unilaterally to stop weighing and measuring. Estimates of per-container weighing and measuring costs ranged from $41 to $85 per TEU, with the majority of responses in the $60–$68 range.

In December, 1995, and January, 1996, agreements were reached involving JHTA, the sworn measurement companies, and JSPC and JFSA (the Japanese and foreign carrier groups), to phase out mandatory weighing and measuring over the course of five years. Reportedly, under the plan agreed to by the parties, carriers will be required to make a lump-sum payment to the sworn measurers each year from 1996 to 2000. The payments will be based on the amount paid for weighing and measuring in 1994. The lump sum payments for the five years will be 83.3%, 66.6%, 49.9%, 33.2%, and 16.5% of the 1994 total.

Sunday Work

Because the earthquake that struck the Kobe region in January, 1995, disabled most of that port's facilities, the volume of cargo moving through other Japanese ports increased substantially. According to several of the respondents, harbor workers immediately began operating on Sundays on an emergency basis to accommodate the additional capacity. In May, 1995, a one-year agreement reportedly was reached between JHTA and the unions to keep Sunday work in place in Japan's six major ports (Tokyo, Yokohama, Nagoya, Osaka, Kobe, and Kanmon).

The one-year agreement (the text of which was provided by several respondents) has several requirements and restrictions for Sunday work. For example, Sunday work is limited to the moving of containers between vessels and the carriers container yards. Therefore, cargo cannot arrive at the gate on Sunday for loading that day, and cargo discharged on Sunday cannot be released the same day to the consignee. Also, the agreement provides that receipt of cargo on Saturdays should be minimized as much as possible, as Saturday is a day off for most harbor workers. Vessels may be loaded and unloaded on Sundays only between 8:30 a.m. and 4:30 p.m.

According to the text of the agreement, a shipping company wishing to work on Sunday must apply by the preceding Friday. An additional charge is imposed for Sunday work. Sunday work is limited to shipping companies that ''have fully implemented the MOT approved rates and charges.'' Sunday work is also limited to carriers that ''have observed the harbor industrial labor/management agreement'' concerning numbers of hours and days that union laborers may work and amount of overtime available.

The current restrictions on Sunday work apparently have had a number of negative effects on the respondent carriers. Some pointed out that restrictions on moving cargo into or out of the container yard causes inefficiency and leads to gate congestion on

[2] The Commission in its information demand orders described further authority that MOT apparently maintains under the Port Transportation Business Law. For example, MOT reviews rates based on whether they are reasonable and non-discriminatory. Art. 9. MOT must approve operators' ''terms and conditions on port transportation,'' to determine that ''there is no fear that the terms and conditions may impede the benefits of users,'' and also approve any changes in operators' business plans. Art. 11 & 17. If MOT determines that the port transportation businesses ''impede benefits of users'' it may order changes in business plans, terms and conditions, or rates. Art. 21.

[3] The Japanese Shipowners Ports Council (''JSPC'') is the component of the Japanese Shipowners' Association that deals directly with harbor service-related matters. JSPC often served as the voice of the Japanese lines in prior consultation and other dealings with JHTA. There is a similar association for non-Japanese shipowners operating in Japan, the Japan Foreign Steamship Association (''JFSA'').

Saturday and Monday. Several noted that Sunday work surcharges result in extra costs. Also, respondents noted that the requirement that lines apply in advance for Sunday work, and the shortened working hours, can be a burden and pose planning problems.

It appears that the uncertainty surrounding the one-year agreement has also discouraged carriers from taking full advantage of Sunday work. While more than half of the respondents indicated that they have used Sunday work on occasion, virtually all of this use has been to accommodate vessel delays or other exigencies. No respondent indicated that it changed sailing schedules to use Sunday work on a regular basis. Apparently, since a permanent shift in vessel schedules would be complex and costly for an individual carrier, its alliance partners, and its feeder services, carriers cannot switch to regular Sunday calls without guarantees that Sunday work will continue to be available.

While it appears that Sunday work will continue to be provided for the near term, there has been no discernable progress in reaching a stable and permanent resolution of the Sunday work issue. The previous one-year agreement for Sunday work expired in June 1996, and was extended for one-month intervals for July and August. It has been reported recently that JHTA and waterfront unions have reached an agreement by which Sunday work would be continued for six months, through March 10, 1997. However, beyond the March 10 deadline, the fate of Sunday work appears uncertain.

Discussion

JHTA Dominance Through the Prior Consultation System

Of all the issues raised in the Commission's information demand order, it is apparent that prior consultation is the most serious. The prior consultation system is central to JHTA's dominance of the harbor services market in Japan, as it is the mechanism by which JHTA exercises control over the activities of individual carriers and stevedoring companies. Other JHTA restrictions, such as those affecting Sunday work and mandatory weighing and measuring, are also of serious concern to the Commission; however, it appears that these matters are symptoms rather than root causes of JHTA's dominant position.

By serving as intermediary in all negotiations and requiring, on threat of labor disruption, that carriers submit virtually all planned operational changes for approval, JHTA is able to assign and allocate work among its member companies. This process is used to eliminate competition among terminal operators and stevedores, obviating the need for them to operate more efficiently, reorganize, downsize, or otherwise cut costs to gain market share. It also puts JHTA in a position to block any carrier initiatives to reduce terminal costs, such as plans by various carrier alliances to share terminals and reduce the number of stevedoring companies used, until plans are made to protect the harbor workers' competitive status quo.

JHTA has pushed prior consultation far beyond its purported use as a labor relations device. As numerous respondents pointed out, virtually every operational change by a carrier, even those with no apparent labor impact, must be submitted to JHTA. This all-encompassing scope of prior consultation has given JHTA broad leverage to implement programs that benefit its constituents. It can, for example, extract unwarranted payments from carriers, such as the Harbor Maintenance Fund and the mandatory weighing and measuring fees. JHTA also appears to have unchecked authority to punish its detractors.

JHTA has shown little regard for public accountability in its administration of prior consultation. There are virtually no written rules and no public records, decisions, or appeals. This lack of transparency makes it almost impossible for government, industry, or media critics to scrutinize the workings of the system.

The Role of the Government of Japan

Prior consultation and JHTA dominance do not, however, appear to be an entirely private sector problem. Prior consultation and JHTA enjoy a substantial amount of support from Japanese authorities. Under the Port Transportation Business Law and the Law Establishing the Ministry of Transportation, MOT has broad authority to oversee and regulate the activities and business practices of JHTA and its members. In exercising this authority, however, MOT officials have chosen to permit JHTA to wield unchecked authority through the prior consultation process, rather than requiring JHTA to be less anticompetitive, less arbitrary, and more transparent.[4]

Further Government of Japan support for prior consultation was evinced clearly by the 1992 Ministerial View issued to carriers by MOT. This document, on its face, mandates that carriers submit changes in their business plans to JHTA for prior consultation. This would appear to be an unequivocal validation and endorsement of JHTA's prior consultation activities.

However, the most significant example of government support for JHTA is the MOT licensing of harbor service companies. The Japanese Port Transportation Business Law directs that, if a person seeks to begin performing harbor services, MOT shall evaluate, inter alia, whether the business in question ''has an appropriate plan to perform the business,'' and whether it would ''cause port transportation supply to be excessively over transportation demand.'' Art. 5 & 6. It appears that MOT uses this authority to restrict entry and to shield JHTA and its members from foreign competition. U.S. carriers have stated that they have been shut out of the market entirely, and advised by Japanese authorities that they should not even bother to apply because such certificates would not be granted.

It appears that, by preventing foreign lines from providing terminal services for themselves and by blocking new entrants from the market, the Government of Japan virtually guarantees that JHTA's monopoly over harbor operations will continue unabated. The licensing requirement ensures that JHTA is insulated from pressure to reform, either from outside competitors or new members. Carriers remain captive in an increasingly unworkable port system, and their customers are forced to absorb the resultant costs, which are among the highest in the world. Moreover, the Government of Japan's licensing practices appear blatantly discriminatory against U.S. carriers. There are no legal restrictions on the ownership of terminal operations by Japanese companies in the United States.

It is our conclusion that the Government of Japan's support for the prior consultation system, through its discriminatory and restrictive licensing requirements for persons wishing to perform harbor services, appears to constitute conditions unfavorable to shipping in the U.S./Japan trade. Accordingly, we are proposing the imposition of countervailing sanctions, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) (''Section 19''). To avert the imposition of these sanctions, we would urge the Government of Japan to

[4] We would also note that the FTC has repeatedly discontinued investigations into JHTA's activities without taking measures to curb the anticompetitive effects of JHTA's actions.

afford U.S. carriers relief by making available to them all necessary licenses, permissions, or certificates to perform, for themselves and third parties, stevedoring and terminal operating services, or to establish subsidiaries or related ventures to do so, as Japanese carriers are permitted to do in the United States.

In addition, we remain concerned about the long term resolution of the Sunday work issue. We are encouraged, however, that some progress appears to have been made in this area, as well as with regard to weighing and measuring. Therefore, we are not proposing sanctions in these areas at this time. However, the Commission will continue to monitor progress on these issues, and on the disposition of the yet undisposed balances in the Harbor Management Fund, and will take further remedial action if appropriate.

Section 19 authorizes and directs the Federal Maritime Commission to

> make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitations, forwarding and agency services, non-vessel-operating common carrier operations, and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country * * *.

The measures authorized under Section 19 include limitation of sailings, suspension of carriers' tariffs or rights to use conference tariffs, suspension of carriers' rights to operate under FMC-filed terminal and other agreements, fees of up to $1,000,000 per voyage, or any other action deemed necessary and appropriate to adjust or meet the unfavorable condition. 46 U.S.C. app. 876(9).

After giving consideration to all available countervailing sanctions, including limitations of sailings and suspension of carrier tariffs or terminal or other agreements, the Commission has determined to propose a primary remedy of a $100,000 fee, assessed on Japanese carriers when their liner vessels enter U.S. ports. However, the Commission specifically solicits comment on the feasibility of additional or alternative sanctions. The Commission reserves the right to adjust the level of the fee or add additional or alternative sanctions at any time if the subject adverse conditions are not remedied. In the event that the presently prescribed fees are not paid, the Proposed Rule provides for the denial of clearance or entry to or detention at U.S. ports.

In order to provide proper notice and a fair opportunity to respond to the proposed action, the Commission is giving all interested parties sixty days to file comments. Factual submissions, where relevant, should include evidence or statistics showing commercial loss and to the extent possible be supported by sworn documents and affidavits.

List of Subjects in 46 CFR Part 586

Cargo vessels; Exports; Foreign relations; Imports; Maritime carriers; Penalties; Rates and fares; Tariffs.

For the reasons set forth in the preamble, the FMC proposes to amend 46 CFR Part 586 as follows:

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), as amended, Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR Part 585, it is proposed to amend Part 586 of Title 46 of the Code of Federal Regulations as follows:

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

1. The authority citation for Part 586 continues to read as follows:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876(5) through (12); 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2. Section 586.2 is added to read as follows:

§ 586.2 Conditions unfavorable to shipping in the United States/ Japan trade.

(a) *Conditions unfavorable to shipping in the trade.* (1) The Federal Maritime Commission (''Commission'') has determined that the Government of Japan has created conditions unfavorable to shipping in the U.S.–Japan trade, by discriminatorily restricting the licensing of persons wishing to offer harbor and terminal services in Japan.

(2) Through its discriminatory and restrictive licensing practices, the Government of Japan has protected the dominant position of the Japan Harbor Transportation Association (''JHTA''), an association of Japanese waterfront employers. Benefitting from this protection and from a lack of oversight by the Government of Japan, JHTA has virtually eliminated competition in the Japanese harbor services market. JHTA effectively controls competition through the use of the prior consultation system, by which carriers are required to submit virtually all operational plans and requests for JHTA review.

(3) JHTA has used the leverage afforded by the prior consultation system to force carriers, inter alia, to change terminal and stevedoring arrangements, to take on unnecessary stevedoring companies or contractors, and to make unwarranted payments to JHTA and its members. This has resulted in detrimental excess costs for carriers and shippers engaged U.S.–Japan oceanborne trade.

(4) The Government of Japan has discriminated against U.S. carriers by refusing to make licenses to perform port services available to them. This has left U.S. carriers with no choice but to submit their shoreside planning and operations to JHTA control. In contrast, there are no legal restrictions on the ownership of terminal operations by Japanese carriers in the United States.

(b) *Definitions.* (1) *Japanese carrier* means Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd, and Nippon Yusen Kaisha.

(2) *Designated vessel* means any container-carrying liner vessel owned or operated by a Japanese carrier (or any subsidiary, related company, or parent company thereof).

(c) *Assessment of fees.* A fee of one hundred thousand dollars shall be assessed each time a designated vessel is entered in any port of the United States from any foreign port or place.

(d) *Report and payment.* Each Japanese carrier, on the fifteenth day of each month, shall file with the Secretary of the Federal Maritime Commission a report listing each vessel for which fees were assessed under paragraph (c) of this section during the preceding calendar month, and the date of each vessel's entry. Each report shall be accompanied by a cashiers check or certified check, payable to the Federal Maritime Commission, for the full amount of the fees owed for the month covered by the report. Each report shall be sworn to be true and complete, under oath, by the carrier official responsible for its execution.

(e) *Refusal of clearance by the collector of customs.* If any Japanese carrier subject to this section shall fail to pay any fee or to file any quarterly report required by paragraph (d) of this section within the prescribed period, the Commission may request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at U.S. ports to refuse the clearance required by 46 U.S.C. app. section 91 to any designated vessel owned or operated by that carrier.

(f) *Denial of entry to or detention at United States ports by the Secretary of Transportation.* If any Japanese carrier subject to this section shall fail to pay any fee or to file any quarterly report required by paragraph (d) of this section within the prescribed period, the Commission may request the Secretary of Transportation to direct the Coast Guard to:

(1) Deny entry for purpose of oceanborne trade, of any designated vessel owned or operated by that carrier to any port or place in the United States or the navigable waters of the United States; or

(2) Detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States. By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–28943 Filed 11–12–96; 8:45 am]

BILLING CODE 6730–01–W

Notices

Federal Register
Vol. 61, No. 220
Wednesday, November 13, 1996

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

National Agricultural Statistics Service

Notice of Intent to Seek Approval to Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the Equine Survey.

DATES: Comments on this notice must be received by January 21, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Equine Survey.

Type of Request: Intent to seek approval to conduct an information collection.

Abstract: To improve information regarding the equine industry, several State Departments of Agriculture are expected to contract with the National Agricultural Statistics Service to conduct an Equine Survey in their state within the next 2 years. Equine activities offer unusually varied opportunities for rural development. In addition to providing the livelihood for breeders, trainers, veterinarians, and many others, the horse remains important to recreation. Equine survey data will quantify the importance of the industry in the state. The number of operations, number of animals, and economic information will provide a focus on the importance of the equine industry to state economies. Income data provides a view of the benefits that the industry provides to the state economy and a ranking in terms of its relative importance within both the agricultural sector and the state's total economic sector. The expenditure information provides data regarding the multiplier effect of money from the equine industry, effects of wage rates paid to both permanent and part-time employees, and secondary businesses supported by the industry. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 45 minutes per response.

Respondents: Horse owners, breeders, trainers, boarders.

Estimated Number of Respondents: 54,000.

Estimated Total Annual Burden on Respondents: 40,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 14th and Independence Ave., SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., October 25th, 1996.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 96–28948 Filed 11–12–96; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 961104308–6308–01]

RIN 0607–XX22

1996 Company Organization Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In conformity with Title 13, United States Code, Sections 182, 224, and 225, I have determined that a 1996 Company Organization Survey is needed to update the multi-establishment companies in the Standard Statistical Establishment List. The survey, which has been conducted for many years, is designed to collect information on the number of employees, payrolls, geographic location, current status, and kind of business for the establishments of multiestablishment companies. These data will have significant application to the needs of the public and to governmental agencies and are not publicly available from nongovernmental or governmental sources.

FOR FURTHER INFORMATION CONTACT: Edward D. Walker, Assistant Division Chief for Business Register, Economic Planning and Coordination Division, on (301) 457–2617.

SUPPLEMENTARY INFORMATION: The data collected in this survey will be within the general scope, type, and character of those that are covered in the economic censuses.

The Office of Management and Budget (OMB) approved the proposed survey on October 18, 1996 under OMB Control

No. 0607–0444 in accordance with the Paperwork Reduction Act, Public Law 104–13. Report forms will be furnished to organizations included in the survey, and additional copies of the forms are available on request to the Director, Bureau of the Census, Washington, DC 20233–0101.

I have, therefore, directed that the 1996 Company Organization Survey be conducted for the purpose of collecting these data.

Dated: November 5, 1996.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 96–29013 Filed 11–12–96; 8:45 am]

BILLING CODE 3510–07–P

[Docket No. 961031306–6306–01]

RIN 0607–XX21

Survey of Plant Capacity

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of consideration.

SUMMARY: Notice is hereby given that the Bureau of the Census is considering a proposal to conduct the Survey of Plant Capacity for the years 1995 and 1996 and annually for subsequent years under the authority of Title 13, United States Code, Sections 182, 224, and 225. On the basis of information and recommendations received by the Bureau of the Census and other agencies, the data have significant application to the needs of the public and industry.

DATES: Any suggestions or recommendations concerning the proposed survey should be submitted in writing by December 13, 1996 in order to receive consideration.

ADDRESSES: Director, Bureau of the Census, Washington, D.C. 20233.

FOR FURTHER INFORMATION CONTACT: Elinor Champion, Chief, Special Studies Branch, Manufacturing and Construction Division (301) 457–4683.

SUPPLEMENTARY INFORMATION: The plant capacity survey gathers data from a sample of manufacturing plants in the United States. The survey forms will collect data on the value of production during the fourth quarter of the year and the value of production that could have been attained if operating at full production capability. The survey will also collect estimates of production that could have been achieved under a national emergency situation. These data are used to calculate rates of utilization for each 4-digit standard industrial classification code in the manufacturing sector. The series is the only comprehensive source of capacity utilization rates covering all manufacturing industries on a consistent basis. Data are used in monitoring inflationary pressure and capital flows, understanding productivity determinants, determining industry's ability to meet increasing demand for products in an emergency, and analyzing and forecasting economic and industrial trends. The primary Government users of the survey results will be the Federal Reserve Board, Department of Defense, Federal Emergency Management Agency, and the International Trade Administration among others. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses.

This survey has been submitted to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act, Public Law 104–13. We will provide copies of the proposed form upon written request to the Director, Bureau of the Census, Washington, D.C. 20233.

Dated: November 6, 1996.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 96–29012 Filed 11–12–96; 8:45 am]

BILLING CODE 3510–07–P

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held December 4, 1996, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Open Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion on disclosures to Iranian nationals under the Iranian Transaction Rules of the Office of Foreign Assets Control (Treasury).
4. Update on implementation of The Wassenaar Arrangement.
5. Discussion on policy developments regarding encryption.
6. Update on review of the Enhanced Proliferation Control Initiative (EPCI).
7. Update on the status of the Export Administration Act.

Closed Session

8. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export 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 the 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: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA, Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 22, 1994, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions 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 6020, U.S. Department of Commerce, Washington, D.C. For further information, call Lee Ann Carpenter at (202) 482–2583.

Dated: November 6, 1996.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 96–29008 Filed 11–12–96; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

[I.D. 102996C]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued to Parker & Parsley Petroleum USA, Inc., 555 N. Carancahua, Corpus Christi, TX 78478 on October 17, 1996; Amoco Production Company, P.O. Box 50879, New Orleans, LA 70150 on October 24, 1996; and Oryx Energy Company, P.O. Box 2880, Dallas, Texas 75221–2880 on November 6, 1996.

ADDRESSES: The application and letter are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Charles Oravetz, Southeast Region (813) 570–5312.

SUPPLEMENTARY INFORMATION:

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139) and remain in effect until November 13, 2000.

Summary of Request

NMFS received requests for letters of authorization on October 15, 1996, from Parker & Parsley Petroleum USA, and on October 23, 1996, from Amoco Production Company and the Oryx Energy Company. These letters requested a take by harassment of a small number of bottlenose and spotted dolphins incidental to the described activity. Issuance of these letters of authorization are based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: November 6, 1996.

Patricia Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–28952 Filed 11–12–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 110596E]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Demersal Species Committee, together with its Summer Flounder Advisors and the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board will hold a public meeting.

DATES: The meeting will be held on November 25, 1996, beginning at 10:00 a.m.

ADDRESSES: This meeting will be held at the Days Inn, 4101 Island Avenue, Philadelphia, PA 19153; telephone: 215–492–0400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss alternatives for summer flounder management to be included in Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 6, 1996.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–29049 Filed 11–12–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 110596D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council will hold a public meeting.

DATES: The meeting will be held on November 25, 1996, beginning at 11:00 a.m. and will continue until business for the day is completed. The meeting will reconvene on November 26, 1996, at 8:00 a.m. and will adjourn when business for the day is concluded.

ADDRESSES: The meetings will be held at the Council office.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to develop options for long term management of the limited entry fixed gear sablefish fishery.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Heather M. Munro at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: November 6, 1996.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–29050 Filed 11–12–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in Guatemala

November 7, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 7, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Category 448 is being increased for special carryforward, based on exchange of letters dated October 24, 1996 and November 4, 1996 between the Governments of the United States and Guatemala.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62398, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 7, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996.

Effective on November 7, 1996, you are directed to increase the limit for Category 448 to 49,642 dozen [1], as provided for by the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing and based on exchange of letters dated October 24, 1996 and November 4, 1996 between the Governments of the United States and Guatemala.

The guaranteed access level for Category 448 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–29209 Filed 11–8–96; 1:53 pm]

BILLING CODE 3510–DR–F

Announcing Establishment and Adjustment of Import Limits and Amendment of Visa Requirements for Certain Cotton Textile Products Produced or Manufactured in Nepal

November 7, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs announcing the establishment and adjustment of limits and amendment of visa requirements.

EFFECTIVE DATE: November 13, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated November 6, 1996, the Governments of the United States and Nepal agreed to establish a limit for cotton shoptowels in Category 369–S for four consecutive one-year periods beginning on January 1, 1997 and extending through December 31, 2000. Also, the two governments agreed to increase the 1996 limit for Category 340 for special carryforward.

Effective on January 1, 1997, textile products in Category 369 which are produced or manufactured in Nepal and exported from Nepal on and after January 1, 1997 shall require a 369–S or 369–O visa. There will be a grace period from January 1, 1997 through January 31, 1997 during which goods exported from Nepal in Category 369 may be accompanied by a 369, 369–S or 369–O visa. Textile products exported in Category 369 on and after February 1, 1997 must be accompanied by an appropriate part-category visa.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the visa requirements to require a 369–S or 369–O part category visa and to increase the current limit for Category 340. As a result of the increase to Category 340, the limit, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 52 FR 11724, published on April 3, 1987; and 60 FR 62410, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the November 6, 1996 MOU, but are designed to assist only in

[1] The limit has not been adjusted to account for any imports exported after December 31, 1995.

the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 7, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman of CITA. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on November 13, 1996, you are directed, pursuant to a Memorandum of Understanding dated October 24, 1996 between the Governments of the United States and Nepal, to increase the current limit for Category 340 to 438,408 dozen [1].

Effective on January 1, 1997, textile products produced or manufactured in Nepal and exported from Nepal on and after January 1, 1997, in Category 369 shall require a 369–S [2] or 369–O [3] visa. There will be a grace period from January 1, 1997 through January 31, 1997 during which goods exported from Nepal in Category 369 may be accompanied by a 369, 369–S or 369–O visa. Textile products exported in Category 369 on and after February 1, 1997 must be accompanied by an appropriate part-category visa.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–29208 Filed 11–8–96; 1:53 pm]

BILLING CODE 3510–DR–F

[1] The limit for Category 340 has not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

DEPARTMENT OF DEFENSE

Department of the Air Force

O'Hare ARS

On October 30, 1996, the Air Force entered into an Agreement (''Agreement'') with the City of Chicago (''City'') to implement portions of the Final Report to the President of the 1995 Defense Base Closure and Realignment Commission (''Report''), issued in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (''Base Closure Act''), concerning the closure of the O'Hare Air Reserve (ARS) in Chicago, Illinois. As required by the Base Closure Act and the Report, and pursuant to the Agreement, the Air Force will close the O'Hare ARS, deactivate the Air Reserve Unit at the O'Hare ARS, and relocate Illinois Air National Guard units to other locations in the state. The Air Force has completed all the environmental analyses and reviews required under the National Environmental Policy Act and the Clean Air Act for the implementation of the O'Hare ARS portion of the Report. The Air Force will convey the O'Hare ARS property in its entirety to the City of Chicago, unless the City fails to satisfy the conditions specified in the Agreement. Execution of the Agreement constitutes the Air Force's final action with respect to arranging for the closure and disposal of the O'Hare ARS.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–29017 Filed 11–12–96; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Armed Forces Epidemiological Board (AFEB)

AGENCY: Office of The Surgeon General.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, the Federal Advisory Committee Act, this announces the forthcoming AFEB Meeting. The meeting will be held from 0800–1600, Thursday and Friday, December 12–13, 1996. The purpose of the meeting is to complete pending Board issues, introduce new questions, and to conduct an executive planning session. The meeting location will be at the Walter Reed Army Institute of Research, Washington, D.C., Building 40, Room 3092. The meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Col. Vicky Fogelman, AFEB Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 693, Falls Church, Virginia 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–28991 Filed 11–12–96; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Corps of Engineers

Available Surplus Real Property at Fort Dix, Burlington County, New Jersey

AGENCY: U.S. Army Corps of Engineers, New York District.

ACTION: Notice.

SUMMARY: This Notice identifies the surplus real property located at Fort Dix, New Jersey. For Dix is located approximately eight (8) miles from the New Jersey Turnpike (I–95) Exit 7.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to Mr. Tony Mazzella, Director, Division Property Management, State of New Jersey, CN 229, Trenton, New Jersey 08625–0229.

FOR FURTHER INFORMATION CONTACT: Additional information regarding particular properties identified in this Notice (i.e., acreage, floor plans, existing sanitary facilities, exact street address), contact Mr. Randy Williams, Army Corps of Engineers, 26 Federal Plaza, Room 2007, New York, NY 10278–0090 (telephone 212–264–6122, fax 212–264–0230); or Ms. Jean Johnson, Department of the Army, Regional Directorate of Public Works, ATTN: AFZT–EHP, Bldg. 5318 Delaware Avenue, Fort Dix, New Jersey 08640 (telephone 609–562–3253, fax 609–562–6350).

The Surplus real property at Fort Dix totals 15.32 acres of land in fee, improved with two (2) barracks buildings, one (1) administrative-supply building, one (1) general instruction building and one (1) confinement facility (State Prison). The aforementioned property and buildings are currently occupied by the State of New Jersey.

Jay B. Hecht,

Chief, Real Estate Division.

[FR Doc. 96–28992 Filed 11–12–96; 8:45 am]

BILLING CODE 3710–06–M

Department of the Army

Corps of Engineers

Intent to Prepare a Programmatic Environmental Impact Statement (PEIS) for the Upper Trinity River Feasibility Study, in Dallas, Denton, and Tarrant Counties, Texas

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: The Fort Worth District is preparing a PEIS for the proposed Upper Trinity River Feasibility Study, in Dallas, Denton, and Tarrant Counties, Texas. The tentatively selected plans consist of structural and non-structural measures at sites in the Upper Trinity River Basin study area which include: detention structures, channel modifications, levee enhancements, floodway sumps, channel and levee combinations, and other allied purposes of water quality improvement, environmental enhancement/restoration opportunities, and recreation development.

FOR FURTHER INFORMATION CONTACT: Mr. Gene T. Rice, Jr., CESWF–PL–M, U.S. Army Engineer District, Fort Worth, P.O. Box 17300 Fort Worth, Texas 76102–0300, phone (817) 978–2187.

SUPPLEMENTARY INFORMATION: This action is being conducted in response to the authority contained in the following United States Senate Committee on Environment and Public Works Resolution dated April 22, 1988, as quoted below:

Resolved by the Committee on Environment and Public Works of the United States Senate, that the Board of Engineers for Rivers and Harbors is hereby requested to requested to review the report of the Chief of Engineers on the Trinity River and Tributaries, Texas, House Document No. 276, Eighty-Ninth Congress, and other pertinent reports, with a view to determining the advisability of modifying the proposal for further studies contained therein, with particular reference to providing improvements in the interest of flood protection, environmental enhancement, water quality, recreation, and other allied purposes in the Upper Trinity River Basin with specific attention on the Dallas-Fort Worth Metroplex.

Numerous water resource development projects are being proposed in the Upper Trinity River Basin in Dallas, Denton, and Tarrant Counties, Texas. Projects in the study area tentatively include: non-structural flood damage reduction river channel modifications, environmental restoration, and recreation facility development along Johnson Creek, Arlington, Texas; environmental restoration within River Legacy Parks in Arlington, Texas; environmental restoration and recreation facility development within Coppell, Texas; environmental restoration and recreation facility development in Denton County, Texas, channel and/or levee modifications, environmental restoration (including a Chain-of-Lakes), and recreation development within the existing Dallas Floodway project limits in Dallas, Texas; levee alignments and recreation facility development in the Stemmons North Industrial Corridor of Dallas, Texas; modification to existing urban sumps (14W/15W) in Fort Worth, Texas; and river channel modification, and levee construction and modification at Riverside Drive in Fort Worth, Texas.

1. *Proposed Action:* The plan to be addressed in the PEIS consists of several projects which implement structural and non-structural measures in the Upper Trinity River Basin, specifically the Texas counties of Dallas, Denton, and Tarrant. The structural and non-structural measures include: detention structures, channel modifications, levee enhancements, floodway sumps, and a combination of channel modifications and floodway levees. These measures will provide flood damage reduction, water quality improvement, environmental enhancement/restoration opportunities, and recreation development.

2 *Alternatives:* Alternatives to the projects which will be considered include numerous structural and non-structural measures, in addition to the ''No Action'' alternative.

3. The Corps' scoping process and public involvement for the PEIS under consideration are described as follows:

a. The public involvement program for this study will consist of at least one public meeting to be scheduled at a later date. The public information meeting would be scheduled at the conclusion of the study to present study results to local interests. Additional public workshops would be scheduled as necessary.

b. Some of the significant issues that will be analyzed in depth include: (1) Impacts of flooding and construction on biological resources (bottomland hardwoods, wetlands, etc.), water quality, and socio-economic factors; (2) Recreational opportunities; and (3) Mitigation and environmental restoration opportunities.

c. No other Federal agencies have been invited to participate in the development of the PEIS at this time.

d. The U.S. Fish and Wildlife Service will furnish information on endangered and threatened species in accordance with the Endangered Species Act. The State Historic Preservation Officer and the Advisory Council on Historic Preservation will be consulted for information in accordance with Section 106 of the Historic Preservation Act.

4. Scoping meetings have been tentatively scheduled for January 7, 1997, and January 9, 1997. Information regarding the scoping meeting for the PEIS will be distributed through public notice and media releases.

5. The Draft PEIS has been scheduled for public review in the fall of 1997.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–28993 Filed 11–12–96; 8:45 am]

BILLING CODE 3710–20–M

Department of the Navy

Notice of Planning and Steering Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet November 20, 1996 from 9:00 a.m. to 4:00 p.m., at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive order.

Accordingly, the Under Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

FOR FURTHER INFORMATION CONTACT: LCDR J. D. Skufca, 2000 Navy Pentagon, Room 4D534, Washington, DC 20350–2000, telephone number (703) 693–7248.

Dated: October 30, 1996.

Donald E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–28958 Filed 11–12–96; 8:45 am]

BILLING CODE 3810–FF-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 13, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 6, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Guidance on the Goals 2000 Amendments (Draft).

Frequency: One-time submission.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 30; Burden Hours: 3,000.

Abstract: The Omnibus Consolidated Rescissions and Appropriations Act of 1996 amended portions of Titles II and III of the Goals 2000: Educate America Act. Included within those amendments is a provision which offers states an alternative to submitting their Goals 2000 plans in order to receive funding.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Guidance on the Goals 2000 Amendments (Draft).

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 56; Burden Hours: 5,600.

Abstract: The Omnibus Consolidated Rescissions and Appropriations Act of 1996 amended portions of Titles II and II of the Goals 2000: Educate American Act. The guidance document which was created to clarify these amendments addresses the reporting requirements of states participating in Goals 2000.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Application for Grants Under the Library Services and Construction Act, Titles I, II and III.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping: Responses: 55; Burden Hours: 2,475.

Abstract: The Office of Library Programs needs the information to know how the respondents plan to use the funds. The information is used to determine compliance with matching, four separate maintenance-of-effort requirements, and use of funds for allowable activities. The respondents are State Library Administrative Agencies.

[FR Doc. 96–28950 Filed 11–12–96; 8:45 am]

BILLING CODE 4000–01–P

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Amendment to notice of partially closed meeting of the National Assessment Governing Board.

SUMMARY: This amends the notice of a partially closed meeting published on October 23, 1996, Vol. 61, No. 206, pages 54990–54991. The Design and Methodology Committee will meet in partially closed session on November 14, 1996. The meeting will be closed from 4:30—5:00 p.m. to permit the Committee to review the draft grants announcement for an upcoming procurement that is being sponsored by the National Center for Education Statistics. The Committee will review the contents of the grants announcement for the purpose of giving approval to the specifications contained in the document. Public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C. The public is given less than fifteen days notice of the closed portion of this meeting because the document to be considered was not available for review before now.

Dated: November 7, 1996.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 96–28984 Filed 11–12–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, November 20, 1996: 6:50 pm-9:30 pm (Mountain Daylight Time).

ADDRESSES: Thomas Bell Community Center, 3001 University Boulevard, SE, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:50 p.m. Public Comment Period
7:00 p.m. Approval of Agenda
7:05 p.m. Approval of 10/16/96 Minutes
7:10 p.m. Chair's Report—DOE/SNL 10-Year Plan Report
7:15 p.m. Board Committees (deferred from October 16, 1996 meeting)
7:25 p.m. Inhalation Toxicology Research Institute—Privatization and DOE Regulations vs. Privatization Regulations
7:40 p.m. Corrective Action Management Unit—Review of Design and Permit (DOE, EPA, New Mexico Environment Department)
8:00 p.m. Break
8:10 p.m. Future Use Management Areas 3,4,5, and 6
8:40 p.m. Board Budget Report
8:55 p.m. New/Other Business
9:05 p.m. Agenda Items for Next Meeting
9:10 p.m. Public Comment
9:20 p.m. Announcement of Next Meeting/ Adjourn

A final agenda will be available at the meeting Wednesday, November 20, 1996.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505)845–4094.

Issued at Washington, DC on November 7, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–29000 Filed 11–12–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Monday and Tuesday, November 18 & 19, 1996: November 18—6:00 p.m.–9:30 p.m.; November 19—8:30 a.m.–4:00 p.m.

ADDRESSES: The November 18, 1996 meeting will be held at: The First Baptist Church, 1803 Allen Street, Barnwell, South Carolina. The November 19, 1996 meeting will be held at: Barnwell County State Park, Route 2, Highway 3, Blackville, South Carolina.

FOR FURTHER INFORMATION CONTACT: Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–8074.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

Monday, November 18, 1996

6:00 p.m. Joint meeting of issues-based subcommittee chairs
6:30 p.m. Public comment session (5-minute rule)
7:00 p.m. Subcommittee meetings
9:00 p.m. Adjourn

Tuesday, November 19, 1996

8:30 a.m. Approval of minutes, agency updates (—15 minutes); Public comment session (5-minute rule) (—30 minutes); Proposed spent nuclear fuel forum motion (—30 minutes); Environmental restoration & waste management subcommittee report (—1 hour).
12:00 p.m. Lunch
1:00 p.m. Environmental restoration & waste management subcommittee report continued (—1 hour); Nuclear materials management subcommittee (—30 minutes); Administrative subcommitteee report (—30 minutes); —Includes bylaws amendments proposal to be voted on in January 1997; Budget subcommittee report (—15 minutes).
4:00 p.m. Adjourn

If necessary, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, November 18, 1996.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803) 725–8074.

Issued at Washington, DC, on October 31, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–29001 Filed 11–12–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Pantex Plant, Amarillo, Texas

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas.

DATES AND TIMES: Tuesday, November 26, 1996: 1:30 p.m.–5:30 p.m.

ADDRESSES: Boatman's First National Bank, Centennial Room, 8th and Fillmore, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

1:30 p.m. Welcome—Agenda Review—Approval of Minutes
1:35 p.m. Co-Chairs' Comments
1:45 p.m. Subcommittee Reports—Policy & Personnel/Community Outreach—Program and Training
2:00 p.m. Task Force Reports—Transition—Air Monitoring
2:10 p.m. Updates—Occurrence Reports
2:25 p.m. Break
2:40 p.m. Presentation, Agency for Toxic Substances and Disease Registry Dr. Paul Charp and Rick Collins
3:40 p.m. Discussion, Preparation/Disposal Options for Plutonium
5:30 p.m. Adjourn

Public Participation: The meeting is open to the public, and public comment will be invited throughout the meeting. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10:00 p.m., Monday through Thursday; 7:45 a.m. to 5:00 p.m. on Friday; 8:30 a.m. to 12:00 noon on Saturday; and 2:00 p.m. to 6:00 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 a.m. to 7:00 p.m. on Monday; 9:00 a.m. to 5:00 p.m., Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on November 6, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–29002 Filed 11–12–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, December 5, 1996—6:00 p.m.–9:30 p.m.

ADDRESSES: Roane County Courthouse, 200 East Race Street, Commissioners Conference Room, Kingston, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

December Meeting Topics

This meeting will include Board members providing trip reports from visits to the Waste Isolation Pilot Project, Envirocare of Utah and the Nevada Test Site, and a trip report regarding the Susceptibility and Risk Symposium.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 a.m. and 5:00 p.m. on Monday, Wednesday, and Friday; 8:30 a.m. and 7:00 p.m. on Tuesday and Thursday; and 9:00 a.m. and 1:00 p.m. on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC, on November 5, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–29003 Filed 11–12–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Idaho National Engineering Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering Laboratory (INEL).

DATES: Tuesday, November 19, 1996 from 8:00 a.m. to 6:00 p.m.; Mountain Savings Time (MST); Wednesday, November 20, 1996 from 1:00 p.m. to 5:00 p.m. MST. There will be a public comment availability session Tuesday, November 19, 1996 from 5:00 p.m. to 6:00 p.m. MST.

ADDRESSES: Holiday Inn Westbank, 475 River Parkway, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Idaho National Engineering Laboratory Information 1–800–708–2680 or Marsha Hardy, Jason Associates Corporation Staff Support 1–208–522–1662.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The EM SSAB, INEL will meet to discuss the Waste Isolation Pilot Project Supplemental Environmental Impact Statement and the Strategic Laboratory Mission Plan. The Board will be updated on the Advanced Mixed Waste Treatment Facility, Test Area North Groundwater, and the INEL Ten Year Plan. Presentations will be given to the Board on High-Level Waste at

INEL, the Idaho Chemical Processing Plant Remedial Investigation Feasibility Study, and the Radioactive Waste Management Complex Remedial Investigation Feasibility Study. For a most current copy of the agenda, contact Woody Russell, DOE-Idaho, (208) 526–0561, or Marsha Hardy, Jason Associates, (208) 522–1662. The final agenda will be available at the meeting.

Public Comment Availability: The two-day meeting is open to the public, with a Public Comment Availability session scheduled for Tuesday, November 19, 1996 from 5:00 p.m. to 6:00 p.m. MST. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with its current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Idaho National Engineering Laboratory Information line or Marsha Hardy, Jason Associates, at the addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays.

Issued at Washington, DC, on November 5, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–29004 Filed 11–12–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. CW–004]

Energy Conservation Program for Consumer Products: Granting of an Extension for an Interim Waiver to General Electric Appliances From the DOE Clothes Washer Test Procedure (Case No. CW–004)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice grants an extension of the Interim Waiver previously granted to General Electric Appliances (GEA). Interim Waiver CW–004 was granted to GEA on April 4, 1996, and published in the Federal Register on April 24, 1996, for its clothes washer with non-traditional wash temperature selections and automatic water fill capability. The Department has not yet issued a Decision and Order and is extending the Interim Waiver by 180 days.

FOR FURTHER INFORMATION CONTACT:

P. Marc LaFrance, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8423.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended, (EPCA) 42 U.S.C. 6291 et seq., which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including clothes washers. The intent of the test procedures is to provide a comparable measure of energy consumption through which manufacturers can establish compliance and that will assist consumers in making purchasing decisions. These test procedures appear at Title 10 CFR Part 430, Subpart B.

DOE amended the test procedure rules to provide for a waiver process by adding § 430.27 to 10 CFR Part 430. (45 FR 64108, September 26, 1980.) Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver from such prescribed test procedures. (51 FR 42823, November 26, 1986).

The waiver process allows the Assistant Secretary to temporarily waive the test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On October 9, 1995, GEA filed a Petition for Waiver and an Application for Interim Waiver regarding its clothes washer model WZSE5310. The design features of this model that differ from those covered by the existing clothes washer test procedure are: five wash temperatures (a cold, three warms and a hot) in a factory preset primary mode, 34 wash temperature selections in a secondary programming mode which may be substituted for the factory preset temperatures, and a consumer activated choice of a manual or automatic water fill capability. Current test procedures do not contain provisions for testing clothes washers with these features. On April 4, 1996, in accordance with 10 CFR Part 430, Section 430.27(g), the Department granted GEA an Interim Waiver on the grounds that it is ''likely that the Petition for Waiver will be granted'' and for ''public policy reasons.'' On April 24, 1996, both the Interim Waiver and Petition for Waiver were published in the Federal Register. 61 FR 18125. The Interim Waiver was granted for 180 days.

Currently, the Department is considering adoption of revisions to the clothes washer test procedure found at 10 CFR Part 430, Subpart B, Appendix J, which may resolve some or all of the issues addressed in the Interim Waiver granted to GEA. Therefore, a decision regarding the Petition for Waiver for the GEA clothes washer is being delayed. Accordingly, in accordance with 10 CFR Part 430, Section 430.27 (h), the Department is granting GEA an extension to the Interim Waiver.

The Interim Waiver is based upon the presumed validity of all statements and assertions submitted by GEA. The Interim Waiver may be revoked or modified at any time upon a

determination that the factual basis underlying the Application is incorrect.

The Interim Waiver shall remain in effect until March 29, 1997, or until the Department acts on the Petition for Waiver, whichever is sooner.

Issued in Washington, DC, November 6, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–29006 Filed 11–12–96; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request .

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under section 3507(a)(1)(D)of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed on or before December 13, 1996. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION: Requests for additional information should be directed to Herbert Miller, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–411, ''Regional Bulk Power Supply Program''.

2. Energy Information Administration, OMB No. 1905–0195, Reinstatement, Voluntary; (Based upon comments received on our Federal Register notice, 61 FR 14766, dated April 3, 1996, EIA will be reinstating Item 1 of the form, Projected Energy and Peak Demand for the First Ten Years and Actual Data for the Previous Year. In addition, EIA is undertaking a broader review of the data collection needs associated with assuring adequate public access to information necessary for assessing the adequacy and reliability of the nation's electrical system.).

3. EIA–411 provides a single, comprehensive source of information on current and planned electric power for the U.S. The data are used to evaluate the current and projected reliability of bulk electric power supply, and the effects of unforseen changes in powerplant construction schedules. Ten Regional Electric Reliability Councils submit data for electric utilities.

4. Regional Electric Reliability Councils, electric utilities.

5. 16,657 (20.89 hrs. × 1 response per year × 797 respondents).

Statutory Authority: 44 U.S.C. 3506(a)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, November 4, 1996.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 96–29005 Filed 11–12–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project Nos. 11499 & 11500—Tennessee]

Armstrong Energy Company; Notice of Inter-Agency Meeting

November 6, 1996.

The interdisciplinary team consisting of staff of the Federal Energy Regulatory Commission (FERC), the Tennessee Valley Authority (TVA), and the U.S. Army Corps of Engineers has scheduled a meeting to discuss preliminary scoping issues submitted in public comments for the Environmental Impact Statement for Armstrong Energy Company's proposed Reynolds Creek Pumped Storage Project No. 11500 and Laurel Branch Pumped Storage Project No. 11499.

The meeting will be held in Knoxville, Tennessee, from 10 a.m. to 5 p.m. November 22, 1996, and will be located in the Knoxville Towers, Room WT 9D.

Any questions concerning this meeting may be directed to Ed Crouse (FERC) at (202) 219–2794, or Linda Oxendine (TVA) at (432) 632–3440.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28965 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–66–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1996.

Take notice that on November 1, 1996, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain pro forma tariff sheets to be effective May 1, 1997.

Canyon states that the purpose of the filing is to reflect changes to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Commission's Regulations by Order No. 587, issued July 17, 1996 in Docket No. RM96–1–000.

Canon states that copies of the filing are being mailed to its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the

Commission's Rules and Regulations. All such motions or protests must be filed on or before November 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28975 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–63–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1996.

Take notice that on November 1, 1996, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the pro forma tariff sheets listed in the attached Appendix A to be effective May 1, 1997.

CIG states that the purpose of this compliance filing is to conform CIG's tariff to the requirements of Order No. 587.

CIG further states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Regulations. All such motions or protests must be filed on or before November 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

Appendix A—Colorado Interstate Gas Company Pro Forma First Revised Volume No. 1 Filed Tariff Sheets

First Revised Sheet No. 5
Fifth Revised Sheet No. 7
First Revised Sheet No. 7A
Fifth Revised Sheet No. 8
Seventh Revised Sheet No. 9
Eighth Revised Sheet No. 10
Twentieth Revised Sheet No. 11
Fourth Revised Sheet No. 13
First Revised Sheet No. 17A
Second Revised Sheet No. 133
First Revised Sheet No. 134
First Revised Sheet No. 135
First Revised Sheet No. 136
First Revised Sheet No. 137
First Revised Sheet No. 138
First Revised Sheet No. 139
Third Revised Sheet No. 224
Fifth Revised Sheet No. 228
Fifth Revised Sheet No. 229
Fifth Revised Sheet No. 230
Second Revised Sheet No. 230A
Original Sheet No. 230B
Fourth Revised Sheet No. 231
Fourth Revised Sheet No. 232
Fourth Revised Sheet No. 233
Third Revised Sheet No. 234
Original Sheet No. 234A
Original Sheet No. 234B
Third Revised Sheet No. 236
Second Revised Sheet No. 237
Second Revised Sheet No. 238
Second Revised Sheet No. 239
Third Revised Sheet No. 240
Third Revised Sheet No. 241
Third Revised Sheet No. 242
Third Revised Sheet No. 243
Third Revised Sheet No. 244
Third Revised Sheet No. 245
Third Revised Sheet No. 246
Second Revised Sheet No. 247
First Revised Sheet No. 248
First Revised Sheet No. 249
Second Revised Sheet No. 250
Second Revised Sheet No. 251
Second Revised Sheet No. 252
Second Revised Sheet No. 253
Third Revised Sheet No. 254
Fourth Revised Sheet No. 255
Fourth Revised Sheet No. 256
Third Revised Sheet No. 257
Second Revised Sheet No. 258
Second Revised Sheet No. 259
Third Revised Sheet No. 272
Third Revised Sheet No. 274
Second Revised Sheet No. 278
Third Revised Sheet No. 279
Original Sheet No. 279A
Second Revised Sheet No. 280
First Revised Sheet No. 281
Original Sheet No. 281A
Original Sheet No. 281B
Fourth Revised Sheet No. 282
Fourth Revised Sheet No. 283
First Revised Sheet No. 283A
Fifth Revised Sheet No. 284
First Revised Sheet No. 284A
First Revised Sheet No. 284B
First Revised Sheet No. 284C
Second Revised Sheet No. 286
Second Revised Sheet No. 287
Second Revised Sheet No. 289
Third Revised Sheet No. 293
First Revised Sheet No. 297
First Revised Sheet No. 298
Second Revised Sheet No. 299
First Revised Sheet No. 300
Third Revised Sheet No. 302
Second Revised Sheet No. 303
First Revised Sheet No. 304
Second Revised Sheet No. 305
Second Revised Sheet No. 306
First Revised Sheet No. 307
Second Revised Sheet No. 326
Second Revised Sheet No. 327
First Revised Sheet No. 330
First Revised Sheet No. 331
First Revised Sheet No. 332

[FR Doc. 96–28972 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–77–000]

Copano Field Services/Copano Bay, L.P.; Notice of Petition for Declaratory Order

November 6, 1996.

Take notice that on October 23, 1996, Copano Field Services/Copano Bay, L.P. (Copano) 1300 Post Oak Boulevard, Suite 1750, Houston, Texas 77056, filed a petition in Docket No. CP97–77–000, requesting that when Copano acquires the Blind Pass Facilities, which are certain pipeline and measuring facilities with appurtenances located in San Patricio, Aransas, and Nueces Counties, Texas, from Florida Gas Transmission Company (FGT), that the Commission declare that the facilities are gathering facilities exempt from the provisions of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Copano requests that its petition be consolidated with FGT's application filed in Docket No. CP97–52–000 which involves the abandonment by sale of the Blind Pass Facilities to Copano.

Copano states it currently renders non-jurisdictional gathering services through its Copano Bay System located adjacent to the Blind Pass Facilities to be acquired from FGT. Copano relates that the Copano Bay System gathers wellhead production which undergoes separation and compression at Copano's K.G. Pearce Plant, after which the condensed and compressed gas is delivered to a processing plant owned by Tejas Gas Corporation. Copano says it then sells the processed gas near the tailgate of the Tejas plant. Copano states that the Blind Pass Facilities will be integrated into the Copano Bay System. Copano says it anticipates attaching additional supplies to the Blind Pass Facilities, thereby increasing the throughput through FGT's Station No. 3.

Copano relates that it will, effective the date of transfer, assume all future operational and commercial responsibilities and maintenance obligations for the Blind Pass Facilities. Copano states that FGT is not currently providing any firm transportation services from the Blind Pass Facilities

pursuant to Part 284 of the Commission's regulations or the transportation rate schedules in FGT's FERC Gas Tariff, Original Volume No. 3. Copano says that FGT has one Western Division Interruptible Transportation Agreement with a receipt point on the Blind Pass Lateral for a shipper who is purchasing gas from the one active well on the Blind Pass Facilities. Copano expects to negotiate an acceptable gathering agreement with that shipper in the near future.

Copano believes that the Blind Pass Facilities meet the criteria of ''gathering facilities'' under Section 1(b) of the NGA as interpreted by the Commission under the ''modified primary function'' test, as set forth in *Amerada Hess Corp., et al.,* as amended. 52 FERC ¶61,268 (1990).

Copano asserts that the Blind Pass Facilities are well within the range of onshore systems the Commission has determined to be gathering because the facilities consist of relatively short, small-diameter pipe configured in a web-like arrangement; there is a typical backbone-type arrangement which collects gas from many wells for delivery to the FGT mainline at Station No. 3; there are no compressors or processing plants located on the Blind Pass Facilities; and the facilities operate based on wellhead pressures for delivery to FGT's Station No. 3.

Copano cities to the most recent twelve-month period ending May 1996, which shows the Blind Pass Facilities have been considerably underutilized recently. Copano says the facilities were designed to move approximately 10,000 Mcf per day, but during this twelve-month period, the average daily volume moved was less than 5% of the design capacity. Copano believes that its acquisition of the Blind Pass Facilities for use as non-jurisdictional gathering will bring increased use of the Blind Pass Facilities for the benefit of consumers served by means of the FGT transmission system.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 27, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28963 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–58–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

November 6, 1996.

Take notice that on November 1, 1996, East Tennessee Natural Gas Company (East Tennessee), filed the pro forma tariff sheets listed on the attached Appendix A in compliance with the Commission's directives in Order No. 587.

East Tennessee states that the pro forma tariff sheets reflect the changes to East Tennessee's tariff that result from the Gas Industry Standards Board's (GISB) consensus standards that were adopted by the Commission in its July 17, 1996 Order No. 587 in Docket No. RM96–1–000. East Tennessee further states that Order No. 587 contemplates that East Tennessee will implement the GISB consensus standards for May 1997 business, and that the pro forma tariff sheets therefore reflect an effective date of May 1, 1997. East Tennessee's filing includes a table listing each Commission-adopted GISB standard and its relationship to East Tennessee's tariff, including a brief description of the tariff changes that are submitted with East Tennessee's filing.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests must be filed on or before November 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

Appendix A—East Tennessee Natural Gas Company

First Revised Sheet No. 1
First Revised Sheet No. 9
Second Revised Sheet No. 10
First Revised Sheet No. 20
Second Revised Sheet No. 21
First Revised Sheet No. 30A
Second Revised Sheet No. 31
First Revised Sheet No. 33
Third Revised Sheet No. 51
Fourth Revised Sheet No. 52
Third Revised Sheet No. 52A
Second Revised Sheet No. 54
First Revised Sheet No. 60
Third Revised Sheet No. 61
Second Revised Sheet No. 63
First Revised Sheet No. 100
Second Revised Sheet No. 102
Third Revised Sheet No. 103
Third Revised Sheet No. 104
Third Revised Sheet No. 105
First Revised Sheet No. 109
Second Revised Sheet No. 111
First Revised Sheet No. 115
First Revised Sheet No. 123
First Revised Sheet No. 124
First Revised Sheet No. 127
First Revised Sheet No. 128
First Revised Sheet No. 129
Original Sheet No. 129A
First Revised Sheet No. 131
First Revised Sheet No. 132
First Revised Sheet No. 133
First Revised Sheet No. 134
First Revised Sheet No. 135
First Revised Sheet No. 136
First Revised Sheet No. 137
First Revised Sheet No. 138
Second Revised Sheet No. 139
Second Revised Sheet No. 140
First Revised Sheet No. 140A
First Revised Sheet No. 141
First Revised Sheet No. 142
Third Revised Sheet No. 143
First Revised Sheet No. 144
Second Revised Sheet No. 145
First Revised Sheet No. 147
First Revised Sheet No. 148
First Revised Sheet No. 149
First Revised Sheet No. 150
First Revised Sheet No. 151
First Revised Sheet No. 152
First Revised Sheet No. 153
Second Revised Sheet No. 154
Second Revised Sheet No. 155
First Revised Sheet No. 156
First Revised Sheet No. 165
First Revised Sheet No. 168
First Revised Sheet No. 169
First Revised Sheet No. 185
First Revised Sheet No. 188
First Revised Sheet No. 194
First Revised Sheet No. 196
First Revised Sheet No. 202
First Revised Sheet No. 203
First Revised Sheet No. 211
First Revised Sheet No. 221
First Revised Sheet No. 228
First Revised Sheet No. 229
First Revised Sheet No. 232

First Revised Sheet No. 236
First Revised Sheet No. 241
First Revised Sheet No. 244
First Revised Sheet No. 248
First Revised Sheet No. 251
First Revised Sheet No. 253
First Revised Sheet No. 255
First Revised Sheet No. 257
First Revised Sheet No. 259
First Revised Sheet No. 260
First Revised Sheet No. 261
First Revised Sheet No. 262
First Revised Sheet No. 263
First Revised Sheet No. 264
First Revised Sheet No. 265
Original Sheet No. 282

[FR Doc. 96–28967 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–59–000]

Midwestern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1996.

Take notice that on November 1, 1996, Midwestern Gas Transmission Company (Midwestern), filed the pro forma tariff sheets listed on the attached Appendix A in compliance with the Commission's directives in Order No. 587.

Midwestern states that the pro forma tariff sheets reflect the changes to Midwestern's tariff that results from the Gas Industry Standards Board's (GISB) consensus standards that were adopted by the Commission in its July 17, 1996 Order No. 587 in Docket No. RM96–1–000. Midwestern further states that Order No. 587 contemplates that Midwestern will implement the GISB consensus standards for May 1997 business, and that the pro forma tariff sheets therefore reflect an effective date of May 1, 1997.

Midwestern states that its filing includes a table listing each Commission-adopted GISB standard and its relationship to Midwestern's tariff, including a brief description of the tariff changes that are submitted with Midwestern's filing.

Midwestern states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 285.214 and 385.211 of the Commission's Regulations. All such motions or protests must be filed on or before November 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

Appendix A—Midwestern Gas Transmission Company

First Revised Sheet No. 1
Second Revised Sheet No. 14
Second Revised Sheet No. 20
First Revised Sheet No. 30
First Revised Sheet No. 31
Second Revised Sheet No. 32
First Revised Sheet No. 33
First Revised Sheet No. 36
First Revised Sheet No. 37
First Revised Sheet No. 39
First Revised Sheet No. 40
First Revised Sheet No. 53
First Revised Sheet No. 54
First Revised Sheet No. 55
First Revised Sheet No. 56
First Revised Sheet No. 60
First Revised Sheet No. 61
First Revised Sheet No. 62
First Revised Sheet No. 63
Second Revised Sheet No. 64
First Revised Sheet No. 66
First Revised Sheet No. 70
First Revised Sheet No. 71
First Revised Sheet No. 72
First Revised Sheet No. 73
First Revised Sheet No. 79
First Revised Sheet No. 80
First Revised Sheet No. 84
First Revised Sheet No. 86
First Revised Sheet No. 87
First Revised Sheet No. 88
First Revised Sheet No. 89
Third Revised Sheet No. 90
First Revised Sheet No. 91
First Revised Sheet No. 92
First Revised Sheet No. 93
First Revised Sheet No. 94
First Revised Sheet No. 95
First Revised Sheet No. 96
First Revised Sheet No. 97
First Revised Sheet No. 98
First Revised Sheet No. 99
Second Revised Sheet No. 100
First Revised Sheet No. 105
Second Revised Sheet No. 108
First Revised Sheet No. 125
First Revised Sheet No. 126
First Revised Sheet No. 135
First Revised Sheet No. 143
First Revised Sheet No. 144
First Revised Sheet No. 145
First Revised Sheet No. 151
First Revised Sheet No. 152
First Revised Sheet No. 158
First Revised Sheet No. 159
First Revised Sheet No. 171
First Revised Sheet No. 172
First Revised Sheet No. 175
First Revised Sheet No. 179
First Revised Sheet No. 188
First Revised Sheet No. 189
First Revised Sheet No. 190
First Revised Sheet No. 191
First Revised Sheet No. 192
First Revised Sheet No. 193
First Revised Sheet No. 194

[FR Doc. 96–28968 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–64–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1996.

Take notice that on November 1, 1996, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain pro forma tariff sheets to be effective May 1, 1997.

Natural states that the purpose of the filing is to reflect changes to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Commission's Regulations by Order No. 587, issued July 17, 1996 in Docket No. RM96–1–000.

Natural states that copies of the filing are being mailed to its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28973 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–61–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1996.

Take notice that on November 1, 1996, NorAm Gas Transmission

Company (NGT) tendered for filing as part of its FERC Gas Tariff, Pro Forma Fourth Revised Volume No. 1, the revised tariff sheets listed on Appendix A, to be effective May 1, 1997.

NGT states that the purpose of this filing is to comply with Order No. 587 issued July 17, 1996, in Docket No. RM96–1–000, as clarified, requiring interstate gas pipelines to implement and follow standardized procedures for certain business practices in accordance with the Standards promulgated by the Gas Industry Standards Board as incorporated by reference in the Commission's Regulations.

NGT states that copies of the filing were served on its customers and interested State Commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First 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). All such motions or protests should be filed on or before November 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

Third Revised Sheet No. 1
Fifth Revised Sheet No. 5
Fifth Revised Sheet No. 6
Second Revised Sheet No. 12
Seventh Revised Sheet No. 13
First Revised Sheet No. 15
Second Revised Sheet No. 126
Second Revised Sheet No. 127
Second Revised Sheet No. 137
Second Revised Sheet No. 162
Third Revised Sheet No. 163
Third Revised Sheet No. 164
First Revised Sheet No. 164A
Third Revised Sheet No. 165A
Second Revised Sheet No. 167
Third Revised Sheet No. 169
Second Revised Sheet No. 169A
Second Revised Sheet No. 172
First Revised Sheet No. 173
First Revised Sheet No. 175
Original Sheet No. 175A
First Revised Sheet No. 178
Second Revised Sheet No. 190
Original Sheet No. 190A
First Revised Sheet No. 191
Original Sheet No. 191A
Second Revised Sheet No. 192
Original Sheet No. 192A
First Revised Sheet No. 193
Second Revised Sheet No. 194
Original Sheet No. 194A
Second Revised Sheet No. 195
Original Sheet No. 195A
Second Revised Sheet No. 196
First Revised Sheet No. 196A
Second Revised Sheet No. 197
First Revised Sheet No. 201
Original Sheet No. 201A
Second Revised Sheet No. 202
Original Sheet No. 202A
Second Revised Sheet No. 203
Second Revised Sheet No. 204
Original Sheet No. 204A
Second Revised Sheet No. 205
Original Sheet No. 205A
Second Revised Sheet No. 206
First Revised Sheet No. 208
First Revised Sheet No. 209
First Revised Sheet No. 210
Second Revised Sheet No. 211
Second Revised Sheet No. 212
First Revised Sheet No. 216B
First Revised Sheet No. 216C
Second Revised Sheet No. 217
First Revised Sheet No. 220
First Revised Sheet No. 235
Original Sheet No. 235A
First Revised Sheet No. 236
Original Sheet No. 236A
First Revised Sheet No. 237
Original Sheet No. 237A
First Revised Sheet No. 273
Second Revised Sheet No. 276
Second Revised Sheet No. 277
First Revised Sheet No. 278
Original Sheet No. 278A
Second Revised Sheet No. 279
Original Sheet No. 279A
Original Sheet No. 279B
Original Sheet No. 279C
Second Revised Sheet No. 280
First Revised Sheet No. 281
Original Sheet No. 281A
First Revised Sheet No. 282
First Revised Sheet No. 283
Second Revised Sheet No. 286
Original Sheet No. 286A
First Revised Sheet No. 305
Original Sheet No. 305A
First Revised Sheet No. 306
Original Sheet No. 306A
First Revised Sheet No. 307
Fourth Revised Sheet No. 325
First Revised Sheet No. 326
Third Revised Sheet No. 329
Second Revised Sheet No. 330
First Revised Sheet No. 331
Third Revised Sheet No. 334A
Third Revised Sheet No. 334D
Third Revised Sheet No. 342
Third Revised Sheet No. 344
Third Revised Sheet No. 345
First Revised Sheet No. 347A
First Revised Sheet No. 348
Original Sheet No. 360
Original Sheet No. 361
Original Sheet No. 362
Original Sheet No. 363

[FR Doc. 96–28970 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–68–000]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1996.

Take notice that on November 1, 1996, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain pro forma tariff sheets to be effective May 1, 1997.

Stingray states that the purpose of the filing is to reflect changes to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Commission's Regulations by Order No. 587, issued July 17, 1996 in Docket No. RM96–1–000.

Stingray states that copies of the filing are being mailed to its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28974 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–60–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1996.

Take notice that on November 1, 1996, Tennessee Gas Pipeline Company (Tennessee), filed the pro forma tariff sheets listed on the attached Appendix A in compliance with the Commission's directives in Order No. 587.

Tennessee states that the pro forma tariff sheets reflect the changes to Tennessee's tariff that result from the Gas Industry Standards Board's (GISB) consensus standards that were adopted by the Commission in its July 17, 1996 Order No. 587 in Docket No. RM96–1–

000. Tennessee further states that Order No. 587 contemplates that Tennessee will implement the GISB consensus standards for May 1997 business, and that the pro forma tariff sheets therefore reflect an effective date of May 1, 1997. Tennessee's filing includes a table listing each Commission-adopted GISB standard and its relationship to Tennessee's tariff, including a brief description of the tariff changes that are submitted with Tennessee's filing.

Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests must be filed on or before November 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

Appendix A—Tennessee Gas Pipeline Company

Pro Forma Fifth Revised Volume No. 1

Fifth Revised Sheet No. 1
First Revised Sheet No. 95B
Third Revised Sheet No. 99
First Revised Sheet No. 100A
Second Revised Sheet No. 110
Second Revised Sheet No. 115
Second Revised Sheet No. 121
Fourth Revised Sheet No. 154
Third Revised Sheet No. 155C
First Revised Sheet No. 158
Fourth Revised Sheet No. 161
Fifth Revised Sheet No. 167
Fourth Revised Sheet No. 173
Fifth Revised Sheet No. 178
Fourth Revised Sheet No. 204
Fifth Revised Sheet No. 205A
Second Revised Sheet No. 205B
Fourth Revised Sheet No. 206
Second Revised Sheet No. 207A
Fifth Revised Sheet No. 209
Second Revised Sheet No. 209C
Second Revised Sheet No. 209H
First Revised Sheet No. 209I
Third Revised Sheet No. 211
Second Revised Sheet No. 211A
Fifth Revised Sheet No. 212
Third Revised Sheet No. 215
Third Revised Sheet No. 217
Second Revised Sheet No. 220
First Revised Sheet No. 222
Third Revised Sheet No. 227
First Revised Sheet No. 228
First Revised Sheet No. 229
Fourth Revised Sheet No. 301
First Revised Sheet No. 302
Third Revised Sheet No. 305
First Revised Sheet No. 309
First Revised Sheet No. 310
First Revised Sheet No. 311
Second Revised Sheet No. 312
Third Revised Sheet No. 313
Third Revised Sheet No. 314
Second Revised Sheet No. 314A
Second Revised Sheet No. 314B
Second Revised Sheet No. 314C
Third Revised Sheet No. 315
Fourth Revised Sheet No. 316
Sixth Revised Sheet No. 317
Fifth Revised Sheet No. 318
Fifth Revised Sheet No. 319
Second Revised Sheet No. 321
Second Revised Sheet No. 323
Third Revised Sheet No. 324
First Revised Sheet No. 325
First Revised Sheet No. 326
Second Revised Sheet No. 327
Third Revised Sheet No. 328
First Revised Sheet No. 329
First Revised Sheet No. 330
First Revised Sheet No. 331
Second Revised Sheet No. 332
Second Revised Sheet No. 333
Second Revised Sheet No. 334
First Revised Sheet No. 334A
Second Revised Sheet No. 335
Second Revised Sheet No. 336
Fourth Revised Sheet No. 337
First Revised Sheet No. 338
First Revised Sheet No. 340
First Revised Sheet No. 341
Second Revised Sheet No. 342
First Revised Sheet No. 342A
First Revised Sheet No. 343
First Revised Sheet No. 344
Second Revised Sheet No. 345
Second Revised Sheet No. 346
First Revised Sheet No. 346A
Second Revised Sheet No. 347
Second Revised Sheet No. 348
First Revised Sheet No. 349
Third Revised Sheet No. 350
First Revised Sheet No. 352
Second Revised Sheet No. 355
First Revised Sheet No. 356
First Revised Sheet No. 357
First Revised Sheet No. 358
Second Revised Sheet No. 363
Third Revised Sheet No. 364
Second Revised Sheet No. 399
First Revised Sheet No. 400
Second Revised Sheet No. 401A
Second Revised Sheet No. 405
Second Revised Sheet No. 405A
Second Revised Sheet No. 405B
Second Revised Sheet No. 405C
First Revised Sheet No. 406A
First Revised Sheet No. 406B
First Revised Sheet No. 503
First Revised Sheet No. 504
First Revised Sheet No. 514
First Revised Sheet No. 515
First Revised Sheet No. 516
First Revised Sheet No. 517
First Revised Sheet No. 520
First Revised Sheet No. 524
Third Revised Sheet No. 529
First Revised Sheet No. 536
First Revised Sheet No. 544
First Revised Sheet No. 552
First Revised Sheet No. 559
First Revised Sheet No. 560F
First Revised Sheet No. 566
First Revised Sheet No. 574
First Revised Sheet No. 578
First Revised Sheet No. 583
First Revised Sheet No. 592
First Revised Sheet No. 593C
Second Revised Sheet No. 601
First Revised Sheet No. 602
First Revised Sheet No. 617D
Second Revised Sheet No. 654
First Revised Sheet No. 657
First Revised Sheet No. 659F

[FR Doc. 96–28969 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–54–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1996.

Take notice that on November 1, 1996, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain pro forma tariff sheets to be effective May 1, 1997.

Trailblazer states that the purpose of the filing is to reflect changes to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Commission's Regulations by Order No. 587, issued July 17, 1996 in Docket No. RM96–1–000.

Trailblazer states that copies of the filing are being mailed to its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28966 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–67–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1996.

Take notice that on November 1, 1996, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the pro forma tariff sheets listed on Appendix A. hereto, to be effective May 1, 1997.

WNG states that this filing is being made to comply with Commission issued Order No. 587, issued July 17, 1996.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

Appendix A—Williams Natural Gas Company

Pro Forma Second Revised Volume No. 1

To Be Effective May 1, 1997

Fifth Revised Sheet No. 1
Sixth Revised Sheet No. 2
First Revised Sheet Nos. 132 and 138
Second Revised Sheet No. 144
First Revised Sheet Nos. 145 and 146
Original Sheet No. 147
Fifth Revised Sheet No. 200
Second Revised Sheet No. 201
Third Revised Sheet Nos. 202 and 203
First Revised Sheet No. 210
Original Sheet No. 210A
Second Revised Sheet Nos. 212 and 213
First Revised Sheet No. 223
Second Revised Sheet No. 226A
Fifth Revised Sheet No. 227
First Revised Sheet Nos. 227A and 227B
Fifth Revised Sheet No. 228
Fourth Revised Sheet No. 229
Revised Sheet Nos. 229C, 230, and 231
Third Revised Sheet No. 233
Second Revised Sheet No. 234
Third Revised Sheet No. 236
First Revised Sheet No. 237A
Third Revised Sheet No. 240
Second Revised Sheet No. 241
Original Sheet No. 241A
Second Revised Sheet No. 242
Third Revised Sheet No. 244
First Revised Sheet Nos. 245 and 246
Second Revised Sheet No. 261
Original Sheet No. 261A
Third Revised Sheet No. 262
Second Revised Sheet No. 263
Third Revised Sheet No. 280
Second Revised Sheet No. 458
Original Sheet Nos. 458A–458D
Second Revised Sheet No. 471

[FR Doc. 96–28976 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–62–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1996.

Take notice that on November 1, 1996, Wyoming Interstate Company LTD. (WIC), tendered for filing to become part of its FERC gas Tariffs, First Revised Volume No. 1 and Second Revised Volume No. 2, the pro forma tariff sheets listed in the attached Appendix A to be effective May 1, 1997.

WIC states that the purpose of this compliance filing is to conform WIC's tariff to the requirements of Order No. 587.

WIC further states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Regulations. All such motions or protests must be filed on or before November 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

Appendix A—Wyoming Interstate Gas Company, Ltd. Pro Forma First Revised Volume No. 1 Filed Tariff Sheets

First Revised Sheet No. 2
Sixth Revised Sheet No. 5
Original Sheet No. 13A
Original Sheet No. 13B
Original Sheet No. 13C
Original Sheet No. 13D
Original Sheet No. 13E
Original Sheet No. 13F
Original Sheet No. 13G
Fourth Revised Sheet No. 14
Original Sheet No. 14A
Fourth Revised Sheet No. 15
Second Revised Sheet No. 15A
Fourth Revised Sheet No. 16
First Revised Sheet No. 16A
Original Sheet No. 16B
Original Sheet No. 16C
Fourth Revised Sheet No. 17
Fourth Revised Sheet No. 18
Second Revised Sheet No. 24
Third Revised Sheet No. 25
Sixth Revised Sheet No. 26
Fourth Revised Sheet No. 27
Third Revised Sheet No. 28
Original Sheet No. 28A
Second Revised Sheet No. 29
Second Revised Sheet No. 29A
Third Revised Sheet No. 29B
First Revised Sheet No. 29C
First Revised Sheet No. 29D
Second Revised Sheet No. 29E
First Revised Sheet No. 29G
First Revised Sheet No. 29H
Third Revised Sheet No. 30
First Revised Sheet No. 36
First Revised Sheet No. 37
Second Revised Sheet No. 38
Third Revised Sheet No. 42
Original Sheet No. 42A
Original Sheet No. 42B
Original Sheet No. 42C
Third Revised Sheet No. 43
Second Revised Sheet No. 44
Original Sheet No. 44A
Third Revised Sheet No. 45
Original Sheet No. 45A
Original Sheet No. 45B
Second Revised Sheet No. 46
Third Revised Sheet No. 51

Wyoming Interstate Gas Company, Ltd. Pro Forma Second Revised Volume No. 2 Filed Tariff Sheet

First Revised Sheet No. 2
Sixth Revised Sheet No. 4
Fifth Revised Sheet No. 4A
Eighth Revised Sheet No. 5
Original Sheet No. 34A
Original Sheet No. 34B
Original Sheet No. 34C
Original Sheet No. 34D
Original Sheet No. 34E
Original Sheet No. 34F
Original Sheet No. 34G
Third Revised Sheet No. 35
Fourth Revised Sheet No. 36
Second Revised Sheet No. 36A
Original Sheet No. 36B
Fourth Revised Sheet No. 37
Second Revised Sheet No. 37A
Original Sheet No. 37B
Fourth Revised Sheet No. 38
Original Sheet No. 38A
Original Sheet No. 38B
Fourth Revised Sheet No. 39
Second Revised Sheet No. 39A
Second Revised Sheet No. 45
Third Revised Sheet No. 47
Second Revised Sheet No. 49

Original Sheet No. 49A
Second Revised Sheet No. 50
Second Revised Sheet No. 51
Second Revised Sheet No. 52
Original Sheet No. 52A
Original Sheet No. 52B
Second Revised Sheet No. 53
Third Revised Sheet No. 54
Sixth Revised Sheet No. 55
Fourth Revised Sheet No. 56
Original Sheet No. 56A
Second Revised Sheet No. 57
Second Revised Sheet No. 57A
Second Revised Sheet No. 57B
Second Revised Sheet No. 57C
Third Revised Sheet No. 57D
First Revised Sheet No. 57E
First Revised Sheet No. 57F
Second Revised Sheet No. 57G
First Revised Sheet No. 57H
First Revised Sheet No. 57I
First Revised Sheet No. 57J
Third Revised Sheet No. 58
Third Revised Sheet No. 64
Original Sheet No. 64A
Original Sheet No. 64B
Original Sheet No. 64C
Second Revised Sheet No. 65
Second Revised Sheet No. 66
First Revised Sheet No. 67
First Revised Sheet No. 68
First Revised Sheet No. 69
Third Revised Sheet No. 72
First Revised Sheet No. 73
Second Revised Sheet No. 81
Third Revised Sheet No. 82

[FR Doc. 96–28971 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG97–10–000, et al.]

CMS Morocco Operating Company SCA, et al.; Electric Rate and Corporate Regulation Filings

November 5, 1996.

Take notice that the following filings have been made with the Commission:

1. CMS Morocco Operating Company SCA

[Docket No. EG97–10–000]

On October 31, 1996, CMS Morocco Operating Company SCA (''Applicant''), with its principal office at c/o CMS Generation Co., Fairlane Plaza South, 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it is a company in the process of formation under the laws of Morocco, and will operate two existing 330 MW coal-fired units and operate two additional 348 MW units to be constructed. Electric energy produced by the Facility will be sold at wholesale to the state-owned Office National de l'Electricite. In no event will any electric energy be sold to consumers in the United States.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Western Systems Power Pool

[Docket No. ER91–195–026]

Take notice that on November 1, 1996, the Western Systems Power Pool (WSPP) filed certain information to update its October 30, 1996, quarterly filing. This data is required by Ordering Paragraph (D) of the Commission's June 27, 1991 order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order on Rehearing Denying Request Not To Submit Information, and Granting In Part and Denying In Part Privileged Treatment. Pursuant to 18 CFR § 385.211, WSPP has requested Privileged Treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

3. Cook Inlet Energy Supply Limited Partnership

[Docket No. ER96–1410–001]

Take notice that on October 30, 1996, Cook Inlet Energy Supply Limited Partnership (Cook) tendered for filing supplements to its October 1, 1996, Notification of Change in Status. In addition, Cook tendered for supplements to its May 16, 1996, request for Approval of Rate Schedule, Clarification of Jurisdiction and Petition for Waivers and Blanket approvals.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company

[Docket No. ER96–2342–001]

Take notice that on October 18, 1996 and October 21, 1996, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Company and West Texas Utilities Company amended their compliance filing made on September 3, 1996 in this proceeding.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket Nos. ER96–2520–000, ER96–2528–000, ER96–2545–000, ER96–2548–000, ER96–2589–000, ER96–2620–000, ER96–2621–000, ER96–2622–000, ER96–2623–000, ER96–2745–000, ER96–2746–000, ER96–2747–000, ER96–2793–000, ER96–2794–000, ER96–2800–000, ER96–2802–000, ER96–2822–000, ER96–2825–000, ER96–2845–000, ER96–2904–000, ER96–2931–000, ER96–2932–000, ER96–2933–000, ER96–3041–000, ER96–3042–000, ER96–3053–000, ER96–3071–000, and ER96–3072–000]

Take notice that on October 21, 1996, Louisville Gas and Electric Company tendered for filing amendments in the above-referenced dockets.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company

[Docket Nos. ER96–2559–000, ER96–2668–000, ER96–2752–000, ER96–2799–000, ER96–2877–000, ER96–2893–000, ER96–3008–000, ER96–3009–000, and ER96–3010–000]

Take notice that on October 21, 1996, Louisville Gas and Electric Company tendered for filing amendments in the above-referenced dockets.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Delmarva Power & Light Company

[Docket No. ER97–236–000]

Take notice that on October 28, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing executed umbrella service agreements with DuPont Power Marketing Inc. and with Western Power Services, Inc. under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Kentucky Utilities Company

[Docket No. ER97–237–000]

Take notice that on October 29, 1996, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during July 1, 1996 through September 30, 1996, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Company

[Docket No. ER97–238–000]

Take notice that on October 29, 1996, Portland General Electric Company

(PGE), tendered for filing under PGE's Final Rule pro forma tariff, (Docket No. OA96–137–000) an executed Service Agreement for Non-firm Point-to-Point Transmission Service to PACIFICORP.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective October 15, 1996.

Copies of this filing were caused to be served upon the entities listed in the body of the filing letter.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Montaup Electric Company

[Docket No. ER97–240–000]

Take notice that on October 29, 1996, Montaup Electric Company (Montaup), filed rate schedule revisions incorporating the 1997 forecast billing rate for its Purchased Capacity Adjustment Clause (PCAC) for all-requirements service to Montaup's affiliates Eastern Edison Company in Massachusetts and Blackstone Valley Electric Company and Newport Electric Corporation in Rhode Island, and contract demand service to two non-affiliated customers: the Town of Middleborough in Massachusetts and the Pascoag Fire District in Rhode Island. The new forecast billing rate is $15.49516/Kw-mo. Montaup requests that the new rate become effective January 1, 1997 in accordance with the PCAC.

Montaup's filing was served on the affected customers, the Attorneys General of Massachusetts and Rhode Island, the Rhode Island Public Utilities Commission and the Massachusetts Department of Public Utilities.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company

[Docket No. ER97–241–000]

Take notice that on October 29, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Koch Power Services under Rate GSS.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Great Bay Power Corporation

[Docket No. ER97–242–000]

Take notice that on October 29, 1996, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between the New York Power Authority and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreement is proposed to be effective October 28, 1996.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Great Bay Power Corporation

[Docket No. ER97–244–000]

Take notice that on October 28, 1996, Great Bay Power Corporation, tendered for filing a summary of activity for the quarter ending September 30, 1996.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER97–247–000]

Take notice that on October 28, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Short-Term Firm Point-to-Point Transmission Service to the Unitil Power Corp. under the NU System Companies' Open Access Transmission Service Tariff No. 8.

NUSCO states that a copy of this filing has been mailed to the Unitil Power Corp.

NUSCO requests that the Service Agreement become effective July 9, 1996.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Houston Lighting & Power Company

[Docket No. ER97–248–000]

Take notice that on October 25, 1996, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with Questar Energy Trading Company for Economy Energy Transmission Service under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of October 25, 1996.

Copies of the filing were served on Questar and the Public Utility Commission of Texas.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Central Illinois Public Service Company

[Docket No. ER97–249–000]

Take notice that on October 28, 1996, Central Illinois Public Service Company (CIPS), submitted a service agreement, dated October 21, 1996, establishing Delhi Energy Services, Inc. (Delhi) as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of October 21, 1996 for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon Delhi and the Illinois Commerce Commission.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas and Electric Company

[Docket No. ER97–250–000]

Take notice that on October 28, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a Purchase and Sales Agreement between Louisville Gas and Electric Company (LG&E) and Aquila Power Corporation, pursuant to LG&E's Rate Schedule GSS.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Niagara Mohawk Power Corporation

[Docket No. ER97–251–000]

Take notice that on October 28, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Citizens Lehman Power Sales. This Transmission Service Agreement specifies that Citizens Lehman Power Sales has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Citizens Lehman Power Sales to enter into separately scheduled transactions under which NMPC will provide transmission service for Citizens Lehman Power Sales as the parties may mutually agree.

NMPC requests an effective date of October 3, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Citizens Lehman Power Sales.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Duquesne Light Company

[Docket No. ER97–252–000]

Take notice that on October 25, 1996, Duquesne Light Company (DLC), filed a Service Agreement dated October 1, 1996 with PacifiCorp Power Marketing, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds PacifiCorp Power Marketing, Inc. as a customer under the Tariff. DLC requests an effective date of October 1, 1996 for the Service Agreement.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. New England Power Company

[Docket No. ER97–253–000]

Take notice that on October 28, 1996, New England Power Company, submitted for filing a corrective amendment to its open access transmission tariff, FERC Electric Tariff, Original Volume No. 9.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Electric and Gas Company

[Docket No. ER97–254–000]

Take notice that on October 29, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing agreements to provide non-firm transmission service to Sonat Power Marketing L.P., and AIG Trading Corporation, pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96–80–000.

PSE&G further requests waiver of the Commission's Regulations such that the agreements can be made effective as of October 29, 1996.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Kansas City Power & Light Company

[Docket No. ER97–255–000]

Take notice that on October 29, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated October 8, 1996, between KCPL and Western Resources. KCPL proposes an effective date of October 8, 1996, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and Western Resources.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888 in Docket No. OA96–4–000.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Tampa Electric Company

[Docket No. ER97–256–000]

Take notice that on October 29, 1996, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to its partial requirements service agreement with the City of St. Cloud, Florida (St. Cloud). The amendment revises Exhibit A to the service agreement to reflect a change in the delivery points thereunder.

Tampa Electric proposes an effective date of November 1, 1996, for the amendment to the service agreement, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on St. Cloud and the Florida Public Service Commission.

Comment date: November 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 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. 96–29011 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–2715–001, et al.]

UGI Power Supply, Inc., et al; Electric Rate and Corporate Regulation Filings

November 6, 1996.

Take notice that the following filings have been made with the Commission:

1. UGI Power Supply, Inc.

[Docket No. ER96–2715–001]

Take notice that on October 24, 1996, UGI Power Supply, Inc. tendered for filing its compliance filing, pursuant to the Commission's October 11, 1996, Order Conditionally Accepting for Filing Proposed Market Based Rates, 77 FERC ¶ 61,021.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Power & Light Corp., DC Tie, Inc., Heartland Energy Services, Inc., Electric Clearinghouse, Inc., Valero Power Services Company, Calpine Power Services Company, CNG Power Services Corporation, and National Power Exchange

[Docket Nos. ER89–401–029, ER91–435–020, ER94–108–010, ER94–968–015, ER94–1394–009, ER94–1545–008, ER94–1554–010, ER94–1593–008 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 31, 1996, Citizens Power & Light Corporation filed certain information as required by the Commission's August 8, 1989, order in Docket No. ER89–401–000.

On October 31, 1996, DC Tie, Inc. filed certain information as required by the Commission's July 11, 1991, order in Docket No. ER91–435–000.

On October 31, 1996, Heartland Energy Services, Inc., filed certain information as required by the Commission's August 9, 1994, order in Docket No. ER94–108–000.

On October 31, 1996, Electric Clearinghouse, Inc., filed certain information as required by the Commission's April 7, 1994, order in Docket No. ER94–968–000.

On October 31, 1996, Valero Power Services Company, filed certain information as required by the Commission's August 24, 1994, order in Docket No. ER94–1394–000.

On October 31, 1996, Calpine Power Services Company, filed certain information as required by the Commission's March 9, 1995, order in Docket No. ER94–1545–000.

On October 31, 1996, CNG Power Services Corporation, filed certain information as required by the Commission's October 25, 1994, order in Docket No. ER94–1554–000.

On November 1, 1996, National Power Exchange, filed certain information as required by the Commission's October 7, 1994, order in Docket No. ER94–1593–000.

3. Chicago Energy Exchange of Chicago, Inc., CRSS Power Marketing, Inc., EDC Power Marketing, Inc., Delhi Energy Services, Inc., Proler Power Marketing, Inc., DuPont Power Marketing, Inc., and Global Petroleum Corp.

[Docket Nos. ER90–225–026, ER94–142–011, ER94–1538–008, ER95–940–006, ER95–1433–004, ER95–1441–006, ER96–359–003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 23, 1996, Chicago Energy Exchange of Chicago, Inc. filed certain information as required by the Commission's April 19, 1990, order in Docket No. ER90–225–000.

On October 29, 1996, CRSS Power Marketing, Inc. filed certain information as required by the Commission's December 30, 1993, order in Docket No. ER94–142–000.

On October 29, 1996, EDC Power Marketing, Inc. filed certain information as required by the Commission's September 14, 1994, order in Docket No. ER94–1538–000.

On October 17, 1996, Delhi Energy Services, Inc. filed certain information as required by the Commission's June 1, 1995, order in Docket No. ER95–940–000.

On October 29, 1996, Proler Power Marketing, Inc. filed certain information as required by the Commission's October 16, 1995, order in Docket No. ER95–1433–000.

On October 10, 1996, DuPont Power Marketing Inc. filed certain information as required by the Commission's August 30, 1995, order in Docket No. ER95–1441–000.

On October 7, 1996, Global Petroleum Corp. filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96–359–000.

4. Aquila Power Corporation, Western Power Services, Inc., CL Power Sales One, L.L.C., Energy Services, Inc., USGen Power Services, L.P., and Federal Energy Sales, Inc.

[Docket Nos. ER95–216–012, ER95–748–006, ER95–892–007, ER95–1021–005, ER95–1625–007, ER96–918–003 (not consolidated)

Take notice that on the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 31, 1996, Aquila Power Corporation filed certain information as required by the Commission's January 13, 1995, order in Docket No. ER95–216–000.

On October 31, 1996, Western Power Services, Inc. filed certain information as required by the Commission's May 16, 1995, order in Docket No. ER95–748–000.

On October 31, 1996, CL Power Sales One, L.L.C. filed certain information as required by the Commission's June 8, 1995, order in Docket No. ER95–892–000.

On October 31, 1996, Energy Services Inc. filed certain information as required by the Commission's June 13, 1995, order in Docket No. ER95–1021–000.

On October 31, 1996, USGen Power Services, L.P. filed certain information as required by the Commission's December 13, 1995, order in Docket No. ER95–1625–000.

On November 1, 1996, Federal Energy Sales, Inc. filed certain information as required by the Commission's March 1, 1996, order in Docket No. ER96–918–000.

5. Ocean State Power and Ocean State Power II

[Docket Nos. ER96–1211–001 and ER96–1212–001]

Take notice that on October 18, 1996, Ocean State Power and Ocean State Power II tendered for filing its compliance filing in the above-referenced dockets pursuant to the Commission's Letter order issued September 16, 1996.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. DPL Energy, Inc. and Dayton Power & Light Company

[Docket Nos. ER96–2601–001 and ER96–2602–001]

Take notice that on October 15, 1996, DPL Energy, Inc. and Dayton Power & Light Company tendered for filing amendments in response to the Commission's Order issued September 30, 1996 in the above-referenced dockets.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corp.

[Docket Nos. ER97–78–000, ER97–89–000, and ER97–90–000]

Take notice that on October 28, 1996, Wisconsin Public Service Corporation (WPSC) tendered for filing separate executed Transmission Service Agreements between WPSC and Wisconsin Power & Light Company, Western Power Services, Inc. and National Gas & Electric L.P. The Agreements provide for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota Company)

[Docket No. ER97–258–000]

Take notice that on October 29, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Transmission Service Agreement between NSP and NorAm Energy Services, Inc.

NSP requests that the Commission accept the agreement effective September 29, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER97–259–000]

Take notice that on October 29, 1996, Louisville Gas and Electric Company, tendered for filing information on transactions that occurred during July 1, 1996 through September 30, 1996, pursuant to the Generation Sales Service Tariff accepted by the Commission in Docket No. ER92–533–000.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Power Company

[Docket No. ER97–260–000]

Take notice that on October 29, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and El Paso Energy Marketing Company (El Paso). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Aquila non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of September 29, 1996.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Public Service Company

[Docket No. ER97–261–000]

Take notice that on October 30, 1996, Southwestern Public Service Company

(Southwestern), submitted amendments to agreements with New Corp Resources, Inc. (New Corp) and Cap Rock Electric Cooperative, Inc. (Cap Rock). The amendments relate to facility financing agreements between Southwestern, New Corp, and Cap Rock.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Unocal Corporation

[Docket No. ER97–262–000]

Take notice that on October 30, 1996, Unocal Corporation, tendered for filing, pursuant to Rule 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, and Section 35.12 of the Commission's Regulations under the Federal Power Act, 18 CFR 35.12, a petition for waivers and blanket approvals under various regulations of the Commission, and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective on the earlier of 60 days after the date of its filing, or the date the Commission issues an order accepting the rate schedule.

Unocal Corporation intends to engage in electric power and energy transactions as a marketer and broker. In Unocal Corporation's marketing transactions, Unocal Corporation proposes to charge rates mutually agreed upon by the parties. Unocal Corporation is not in the business of producing or transmitting electric power. Unocal Corporation does not currently have nor contemplate acquiring title to any electric power transmission facilities or any electricity service area franchises.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER97–263–000]

Take notice that on October 30, 1996, PECO Energy Company (PECO), filed a Service Agreement dated October 25, 1996 with Northeast Utilities Service Company (NUSCO) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds NUSCO as a customer under the Tariff.

PECO requests an effective date of October 25, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to NUSCO and to the Pennsylvania Public Utility Commission.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER97–265–000]

Take notice that on October 30, 1996, PECO Energy Company (PECO), filed a Service Agreement dated October 22, 1996 with Illinois Power Company (ILLINOIS) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds ILLINOIS as a customer under the Tariff.

PECO requests an effective date of October 22, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to ILLINOIS and to the Pennsylvania Public Utility Commission.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Maine Public Service Company

[Docket No. ER97–266–000]

Take notice that on October 30, 1996, Maine Public Service Company (Maine Public), filed an executed Service Agreement with The Power Company of America.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Maine Public Service Company

[Docket No. ER97–267–000]

Take notice that on October 30, 1996, Maine Public Service Company (Maine Public), filed an executed Service Agreement with VTEC Energy, Inc.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Maine Public Service Company

[Docket No. ER97–268–000]

Take notice that on October 30, 1996, Maine Public Service Company (Maine Public), filed an executed Service Agreement with CPS Utilities.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Southern Company Services, Inc.

[Docket No. ER97–269–000]

Take notice that on October 30, 1996, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as ''Southern Companies'') filed five (5) service agreements under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entities: (i) Minnesota Power and Light Company; (ii) KN Marketing, Inc.; (iii) Phibro Inc.; (iv) Questar Energy Trading Company; and (v) CPS Utilities. SCSI states that the service agreement will enable Southern Companies to engage in short-term market-based rate transactions with this entity.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER97–270–000]

Take notice that on October 30, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 5 to add CPS utilities, Electric Clearinghouse, Inc., and SCANA Energy Marketing, Inc. to the Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is October 29, 1996.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Corporation

[Docket No. ER97–271–000]

Take notice that on October 30, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Wisconsin Power & Light Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11. WPSC also filed a refund compliance report.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Indiana Michigan Power Company

[Docket No. ER97–272–000]

Take notice that on October 30, 1996, Indiana Michigan Power Company

(I&M), tendered for filing with the Commission Facility Request No. 9 to the existing Agreement, dated December 11, 1989 (1989 Agreement), between I&M and Wabash Valley Power Association, Inc. (WVPA). Facility Request No. 9 was negotiated in response to WVPA's request that I&M provide new facilities at two existing 69 Kv tap stations to be owned by WVPA and operated by I&M known as Fruit Belt Electric Cooperative-Daily and Jones Tap Stations. The Commission has previously designated the 1989 Agreement as I&M's Rate Schedule FERC No. 81.

As requested by, and for the sole benefit of WVPA, I&M proposes an effective date of December 31, 1996, for Facility Request No. 9. A copy of this filing was served upon WVPA, the Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Interstate Power Company

[Docket No. ER97–273–000]

Take notice that on October 30, 1996, Interstate Power Company (IPW), tendered for filing a revised Transmission Interconnection and Operating Agreement between IPW and the City of Luverne. IPW also requested withdrawal of the notice of cancellation in Docket No. ER96–1242–000 and deferral of action in Docket No. ER96–2989–000.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Central Illinois Light Company

[Docket No. ER97–275–000]

Take notice that on October 30, 1996, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreements for one new customer.

CILCO requested an effective date of October 1, 1996.

Copies of the filing were served on all affected customers and the Illinois Commerce Commission.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Pacific Gas and Electric Company

[Docket No. ER97–276–000]

Take notice that on October 30, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing the first Service Agreement under its Open Access Transmission Tariff.

PG&E proposes that this Service Agreement, as may be subject to refund or otherwise, become effective on October 1, 1996. PG&E is requesting any necessary waivers.

Copies of this filing have been served upon the California Public Utilities Commission and Minnesota Methane, LLC.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER97–277–000]

Take notice that on October 30, 1996, PECO Energy Company (PECO), filed a summary of transactions made during the third quarter of calendar year 1996 under PECO's market based rate tariff for power service accepted by the Commission in Docket No. ER96–640–000.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 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. 96–29009 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 1988–007 California]

Pacific Gas & Electric Co.; Notice of Availability of Environmental Assessment

November 6, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Haas-Kings River Hydroelectric Project, located on the North Fork Kings River near the towns of Centerville, Fresno and Sanger, in Fresno County, California and has prepared a final Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28964 Filed 11–12–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5650–9]

National Advisory Council for Environmental Policy and Technology Reinvention Criteria Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a two-day meeting of the National Advisory Council for Environmental Policy and Technology. (NACEPT) Reinvention Criteria Committee (RCC). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The RCC has been asked to identify criteria the Agency can use to measure the progress and success of specific reinvention projects and its overall reinvention efforts; and to identify criteria to promote opportunities for self-certification, similar to the concept used for pesticide registration. This meeting is being held to provide the EPA with perspectives from representatives of state and local government, academia, industry, and NGOs.

DATES: The two-day public meeting will be held on Wednesday, December 11, 1996 from 8:30am to 5:00pm and on

Thursday, December 12, 1996 from 8:30am to 3:00pm.

ADDRESSES: The meeting will be held at the Dupont Plaza Hotel, 1500 New Hampshire Avenue, N.W., Washington, DC 20036.

Materials or written comments, may be transmitted to the Committee through Gwendolyn Whitt, Designated Federal Official, NACEPT/RCC, U.S. EPA, Office of Cooperative Environmental Management (1601–F), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt, Designated Federal Official for the Reinvention Criteria Committee at 202–260–9484.

Dated: November 4, 1996.

Gwendolyn C.L. Whitt,

Designated Federal Official.

[FR Doc. 96–29027 Filed 11–12–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5630–3]

Preparing No-Migration Petitions for Municipal Solid Waste Disposal Facilities—Draft Guidance Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a draft guidance document for comment. The draft guidance affects EPA regulations (40 CFR Part 258) for municipal solid waste landfills (MSWLFs) that allow groundwater monitoring requirements to be suspended if there is no potential for migration of hazardous constituents from the unit to the uppermost aquifer during the active life and post-closure care period. The requirements may be suspended by the Director of an Approved State/Tribe.

This manual is intended to help the owners and operators of small MSWLFs (20 tons per day) to develop and submit no-migration petitions (NMP) to State permit authorities. A NMP can be a cost effective way for owners and operators of MSWLFs in specific climatic and hydrogeologic conditions to comply with the Groundwater Monitoring provisions of EPA's rules. NMPs result in the same environmental protection at less cost.

The primary audience for the draft guidance manual is owners and operators of small MSWLFs, however, the general approach could be used by an owner/operator of any size MSWLF.

The Agency was directed by the Land Disposal Program Flexibility Act (LDPFA) to issue a guidance document to facilitate the use of NMPs by small MSWLFs.

DATES: Comments will be accepted until February 11, 1997.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–96–NMP-FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–96–NMP-FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW., Washington, DC 20460. Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. For information on accessing paper and/or electronic copies of the document, see the ''Supplementary Information'' section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For information on specific aspects of the report, contact Allen J. Geswein, Office of Solid Waste [5306W], U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, [(703) 308–7261], [geswein.allen@epamail.epa.gov].

SUPPLEMENTARY INFORMATION: A paper copy of ''Preparing No-Migration Petitions for Municipal Solid Waste Disposal Facilities—Draft Guidance Document'', is free and may be obtained by calling the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). The document number is EPA530–R–96–020. In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. The Draft Guidance Document is also available in electronic format on the Internet. Follow these instructions to access the report. WWW: http://www.epa.gov/epaoswerGopher: gopher.epa.gov Dial-up: 919 558–0335

If you are using the gopher or direct dialup method, once you are connected to the EPA Public Access Server, look for this report in the directory EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/[consult with Communication Strategist for precise subject heading].

FTP: ftp.epa/gov

Login: anonymous

Password: your Internet address

Files are located in /pub/gopher/OSWRCRA.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. EPA responses to comments, whether the comments are written or electronic, will be in a notice in the Federal Register or in a response to comments document placed in the official record. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Michael Shapiro, Director,

Office of Solid Waste.

[FR Doc. 96–29025 Filed 11–12–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–181029; FRL–5571–9]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the three States listed below. Four crisis exemptions were initiated by various States. These exemptions, issued during the months of May, June, and August 1996, are subject to application and timing restrictions and reporting requirements designed to

protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS 1B1, 2800 Jefferson Davis Highway, Arlington, VA (703–308–8417); e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Indiana, Office of State Chemist for the use of Dimethomorph on tobacco to control blue mold; August 15, 1996, to August 14, 1997. (Libby Pemberton)

2. Tennessee Department of Agriculture for the use of tebufenozide on cotton to control beet armyworms; August 1, 1996, to September 30, 1996. (Margarita Collantes)

3. Tennessee Department of Agriculture for the use of Pirate on cotton to control beet armyworms; August 1, 1996, to September 30, 1996. (Margarita Collantes)

4. Utah Department of Agriculture for the use of Dimethomorph on potatoes to control late blight; August 2, 1996, to August 2, 1997. (Libby Pemberton)

5. Utah Department of Agriculture for the use of propamocarb hydrochloride on potatoes to control late blight; August 2, 1996, to August 2, 1997. (Libby Pemberton)

6. Utah Department of Agriculture for the use of cymoxanil on potatoes to control late blight; August 2, 1996, to August 2, 1997. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. Idaho Department of Agriculture on August 5, 1996, for the use of zinc phosphide on potatoes to control voles. This program has ended. (Libby Pemberton)

2. Idaho Department of Agriculture on August 5, 1996, for the use of zinc phosphide on sugar beets to control voles. This program has ended. (Libby Pemberton)

3. Maine Department of Agriculture Food and Rural Resources on June 10, 1996, for the use of fomesafen on dry beans to control weeds. The program has ended. (Margarita Collantes)

4. Missouri Department of Agriculture on May 29, 1996, for the use of fomesafen on snap beans to control weeds. The program has ended. (Margarita Collantes)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: October 30, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–29022 Filed 11–12–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50822; FRL–5570–9]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275–EUP–81. Issuance. Abbott Laboratories, 1401 Sheridan Road, North Chicago, IL 60064–4000. This experimental use permit allows the use of 108.5 pounds of the plant growth regulator gibberellic acid on 492 acres of hybrid rice to evaluate crop performance. The program is authorized only in the State of Texas. The experimental use permit is effective from June 11, 1996 to June 15, 1997. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Denise Greenway, CS 1 5th Floor, 703–308–8263, e-mail: greenway.denise@epamail.epa.gov)

69575–EUP–1. Issuance. Dekalb Genetics Corporation, Discovery Research, 62 Maritime Drive, Mystic, CT 06355-1958. This experimental use permit allows the use of 730 grams of the *Bacillus thuringiensis* δ-endotoxin in seeds to evaluate the control of the European corn borer, southwestern corn borer, fall armyworm, and corn earworm. The program is authorized only in the States of Connecticut, Florida, Georgia, Hawaii, Kansas, Illinois, Indiana, Iowa, Maryland, Michigan, Minnesota, Missouri, Nebraska, North Carolina, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, and Wisconsin and Puerto Rico. The experimental use permit is effective from May 2, 1996 to April 30, 1997. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Michael Mendelsohm, CS 1 5th Floor, 707-308-8715, e-mail: mendelsohm.michael@epamail.epa.gov)

707–EUP–136. Issuance. Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399. This experimental use permit allows the use of 565.0 pounds of the herbicide 3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester on 800 acres of tree nuts and 660 acres of peanuts to evaluate the preemergence control of various annual grasses and broadleaf weeds. The program is authorized only in the States of California, Georgia, New Mexico, Oregon, and Texas for the tree nut program and in the States of Alabama, Georgia, North Carolina, Oklahoma, Texas, and Virginia for the peanut program. The experimental use permit is effective from July 25, 1996 to July 25, 1998. Temporary tolerances for residues of the active ingredient in or on tree nuts and peanuts have been established. (Joanne Miller, PM 23, Rm. 237, CM #2, 703–305–6224, e-mail: miller.joanne@epamail.epa.gov)

59639–EUP–118. Issuance. Valent U.S.A. Corporation, 1333 N. California Blvd., Suite 600, Walnut Creek, CA 95496. This experimental use permit allows the use of 91.78 pounds (45.89 each year) of the herbicide 7-fluoro-6-[(3,4,5,6-tetrahydro)phthalimido)]-4-(2-propynyl)-1,4-benzoxazin-3(2(*H*)-one on 480 acres of soybeans to evaluate the control of various broadleaf weeds. The program is authorized only in the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Tennessee, and Virginia. The experimental use permit is effective from August 1, 1996 to August 1, 1998. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (Joanne Miller, PM 23, Rm. 237, CM #2, 703–305–6224, e-mail: miller.joanne@epamail.epa.gov)

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: October 28, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–29021 Filed 11–12–96; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the November 14, 1996 regular meeting of the Farm Credit Administration Board (Board) will not be held.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: November 7, 1996

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–29122 Filed 11–7–96; 4:42 pm]

BILLING CODE 6705–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3120–EM]

California; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of California (FEMA–3120–EM), dated October 23, 1996, and related determinations.

EFFECTIVE DATE: October 31, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective October 31, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–29030 Filed 11–12–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–3121–EM]

Maine; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Maine (FEMA–3121–EM), dated October 24, 1996, and related determinations.

EFFECTIVE DATE: October 24, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 24, 1996, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), as follows:

I have determined that the damage in certain areas of the State of Maine, resulting from a severe storm, heavy rains, high winds, and inland and coastal flooding on October 20, 1996, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under subsection 501(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). I, therefore, declare that such an emergency exists in the State of Maine.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for debris removal and emergency protective measures as authorized under subsection 502(a) (4) and (5), excluding regular time costs for subgrantees' regular employees, and disaster housing as authorized under subsection 502(a)(6).

In order to provide Federal assistance, you are hereby authorized to coordinate and direct other Federal agencies and fund activities not authorized under other Federal statutes and allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Pursuant to this emergency declaration, you are authorized to provide emergency assistance as you deem appropriate under Title V of the Stafford Act at 75 percent Federal funding.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Sharon Stoffel of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared emergency:

The counties of Cumberland and York.

FEMA has been authorized to provide Federal funding for disaster housing, debris removal, and emergency protective measures as authorized under Title V subsections 502(a) (4), (5), and (6).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 96–29032 Filed 11–12–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–3121–EM]

Maine; Amendment to Notice of a Presidential Declaration of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of the Presidential declaration of an emergency for the State of Maine (FEMA–3121–EM), dated October 24, 1996, and related determinations.

EFFECTIVE DATE: November 4, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and

Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective October 26, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–29033 Filed 11–12–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–3119–EM]

Massachusetts; Amendment to Notice of a Presidential Declaration of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of the Presidential declaration of an emergency for the Commonwealth of Massachusetts (FEMA–3119–EM), dated October 23, 1996, and related determinations.

EFFECTIVE DATE: November 4, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective October 25, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–29031 Filed 11–12–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

K.M. International
23516 Arlington Avenue, Torrance, CA 90501; Naomi Saito, Sole Proprietor

Cargo Maritime Services, Inc.
9345 N.E. 6th Avenue, Suite 401, Miami Shores, FL 33138; Officer: Dennis E. Joseph, President/Director

Dated: November 6, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–28953 Filed 11–12–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 26, 1996.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Orville T. and Helen M. Graslie, both of Faith, South Dakota; to acquire a total of 23.08 percent; Gary W. and Nancy K. Vance, both of Faith, South Dakota, to acquire a total of 23.08 percent; Eldon S. Jensen, Lemmon, South Dakota, to acquire a total of 23.08 percent; Carveth S. and Margaret A. Thompson, both of Faith, South Dakota, to acquire an additional 15.68 percent, for a total of 23.08 percent; and Morris M. Gustafson, Faith, South Dakota, to acquire a total of 7.69 percent, of the voting shares of Faith Bank Holding Company, Faith, South Dakota, and thereby indirectly acquire Farmers State Bank, Faith, South Dakota.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Robert Dunkin, Trustee for the First National Bank Employee Stock Ownership Plan, to acquire an additional 14.2 percent, for a total of 17.9 percent; Robert Dunkin, San Benito, Texas, to *decrease* voting shares by 1.8 percent, for a total of 17.8 percent; Lucy Ann Dunkin, San Benito, Texas, to acquire a total of 0.2 percent, of the voting shares of First San Benito Bancshares, Inc., San Benito, Texas, and thereby indirectly acquire First National Bank of San Benito, San Benito, Texas.

Board of Governors of the Federal Reserve System, November 6, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–28956 Filed 11-12-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of

a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First American Corporation, Nashville, Tennessee; to merge with Hartsville Bancshares, Inc., Hartsville, Tennessee, and thereby indirectly acquire CommunityFIRST Bank, Hartsville, Tennessee.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Mound City Bancshares, Inc., Platteville, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Mound City Bank, Platteville, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CNB Bancshares, Inc., Evansville, Indiana; to merge with BMC Bancshares, Inc., Mt. Carmel, Illinois, and thereby indirectly acquire Bank of Mt. Carmel, Mt. Carmel, Illinois.

2. Linn Holding Company, Linn, Missouri; to acquire an additional 64.86 percent, for a total of 79.28 percent, of the voting shares of Heritage Bank, Loose Creek, Missouri.

3. Louisville Development Bancorp, Inc., Louisville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Louisville Community Development Bank Louisville, Kentucky (a *de novo* bank). In connection with this application, Applicant also has applied to acquire Real Estate Development Company, Louisville, Kentucky, and thereby engage *de novo* in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in low to moderate communities in Louisville, Kentucky.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Hoeme Family Partnership, Scott City, Kansas; to acquire an additional 4.99 percent, for a total of 40.60 percent, of the voting shares of First National Bancshares of Scott City, Ltd., Scott City, Kansas, and thereby indirectly acquire First National Bank of Scott City, Scott City, Kansas.

2. Platte Valley Financial Service Companies, Inc., Scottsbluff, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Platte Valley Banc, Inc., Scottsbluff, Nebraska, Platte Valley National Bank, Scottsbluff, Nebraska, FirstMorrill Co., Morrill, Nebraska, and Platte Valley National Bank-Morrill, Minatare, Lyman, and Morrill, Nebraska.

Board of Governors of the Federal Reserve System, November 6, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–28955 Filed 11-12-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for 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 on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Campello Bancorp, Brockton, Massachusetts; to engage *de novo* through its subsidiary, Cody Services Corporation, Brockton, Massachusettts, in loan servicing and/or subservicing, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 6, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–28954 Filed 11-12-96; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, November 18, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposal regarding a maintenance contract within the Federal Reserve System. (This item was originally announced for a closed meeting on October 30, 1996.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 8, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–29232 Filed 11–8–96; 2:37 pm]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 8:00 a.m. (EST); November 18, 1996.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Labor Department audit briefing.

2. Approval of the minutes of the October 21, 1996, Board meeting.

3. Thrift Savings Plan activity report by the Executive Director.

4. Review of KPMG Peat Marwick audit reports:

(a) ''Pension and Welfare Benefits Administration Review of the Policies and Procedures of the Federal Retirement Thrift Investment Board Administrative Staff.''

(b) ''Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Billing Process at the United States Department of Agriculture, National Finance Center.''

(c) ''Pension and Welfare Benefits Administration Review of Backup, Recovery, and Contingency Planning of the Thrift Savings Plan at the United States Department of Agriculture, National Finance Center.''

(d) ''Pension and Welfare Benefits Administration Review of Capacity Planning and Performance Management of the Thrift Savings Plan at the United States Department of Agriculture, National Finance Center.''

5. Semiannual review of status of audit recommendations.

6. Quarterly investment policy review.

7. Annual ethics briefing.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: November 6, 1996.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 96–29124 Filed 11–7–96; 4:42 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Proposed Research Agenda

AGENCY: Agency for Health Care Policy and Research, with the National Institute for Nursing Research and Health Resources and Services Administration, Division of Nursing.

ACTION: Notice of request for comments.

SUMMARY: The Agency for Health Care Policy and Research (AHCPR), the National Institute for Nursing Research (NINR), and the Division of Nursing (DN) of the Health Resources and Services Administration (HRSA) invite comments and suggestions of priority research topics related to the impact of nurse staffing on the quality of care in hospitals. These comments and suggestions will be considered by AHCPR, NINR, and DN of HRSA in planning for future research initiatives to benefit health care for the public and the health of the nation. Comments and suggestions on the proposed research agenda will be considered by the three Agencies in developing research priorities, but they will not be responded to individually.

DATES: Comments and suggestions must be postmarked by December 30, 1996.

ADDRESSES: Written comments and suggestions should be submitted to Kelly Morgan, Program Analyst, Center for Primary Care Research, Agency for Health Care Policy and Research, Suite 502, 2101 East Jefferson Street, Rockville, Maryland 20852. Respondents should provide a clear rationale and supporting evidence of the importance of the suggested topic.

All responses will be available for public inspection at the Center for Primary Care Research. Telephone 301–594–1357 ext. 1335, weekdays between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION: In response to a congressional directive, the Department requested the Institute of Medicine (IOM) to conduct a study on nurse staffing levels in hospitals and nursing homes. The IOM issued a report in January 1996, *Nursing Staff in Hospitals and Nursing Homes—Is It Adequate?* [1] (the Report). The Report notes a paucity of objective research on the relationships among restructuring, nurse staffing, and quality in hospitals. One of the recommendations of the Report is that the National Institute of Nursing Research and other appropriate agencies fund scientifically sound research on the relationships between quality of care and nurse staffing levels and skill mix, taking into account organizational variables. The Report further recommends that NINR, along with AHCPR and private organizations, develop a research agenda on staffing and quality of care (See page 122 of the Report).

In July 1996, AHCPR, DN (HRSA), and NINR jointly convened a group of research experts to discuss methodological issues and key research questions on nurse staffing and quality of care in hospitals. Also discussed were selected outcomes from a conference held by the American Academy of Nursing in June 1996, sponsored by AHCPR, the American Nurses' Association, and the American Organization of Nurse Executives, entitled ''Outcome Measures and Care Delivery Systems.''

Nurse Staffing

Research efforts in this area will require refinement and standardization of conceptual as well as operational definitions of variables such as nurse staffing level and nursing skill mix. Included in this process must be an evaluation of the characteristics of the nurses providing care, such as level of education and psychological factors (e.g., nurse satisfaction with work). What nurses actually do (clinical vs administrative vs other duties), how nursing care is provided (staffing models used in each unit), and organizational characteristics (such as management or leadership style) are also important considerations.

Quality of Nursing Care

The concept of health care quality is extremely complex and usually includes a consideration of the structure and process as well as the outcomes of care. Research focusing on nurse staffing and quality of care in hospitals may, therefore, be expected to include an evaluation of the organization and delivery of nursing care in the hospital setting.

Proposed Research Agenda

Based on the expert discussions, the IOM Report, and a review of the published literature, the overarching questions to be addressed by research related to nurse staffing and quality of care in hospitals are: What is the contribution of nursing to the quality of care in hospitals, and what are the cost implications of this contribution? Within this area, a high research priority

[1] Wunderlich, Gooloo S. & Davis, Carolyne K. (1996). Nursing Staff in Hospitals and Nursing Homes—Is It Adequate? Washington, D.C.: National Academy Press.

continues to be identifying patient outcomes that are sensitive to nursing care.

The primary areas proposed for future research focusing on the impact of nurse staffing on the quality of care in hospitals include:

- What is the relationship between the organization and delivery of nursing care and patient outcomes? What are the key organizational variables that influence staff performance and outcomes?
- What are the unique skills and the mix of registered nurses and other nursing and ancillary staff that impact on outcomes? This includes understanding what work needs to be done for patients to impact patient outcomes and who are the best people to do it.
- What specific organizational variables and delivery of care variables are related to specific patient outcomes? Specific questions within this category include: What is the relationship between nursing skill mix and achievement of outcomes such as appropriate self-care? What are the relative contributions of nurse, patient, other clinicians (e.g., M.D.), and organizational factors to specific patient outcomes?
- What is the impact of computer technology on patient outcomes? Included in this area are questions about the use of decision support that may extend off-site clinical expertise to hospital nursing staff. Also included are questions about the data elements about nursing and nurses that should be routinely collected.
- What is costworthy in an era when limited resources are available for hospital care? Although a nursing intervention may work for a clinical problem and even be more effective than other interventions, there may be other diseases or clinical problems that affect more people and also have cost-effective interventions.

At the AAN Conference, the following patient outcomes were identified for further refinement by research teams: achievement of appropriate self-care, demonstration of health-promoting behaviors, health-related quality of life, perception of being well cared for (broadened beyond patient satisfaction), symptom management, and adverse outcomes. Other outcomes of interest relate to the patient's family and community.

In line with the recommendations of the IOM Report the specific focus of this proposed research agenda is the relationship between nurse staffing and quality of care in hospitals. However, comments and suggestions about research pertaining to nurse staffing and quality in other types of delivery settings are welcome by AHCPR, NINR, and DN (HRSA).

Dated: November 6, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–28997 Filed 11–12–96; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 88P–0439]

Medical Devices; Reclassification of Suction Lipoplasty System for Aesthetic Body Contouring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of panel recommendation.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment the recommendation of the General and Plastic Surgery Devices Panel (the Panel) to reclassify the suction lipoplasty system for aesthetic body contouring from class III to class II. The Panel made this recommendation after reviewing the reclassification petition submitted by the American Society for Aesthetic Plastic Surgery (ASAPS) and other publicly available information. FDA is also issuing for public comment its tentative findings on the Panel's recommendation. After considering any public comments on the Panel's recommendation and FDA's tentative findings, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioner. FDA's decision on the reclassification petition will be announced in the Federal Register.

DATES: Written comments by February 11, 1997.

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

FOR FURTHER INFORMATION CONTACT: Stephen P. Rhodes, Center for Devices and Radiological Health (HFA–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION: On December 28, 1988, ASAPS submitted a petition under section 513(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e)), requesting that the suction lipoplasty system intended for surgical use in aesthetic body contouring, be reclassified from class III into class II. The major components of this system, the cannula (a manual surgical instrument for general use (21 CFR 878.4800)), and the suction pump (powered suction pump (21 CFR 878.4780)) when intended for certain uses other than suction lipoplasty procedures are classified in class I and class II, respectively. However, when these devices, individually labeled or combined into a system, are intended for use in aesthetic body contouring, they are automatically classified into class III under section 513(f)(1) of the act.

Section 513(f)(2) of the act provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the agency to reclassify the device into class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the suction lipectomy system for use in aesthetic body contouring, it is necessary that the proposed new class has sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 310–394), (as amended by the Medical Device amendments of 1976 (the amendments) (Pub. L. 94–295), class II devices were defined as those devices for which there is insufficient information to show that general controls alone will ensure safety and effectiveness, but there is sufficient information to establish that performance standards would provide a reasonable assurance of safety and effectiveness of the device. In the time that has passed since the submission of the petition and the Panel meeting, the definition of class II devices has been amended by the Safe Medical Devices Act of 1990 (the SMDA). Under the SMDA, class II devices are those devices for which there is insufficient information to show that general controls alone will ensure safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance, including the issuance of a performance standard, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions the agency deems necessary (section 513(a)(B) of the act).

It is the agency's position that is not necessary to obtain a new reclassification recommendation from a

Panel which had recommended reclassification into class II prior to the SMDA. If a Panel recommended that a device be reclassified from class III to class II under the 1976 definition of class II, which included only performance standards as a class II control, clearly the Panel's recommendation for class II status would not change if controls in addition to performance standards could be added.

I. Background

In 1983 three firms submitted four premarket notifications to FDA under section 510(k) of the act (21 U.S.C. 360(k)) advising the agency of their intentions to place into commercial distribution either the suction cannula or the powered suction pump for use in suction lipoplasty for aesthetic body contouring. FDA determined that neither the suction cannula nor the powered suction pump for aesthetic body contouring was substantially equivalent to any preamendments device, nor was either device substantially equivalent to any postamendments device that had been classified into class I or class II for use in suction lipectomy for aesthetic body contouring. Accordingly, both devices were classified into class III under section 513(f)(1) of the act, and neither device could be placed in commercial distribution for use in suction lipoplasty for aesthetic body contouring unless it was reclassified under section 513(f)(2), or subject to an approved premarket approval application under section 515 of the act (21 U.S.C. 360e).

Subsequently, ASAPS initiated a clinical trial to identify the risks associated with suction lipoplasty procedures and to determine the relationship of the risks to characteristics of suction lipoplasty devices and thereby develop measures to minimize or control the risks (Ref. 1). After completing the clinical trial, ASAPS petitioned FDA to reclassify suction lipoplasty systems for use in aesthetic body contouring from class III into class II (Ref. 1). Consistent with the act and applicable regulations, the agency referred the petition to the Panel for its recommendation on the requested change in classification.

II. Recommendation of the Panel

The Panel met on January 26, 1989, in a public meeting and on March 10, 1989, via a telephone conference to discuss the suction lipoplasty systems intended for use in aesthetic body contouring. During the January 6, 1989, meeting, the Panel determined that additional data and information were indicated and that another panel meeting would be necessary to allow the Panel to address specific issues concerning the reclassification of the suction lipoplasty systems (Ref. 2). The Panel noted that the suction lipoplasty system is indicated for aesthetic body contouring (Ref. 2, p. 52) and is not intended to be a substitute for a weight reduction regimen. On March 10, 1989, after considering the device components and accompanying surgical risks as addressed in the petition and literature, the Panel recommended that the suction lipoplasty systems intended for aesthetic body contouring be reclassified from class III into class II (Ref. 3, p. 95). The Panel also recommended that FDA assign a high priority for the development of a performance standard for the generic type device.

III. Device Description

The suction lipoplasty system consists of a powered suction pump (containing a microbial filter on the exhaust and a microbial in-line filter in the connecting tubing between the collection bottle and the safety trap), collection bottle, cannula, and connecting tube. The microbial filters, tubing, collection bottle, and cannula must be sterile and capable of being changed between patients. The powered suction pump has a motor with a minimum of 1/3 horsepower, a variable vacuum range from 0 to 29.9 inches of mercury, vacuum control valves to regulate the vacuum with accompanying vacuum gauges, single or double rotary vane (oil or oil-less), single or double diaphragm, single or double piston, and a safety trap (Ref. 4). The pump meets the voluntary Underwriters Laboratories (UL) UL–455 Standards for Medical and Dental Equipment (Ref. 5). The collection bottle is calibrated to permit precise continual monitoring of the amount of material being removed from the patient. The cannulas are composed of biocompatible material such as plastic or surgical grade stainless steel with various dimensions and configurations determined by the particular application or surgical site and preference of the individual surgeon (Refs. 4, 6, and 7). The connecting tubing has an internal diameter appropriate to the size of the cannula handle, generally 7.5 to 12.5 millimeters. The tubing is able to withstand the amount of negative pressure created by the pump without collapsing.

The device is used in the clinical field of plastic surgery for the purpose of aesthetic body contouring.

IV. Summary of Reasons for the Recommendation

After reviewing the data and information contained in the petition and provided by FDA, and after consideration of the open discussions during the Panel meetings and the Panel members' personal knowledge of and clinical experience with the device system, the Panel gave the following reasons in support of its recommendation to reclassify the generic type suction lipoplasty system for use in aesthetic body contouring from class III into class II:

(1) General controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

(2) There is sufficient publicly available information to establish a performance standard to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

(3) There is sufficient publicly available information to demonstrate that the risks to health and the performance parameters of the device have been characterized and that the relationship of these risks and performance parameters have been evaluated (Refs. 8, 11, and 12).

(4) Sufficient voluntary standards exist to reasonably assure the design and performance of the device system (Refs. 5, 13, 14, 15, 16, and 26).

The Panel believed that current and any subsequent manufacturer of the suction lipoplasty system can comply with these voluntary standards and a performance standard; that FDA can assure the safety and effectiveness of device systems made by new manufacturers through premarket notification procedures under section 510(k) of the act; and that a regulatory level of class III is unnecessary to provide a reasonable assurance of safety and effectiveness.

V. Risks to Health

The Panel determined that the foreseeable risks to health associated with the use of the suction lipoplasty system fall into two categories: (1) Those related to the device system that include the potential of infection of a subsequent patient resulting from the backflow of contaminated material trapped by the in-line filter during the preceding procedure, and (2) those related to the suction procedure that include tissue trauma (i.e., pain, nerve and blood vessel damage, hypesthesia, and hemorrhage). The degree of tissue trauma is believed to be related to the amount of vacuum applied and the type

of cannula used during the procedure (Refs. 10, 17, 18, and 19).

After reviewing the Panel meeting transcripts, the petition, and the relevant literature, FDA identified other potential risks which include airborne bacterial or viral contamination of other patients and hospital personnel resulting from inefficient or overused in-line filters, patient bio-incompatibility to materials, and infection resulting from improper sterilization or practitioner handling.

Several of the procedure-related risks reported in the literature (fat embolism, venous thrombosis, hematoma/seroma, pain, infection, necrosis/skin slough, edema, hypovolemia/hypotension, and potential death (Refs. 8, 11, 20, 21, 22, and 23)) were not observed in the petitioner's clinical studies and other procedure-related risks were reduced when the surgical procedure was performed by adequately trained surgeons on properly selected patients.

In general, the best candidates for liposuction are healthy individuals who have concentrated areas of fat and firm, elastic skin. Age is usually a criterion for a healthy patient. However, after age 55, some patients lose skin elasticity and will not achieve the same good results as a younger patient.

Liposuction is not recommended for patients with heart or lung diseases, poor blood circulation, diabetes, or those who have had recent surgery near the area of fat to be suctioned. Patients who are obese with diffuse areas of fat are not considered ideal candidates because of a greater risk of complications. However, in some cases, a series of carefully controlled procedures may be an effective adjunct to a weight-loss program.

(Ref. 24)

VI. Benefits

Suction lipoplasty systems provide benefits to patients by effectively performing aesthetic body contouring. The benefits of these devices are probably best characterized in terms of patient satisfaction. The ASAPS study reported 56 percent of patients being very satisfied, 34 percent satisfied, and 6 percent not satisfied. Two other large studies reported overall satisfaction rates of 88 and 76 percent, respectively (Refs. 8 and 9). Both studies found dissatisfaction rates highest in patients who had undergone liposuction of the buttocks. From the physicians' survey, review of the long-term results reveal that less than half of the respondents reported totally permanent results. Twenty nine percent reported fat ''regrowth'' as minimal and 62 percent were satisfied with the results.

VII. Summary Data Upon Which the Panel Recommendation is Based

During its review and discussion of the petition, the Panel paid close attention to the potential risks and benefits to health associated with the use of the suction lipoplasty system and concluded that the data and information contained in the petition and presented by FDA demonstrated that the risks to health associated with this system could be adequately controlled (Ref. 1). The Panel relied on the following information in recommending that the suction lipoplasty system for aesthetic body contouring be class II devices.

A 1988 ASAPS multicenter study (Ref. 1) provided some perspective of the above mentioned risks and complications. The study, using 2 different suction pumps and connective tubing and 8 different cannulas, reported that of the 113 patients in whom 189 procedures had been performed, where the amount of fluid aspirated ranged from 15 to 4,700 cubic centimeters per patient, there were no complications, undesired sequelae or health problems directly related to the device system used to perform liposuctions (Ref. 1, p. 24). The study also noted no mortality or episodes of shock, although 1 patient developed subcutaneous emphysema of the neck that was determined to be anesthesia related and 39 patients required postoperative transfusions. Other reported complication rates were hypesthesia, 46.6 percent; pain, 18.6 percent; change in pigmentation, 10.6 percent; and scarring (thickening of the skin) during the immediate postoperative period, 9.9 percent. Additional complications which occurred in less than 5 percent of patients include asymmetry, waviness, insufficient fat removal, hematoma, excessive fat removal, and edema. Most of these complications improved or resolved with time resulting in an overall complication rate of 4.1 percent. Many of the items listed as complications in the study would be classified as undesirable sequela by other authors (Ref. 1, p. 24).

A 1987 American Society of Plastic and Rescontructive Surgery (ASPRS) task force studied the safety of liposuction. Eleven deaths and nine nonfatal serious complications over a 5-year period (an estimated 100,000 cases) were documented (Ref. 12).

Two other major studies on liposuction devices have been completed since the January 26, 1989, Panel recommendation. In 1989, a national survey of plastic surgeons was conducted. The findings of this survey identified a liposuction complication rate of 0.1 percent with 2 deaths among the 75,591 liposuction procedures analyzed in the survey. One death was caused by fat embolism and the other death by pulmonary thromboembolism. Twenty-five cases of deep venous thrombosis, 10 transfusion complications, 9 cases of pulmonary thromboembolism, 5 cases of major skin loss, 1 stroke, and 1 nonlethal fat embolus were reported (Ref. 11).

In 1990, the Fornebu Clinic in Norway conducted a study involving 3,511 liposuctions in 2,009 patients. It reported excessive bleeding in eight patients and anesthesia related complications in nine patients; however, no deaths, thromboembolic events, fat emboli or cardiovascular complications were reported (Ref. 8). Infection, an issue of particular concern to the Panel and to FDA, occurred in only 1 of the 2,009 patients. The low incidence of infection associated with liposuction devices is confirmed and supported by several other reports in which the infection rate was less than 1 percent (Refs. 7, 8, 10, and 25).

VIII. Panel Recommendation

The Panel concluded that the incidence of infections and other complications associated with liposuction using the suction lipoplasty system for aesthetic body contouring can be controlled by proper patient selection, utilization of the proper surgical technique, and restricting the use of the device to trained and experienced practitioners.

Focusing on other potential problems and performance aspects of the device system, the Panel considered the issues of electrical malfunctions; bacterial, viral, or oil contamination of the operating room; bioincompatibility of materials; reflux of possible contaminated aspirated material; and product labeling.

Regarding potential electrical malfunctioning of the components and properties of the device, the Panel believed that the UL–544 Standard for Medical and Dental Equipment (Ref. 2) can provide the necessary provisions to control the potential electrical hazards associated with the use of the suction pump. Likewise, the Panel believed that the American Society for Testing Materials (ASTM) F 960–86 Standard Specification for Medical and Surgical Suction and Drainage Systems can control the potential risk of leakage, risk of filtration, and implosion of the contaminants into the operating room by emissions from the exhaust port of the pump. Proper sterilization of the cannula and tubing can control the risk

of infection as indicated by the low rate of infection reported in the literature (Ref. 1, p. 29). The risk of oil vapor leakage can be reduced by properly maintaining the pump in oil based aspirators (Refs. 1 and 4). The Panel noted that there are no reports of viral transmissions to operating room personnel from aerosolization of aspirate (Ref. 4).

A major concern to the Panel was the reflux of possibly contaminated aspirated material from the collection bottle into the sterile surgical field. They concluded that filters and/or valves can minimize the potential risk of bacterial contamination of the cannula, surgical field, and operating room air.

The Panel believed the biocompatibility of materials used to manufacture the cannula can be assessed by voluntary standards established by ASTM (Ref. 13), United States Pharmacopeia (USP) (Ref. 14), and by methods described in Tripartite Biocompatibility Guidance for Medical Devices (Ref. 26), and that these test methods will provide reasonable assurance that the materials used to manufacture the device system, as well as any residues remaining on the devices after manufacturing, are not toxic and that the system is biocompatible. The Panel also believed that when the device is manufactured of materials that meet the specifications of existing voluntary standards, a biocompatible cannula can be produced thereby providing reasonable assurance of safety and effectiveness with respect to biocompatibility.

The Panel believed that device labeling should reflect the nature of the device as it relates to the intended use and should include appropriate directions for use, warnings, and precautions, based upon current scientific knowledge. The Panel further believed that the labeling should be accessible to physicians and patients.

In summary, the Panel believed that, based on publicly available valid scientific evidence, class II controls can provide reasonable assurance that the suction lipoplasty system is safe and effective for use in aesthetic body contouring. The Panel specified that the device conform to the provisions similar to those in the Tripartite Biocompatibility Guidance for Medical Devices, the above voluntary standards established by UL, ASTM, the Canadian Standards Association (CSA), the International Organization for Standardization (ISO), and USP, and specific labeling which identifies the appropriate patient selection criteria and surgeon training. The panel also recommended the issuance of a performance standard on a high priority basis.

IX. FDA's Tentative Findings

FDA believes that the data provided by the petitioners and others constitute valid scientific evidence demonstrating that the regulatory controls of class II in combination with class I are sufficient to provide reasonable assurance of the safety and effectiveness of the generic type lipoplasty system as identified in section III. of this document. FDA tentatively agrees with the recommendation of the Panel that the suction lipoplasty system for aesthetic body contouring and substantially equivalent devices of this generic type should be reclassified from class III into class II. The agency has identified the special controls as the four following voluntary standards: International Organization for Standardization (ISO) 10079–1, Medical Suction Equipment, Part 1, Electrically Powered suction Equipment—Safety Requirements, 1993 (Ref. 15); Canadian Standards Association (CSA), Standard Z168.11–94, Vacuum Devices Used for Suction and Drainage, 1994 (Ref. 16); Clinical Practice Guidelines, Plastic and Maxillofacial Surgery, American Society of Plastic and Reconstructive Surgeons, Chapter L: Localized Adiposity, September 1993 (Ref. 27); International Standard ISO–10993 Biological Evaluation of Medical Devices Part I Evaluation and Testing, 1995 (Ref. 28); and the inclusion of the following labeling statements to provide reasonable assurance of the safety and effectiveness of the suction lipoplasty system:

(1) This device is designed to contour the body by removing localized deposits of excess fat through small incisions.

(2) Use of this device is limited to those physicians who, by means of residency training or sanctioned continuing medical education, have demonstrated proficiency in suction lipoplasty.

(3) This device will not, in and of itself, produce significant weight reduction.

(4) This device should be used with extreme caution in patients with chronic medical conditions such as diabetes, heart or lung disease, circulatory diseases, or obesity.

(5) Results of this procedure will vary depending upon patient age, surgical site, and experience of the surgeon.

(6) Results of this procedure may or may not be permanent.

(7) The amount of fat removed should be limited to that necessary to achieve a desired cosmetic effect.

(8) Loss of blood and fluid is predictable based on suction volume. Capability of providing adequate, timely replacement of these components is essential for patient safety.

(9) All reusable components of the device must be sterilized between patients and all disposable components replaced.

FDA does not believe that the performance standard recommended by the Panel is necessary because the voluntary standards listed above will provide a reasonable assurance of safety and effectiveness for the suction lipectomy system.

Consistent with the purpose of the act, class II controls as identified above and as defined by section 513(a)(1)(B) of the act are sufficient to provide reasonable assurance of the safety and effectiveness of the suction lipoplasty system.

X. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Analysis of Impacts

FDA has examined the impacts of this proposed action under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed action is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed action is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because reclassification of devices relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the act, and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that this proposed action would not have a significant economic impact on

a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

XII. References

The following references have been placed on display in the Documents Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Reclassification Petition for the Suction Lipectomy Systems for Aesthetic Body Contouring, submitted by American Society for Aesthetic Surgery, December 28, 1989.

2. Transcript of the General and Plastic Surgery Devices Panel Meeting, January 26, 1989.

3. Transcript of the General and Plastic Surgery Devices Panel Meeting, March 10, 1989.

4. Pitman, G. H., ''Instrumentation,'' *Liposuction and Aesthetic Surgery*, Quality Medical Publishing Inc., St. Louis, MO, Part I, 2:31–36.

5. Underwriters Laboratories, UL–544, Standard for Medical and Dental Equipment, 1976, Reprinted 1985.

6. Illouz, Y. G., ''Illouz's Technique of Body Contouring by Lipolysis,'' *Clinics in Plastic Surgery*, 11:409–417, 1984.

7. Kesselring, U. K., ''Body Contouring with Suction Lipectomy,'' *Clinics in Plastic Surgery*, 11:393–498, 1984.

8. Dillerud, E., ''Suction Lipoplasty, A Report on Complications, Undesired Results, and Patient Satisfaction Based on 3,511 Procedures,'' *Plastic and Reconstructive Surgery*, 88:239–246, August 1991.

9. Dillerud, E., and L. L. Haheim, ''Long-term Results of Blunt Suction Lipectomy Assessed By Questionnaire Survey,'' *Plastic and Reconstructive Surgery*, 92:35–42, July 1993.

10. Dolsky, R. L., J. Newman, J. R. Fetzek, et al., ''Liposuction History, Techniques and Complications,'' *Dermatology Clinics of North America*, 5:313–333, 1987.

11. Teimourian, B. and W. B. Rogers, ''A National Survey of Complications Associated with Suction Lipectomy: A Comparative Study,'' *Plastic and Reconstructive Surgery*, 84:628–631, 1989.

12. Fredricks, S., ''Five-year Updated Evaluation of Suction-assisted Lipectomy,'' ASPRS Ad Hoc Committee on New Procedures, September 30, 1987.

13. Annual Book of American Society for Testing and Materials Standards, Medical Devices, vol. 13.01, 1088.

F 639–79 Standard Specification for Polyethylene Plastics for Medical Applications.

F 665–80 Standard Classification for Vinyl Chloride Plastics Used in Biomedical Application.

F 719–81 Standard Practice for Testing Biomaterials in Rabbits for Primary Skin Irritation.

F 720–81 Standard Practice for Testing Guinea Pig Maximization Test.

F 748–87 Standard Practice for Selecting Generic Biological Test Method for Materials and Devices.

F 749–87 Standard Practice for Evaluating Material Extracts by Intracutaneous Injection in the Rabbit.

F 750–87 Standard Practice for Evaluating Material Extracts by Systemic Injection in the Mouse.

F 813–83 Standard Practice for Direct Cell Culture Evaluation of Materials for Medical Devices.

F 960–86 Standard Specification for Medical and Surgical Suction and Drainage Systems.

14. United States Pharmacopeia XXI, Biological Tests—Plastics.

15. ISO (International Organization for Standardization) 10079–1, Medical Suction Equipment, Part I, Electrically Powered Suction Equipment—Safety Requirements, 1993.

16. CSA (Canadian Standards Association), Standard Z168.11–94, Vacuum Devices Used for Suction and Drainage, 1994.

17. Grazer, F. M., ''Suction-Assisted Lipectomy: Its Indications, Contraindications, and Complications,'' *Year Book Medical Publishers*, 1984.

18. Ersek, R. A., J. Zambrona, G. S. Surak, et al., ''Suction-assisted Lipectomy for Correction of 202 Figure Faults in 101 Patients: Indications, Limitations, and Applications,'' *Plastic and Reconstructive Surgery*, 78:615–626, 1986.

19. Hetter, G. P., ''Optimum Vacuum Pressures for Lipolysis,'' *Aesthetic Plastic Surgery*, 8:23–26, 1984.

20. Christman, K. D., ''Death Following Lipectomy and Tissue,'' ''Neither Panacea of Humbug,'' *Postgraduate Medicine*, 75:124, 126, 128, 1984.

21. Courtiss, E. H., ''Suction Lipectomy: A Retrospective Analysis of 100 Patients,'' *Plastic and Reconstructive Surgery*, 73:780–796, 1984.

22. Badran, H. A., K. Z. Kodeara, and M. H. Mabrouk, ''Blood Conservation in Massive Suction Lipectomy,'' *Plastic and Reconstructive Surgery*, 92:1298–1304, 1993.

23. Hunter, G. R., R. O. Crapo, and T. R. Broadbent, ''Pulmonary Complications Following Abdominal Lipectomy,'' *Plastic and Reconstructive Surgery*, 71:809–817, 1983.

24. Backgrounder, ''Liposuction'' American Society of Plastic and Reconstructive Surgeons, July 1994.

25. Pitman, G. H., and B. Teimourian, ''Suction Lipectomy: Complications and Results by Survey,'' *Plastic and Reconstructive Surgery*, 76:65–72, 1985.

26. Tripartite Biocompatibility Guidance for Medical Devices, September 1986.

27. Clinical Practice Guidelines, Plastic and Maxillofacial Surgery, American Society of Plastic and Reconstructive Surgeons, Chapter L: Localized Adiposity, September 1993.

28. International Standard ISO–10993 Biological Evaluation of Medical Devices Part I Evaluation and Testing, 1995.

XIII. Request for Comments

Interested persons may, on or before February 11, 1997, submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 6, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–29066 Filed 11–12–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[Document Identifier: HCFA–1450]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, with change, of previously approved collection for which approval has expired; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill Form HCFA–1450 (UB–92) and Instructions, and Supporting Regulations 42 CFR 424.5 (a) (5) (Claim for Payment), 42 CFR 424.32 (Basic Requirements for all Claims) and 42 CFR 412.60 (Diagnosis-Related Groups Classification and Weighting Factors); *Form No.:* HCFA–1450; *Use:* This form and instructions are standardized for use in the Medicare/Medicaid programs to apply for reimbursement for covered services. The HCFA–1450 is managed by the National Uniform Billing

Committee, a standards body sponsored by the American Hospital Association. Most major payers, such as the Blues network, the members of the Health Insurance Association of America, as well as the state hospital associations, are represented on this body. 42 CFR 424.5 (a) (5), 42 CFR 424.32, and 42 CFR 412.60 are regulations underlying the use of the form HCFA–1450 and the information captured on the form HCFA–1450, including the use of diagnostic and procedural coding systems. HCFA solicits comments on any and all aspects of the HCFA–1450, and the use of diagnostic and procedural coding systems: HCFA currently uses the most current version of the ICD–9–CM and CPT/HCPCS; *Frequency:* On occasion; *Affected Public:* Business or other for profit, not for profit institutions, State, local or tribal government, Federal Government; *Number of Respondents:* 133,100,000; *Total Annual Responses:* 133,100,000; *Total Annual Hours:* 993,250.

To obtain copies of the supporting statement and any related forms and instructions for the proposed paperwork collection referenced above, E-mail your request, including your address and phone number, to JBurke1@hcfa.gov, or call the Reports Clearance Office on (410) 786–1325. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 4, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–28947 Filed 11–12–96; 8:45 am]

BILLING CODE 4120–03–P

[HCFA–R–199]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following request for emergency review. We are requesting an emergency review because the collection of Section 3515 of the Chief Financial Officers Act of 1990 requires government agencies to produce auditable financial statements in accordance with Office of Management and Budget guidelines on form and content. Beginning in fiscal year 1996, the Government Management and Reform Act of 1994 requires that all offices, bureaus and associated activities of the 24 CFO Act agencies must be covered in an agency-wide, audited financial statement. Because of the size of the Medicaid program, we believe that Medicaid payables and receivables are material to both financial statements. The agency cannot reasonably comply with the normal clearance procedures because it is imperative that HCFA collects this data in time for incorporation into HCFA's fiscal year 1996 financial statement. Failure to collect this information could result in a disclaimer on the audit opinion.

HCFA is requesting that OMB provide a completed review by November 15, 1996 and a 180 day approval. During this 180-day period, HCFA will publish a separate Federal Register notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. Then HCFA will submit the requirements for OMB review and an extension of this emergency approval.

Title of Information Collection Request: New Collection; *Title of Information Collection:* Medicaid Report on Payables and Receivables; *Form No.:* HCFA–R–199; *Use:* The Chief Financial Officers Act of 1990 requires government agencies to produce auditable financial statements. Form HCFA–R–199 will collect accounting data from the States on payables and receivables. *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 57; *Total Annual Responses:* 57; *Total Annual Hours Requested:* 171.

To request copies of the proposed paperwork collection referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 2 working days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Laura Oliven, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 6, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–29014 Filed 11–12–96; 8:45 am]

BILLING CODE 4120–03–P

[HCFA–1961]

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* HCFA Forms and manuals Order; *Form No.:* HCFA–1961; *Use:* The HCFA–1961 will be used by Medicare Intermediaries, Carriers, State Agencies, SSA and End Stage Renal Networks to order Medicare/Medicaid forms and program manuals from the Health Care Financing Administration; *Frequency:* Annually; *Affected Public:* Federal Government and State, local, or tribal government; *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 400.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and

Planning Staff, Attention: Linda Mansfield, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 5, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–29015 Filed 11–12–96; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4086–N–14]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: Comments due: January 13, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) valuate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Contract and Subcontract Activity.

OMB Control Number: 2577–0088.

Description of the need for the information and proposed use: The information provided to HUD by Housing Agencies/Grantees will be used to prepare an annual report on Minority Business Enterprise (MBE) participation in Public and Indian Housing Programs. The report will be submitted to the Department of Commerce pursuant to Executive Order 12432. HUD will also use the information to monitor and evaluate Housing Agency performance.

Form Number: HUD–2516.

Members of affected public. State, Local or Tribal Government, Small Businesses or Organizations.

Estimation of the total number of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: 3,400 respondents annually, one hour per response, 3,400 total burden hours.

Status of the proposed information collection: Revision.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 4, 1996.

Michael B. Janis,

General Deputy,

BILLING CODE 4210–33–M

Contract and Subcontract Activity

U.S. Department of Housing and Urban Development

OMB Approval Nos.: 2502-0355 (exp.8/31/96), 2506-0066 (exp.8/31/96), & 2577-0088 (exp.7/31/96)

Public reporting burden for this collection of information is estimated to average 1 hour 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, Paperwork Reduction Project (2502-0355, 2506-0066, and 2577-0088), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collecton displays a valid OMB control number.

Do not send this form to the above address.

Executive Orders 12432 and 11625 requires Federal agencies to promote Minority Business Enterprise (MBE) participation in their programs and prescribes additional arrangements for developing and coordinating a National Program for MBE. Pursuant to Executive Order 12432, the Department of Commerce requires an annual report on MBE achievements. The information provided on Public and Indian Housing Programs will be used to monitor and evaluate HA performance and to develop and submit the Annual Report to the President. Responses to the collection of information are voluntary. The information requested does not lend itself to confidentiality

1. Grantee/Project Owner/Developer/Sponsor/Builder/Agency

Check if: PHA ☐ IHA ☐

2. Location (City, State, ZIP Code)

3a. Name of Contact Person

3b. Phone Number (Including Area Code)

4. Reporting Period ☐ Oct. 1 - Sept. 30 (Annual-FY)

5. Program Code (Not applicable for CPD programs.) See explanation of codes at bottom of page. Use a separate sheet for each program code. ☐

6. Date Submitted to Field Office

Grant/Project Number or HUD Case Number or other identification of property, subdivision, dwelling unit, etc. 7a.	Amount of Contract or Subcontract 7b.	Type of Trade Code (See below) 7c.	Contractor or Subcontractor Business Racial/Ethnic Code (See below) 7d.	Woman Owned Business (Yes or No) 7e.	Prime Contractor Identification (ID) Number 7f.	Sec. 3 7g.	Subcontractor Identification (ID) Number 7h.	Sec. 3 7i.	Contractor/Subcontractor Name and Address 7j. Name	Street	City	State	Zip Code

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CPD:
1 = New Construction
2 = Education/Training
3 = Other

7c: Type of Trade Codes:

Housing/Public Housing:
1 = New Construction
2 = Substantial Rehab.
3 = Repair
4 = Service
5 = Project Mangt.
6 = Professional
7 = Tenant Services
8 = Education/Training
9 = Arch./Engrg. Appraisal
0 = Other

7d: Racial/Ethnic Codes:
1 = White Americans
2 = Black Americans
3 = Native Americans
4 = Hispanic Americans
5 = Asian/Pacific Americans
6 = Hasidic Jews

5: Program Codes (Complete for Housing and Public and Indian Housing programs only):
1 = All insured, including Section 8
2 = Flexible Subsidy
3 = Section 8 Noninsured, Non-HFDA
4 = Insured (Management)
5 = Section 202
6 = HUD-Held (Management)
7 = Public/Indian Housing Development
8 = Public/Indian Housing Management
9 = Public/Indian Housing Modernization
0 = Other (specify which program)

Previous editions are obsolete.

form **HUD-2516** (07/17/96)

This report is to be completed by grantees, developers, sponsors, builders, agencies, and/or project owners for reporting contract and subcontract activities of $10,000 or more under the following programs: Community Development Block Grants (entitlement and small cities); Urban Development Action Grants; Housing Development Grants; Multifamily Insured and Noninsured; Public and Indian Housing Authorities; and contracts entered into by recipients of CDBG rehabilitation assistance.

Contracts/subcontracts of less than $10,000 need be reported only if such contracts represent a significant portion of your total contracting activity. Include only contracts executed during this reporting period.

This form has been modified to capture Section 3 contract data in columns 7g and 7i. Section 3 requires that the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. Recipients using this form to report Section 3 contract data must also use Part I of form HUD-60002 to report employment and training opportunities data. Form HUD-2516 is to be completed for public and Indian housing and most community development programs. Form HUD-60002 is to be completed by all other HUD programs including State administered community development programs covered under Section 3.

A Section 3 contractor/subcontractor is a business concern that provides economic opportunities to low- and very low-income residents of the metropolitan area (or nonmetropolitan county), including a business concern that is 51 percent or more owned by low- or very low-income residents; employs a substantial number of low- or very low-income residents; or provides subcontracting or business development opportunities to businesses owned by low- or very low-income residents. Low- and very low-income residents include participants in Youthbuild programs established under Subtitle D of Title IV of the Cranston-Gonzalez National Affordable Housing Act.

The terms "low-income persons" and "very low-income persons" have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. Low-income persons mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families. Very low-income persons means low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Submit two (2) copies of this report to your local HUD Office within ten (10) days after the end of the reporting period you checked in item 4 on the front.

Complete item 7h. only once for each contractor/subcontractor on each semi-annual report.

Enter the prime contractor's ID in item 7f. for all contracts and subcontracts. Include only contracts executed during this reporting period. PHAs/IHAs are to report all contracts/subcontracts.

Community Development Programs

1. **Grantee:** Enter the name of the unit of government submitting this report.

3. **Contact Person:** Enter name and phone of person responsible for maintaining and submitting contract/subcontract data.

7a. **Grant Number:** Enter the HUD Community Development Block Grant Identification Number (with dashes). For example: B-32-MC-25-0034. For Entitlement Programs and Small City multi-year comprehensive programs, enter the latest approved grant number.

7b. **Amount of Contract/Subcontract:** Enter the dollar amount rounded to the nearest dollar. If subcontractor ID number is provided in 7f, the dollar figure would be for the subcontract only and not for the prime contract.

7c. **Type of Trade:** Enter the numeric codes which best indicates the contractor's/subcontractor's service. If subcontractor ID number is provided in 7f., the type of trade code would be for the subcontractor only and not for the prime contractor. The "other" category includes supply, professional services and all other activities except construction and education/training activities.

7d. **Business Racial/Ethnic/Gender Code:** Enter the numeric code which indicates the racial/ethnic /gender character of the owner(s) and controller(s) of 51% of the business. When 51% or more is not owned and controlled by any single racial/ethnic/gender category, enter the code which seems most appropriate. If the subcontractor ID number is provided, the code would apply to the subcontractor and not to the prime contractor.

7e. **Woman Owned Business:** Enter Yes or No.

7f. **Contractor Identification (ID) Number:** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of HUD funds. Note that the Employer (IRS) Number must be provided for each contract/subcontract awarded.

7g. **Section 3 Contractor:** Enter Yes or No.

7h. **Subcontractor Identification (ID) Number:** Enter the Employer (IRS) Number of the subcontractor as the unique identifier for each subcontract awarded from HUD funds. When the subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.

7i. **Section 3 Contractor:** Enter Yes or No.

7j. **Contractor/Subcontractor Name and Address:** Enter this information for each firm receiving contract/subcontract activity only one time on each report for each firm.

Multifamily Housing Programs

1. **Grantee/Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report.

3. **Contact Person:** Same as item 3 under CPD Programs.

4. **Reporting Period:** Check only one period.

5. **Program Code:** Enter the appropriate program code.

7a. **Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.

7b. **Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.

7c. **Type of Trade:** Same as item 7c. under CPD Programs.

7d. **Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.

7e. **Woman Owned Business:** Enter Yes or No.

7f. **Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.

7g. **Section 3 Contractor:** Enter Yes or No.

7h. **Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.

7i. **Section 3 Contractor:** Enter Yes or No.

7j. **Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.

Public Housing and Indian Housing Programs

PHAs/IHAs are to report all contracts/subcontracts. Include only contracts executed during this reporting period.

1. **Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report. Check box as appropriate.

3. **Contact Person:** Same as item 3 under CPD Programs.

4. **Reporting Period:** Check only one period.

5. **Program Code:** Enter the appropriate program code.

7a. **Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.

7b. **Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.

7c. **Type of Trade:** Same as item 7c. under CPD Programs.

7d. **Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.

7e. **Woman Owned Business:** Enter Yes or No.

7f. **Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.

7g. **Section 3 Contractor:** Enter Yes or No.

7h. **Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.

7i. **Section 3 Contractor:** Enter Yes or No.

7j. **Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.

DRAFT

Previous editions are obsolete.

form **HUD-2516** (07/17/96)

[FR Doc. 96–28951 Filed 11–12–96; 8:45 am]

BILLING CODE 4210–33–C

[Docket No. FR–4086–N–74]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The soliciting public comments on the subject proposal.

DATES: Comments are due January 13, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and be sent to: Reports Liaison Officer, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships—telephone (202) 708–1537. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected entities concerning the proposed information collection to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of information to be collected; and (4) Minimize the burden of collection of information on those who are to respond; including through the use of appropriate technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of the Proposal: Notice of Funding Availability and Application Kit for the Hispanic-Serving Institutions Work Study Program (HSI–WSP).

Description of the need for the information and proposed use: The information is being collected to select grantees in this statutorily-created competitive grant program. The information is also being used to monitor the performance of grantees to ensure that they meet statutory and program goals and requirements.

Members of the affected public: Certain Hispanic-serving institutions of higher education: 89 applicants and 30 grantees.

Estimation of the total number of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: Information pursuant to submitting applications will be submitted once. Information pursuant to grantee monitoring requirements will be submitted once a year.

The following chart details the respondent burden on an annual basis:

	No. of respondents	Total annual responses	Hours per response	Total hours
Application	89	89	40	3,560
Annual Reports	30	30	6	180
Final Reports	30	30	8	240
Recordkeeping	30	30	5	150
				4,130

Status of proposed information collection: OMB approved an emergency paperwork clearance for this information collection and assigned it OMB Control No. 2528–0182, expiration date December 31, 1996. OMB's approval of this regular paperwork clearance is pending.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 15, 1996.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 96–28961 Filed 11–12–96; 8:45 am]

BILLING CODE 4210–62–M

[Docket No. FR–4086–N–67]

Notice of Proposed Information, Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: Comments due: January 13, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jane E. Luton, telephone number (202) 708–2556; extension 2537 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including

through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 24 CFR, Part 266, Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans.

OMB Control Number: 2502–0500.

Description of the need for the information and proposed use: Section 542(c) of the Housing and Urban Development Act of 1992 directs HUD to implement a pilot program of risk-sharing with State and local housing finance agencies (HFAs). Under this program, HUD provides full mortgage insurance on multifamily housing projects whose loans are underwritten, processed and serviced by HFAs. The HFAs will reimburse HUD a certain percentage of any loss under an insured loan depending upon the level of risk the HFA contracts to assume.

The regulatory authority for this program is set forth in 24 CFR 266, published in final form on December 5, 1994. This regulation was amended on February 29, 1996, as part of the President's regulatory reinvention effort. Accordingly, the collection of this information is consistent with statutory requirements.

Agency form numbers: None.

Members of affected public: An estimation of the total number of hours needed to prepare the information collection is 18,051, the number of respondents is 330, frequency of response is 1, and the hours of response is 547.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 4, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–28962 Filed 11–12–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4086–N–73]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comments due: January 13, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Todd Richardson, Social Science Analyst, Office of Policy Development and Research—telephone (313) 226–6896 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Measuring Quality of Life, Health, and Well-Being in Different Housing Environments.

Description of the need for the information and proposed use: With the reinvention of the Department of Housing and Urban Development and the restructuring of many HUD programs, it has become increasingly important to understand why certain housing developments ''work'' and others do not. The information collected throughout this project will be used to help HUD determine what survey methods and questions appropriately assess the quality of life in housing developments, and how to measure the unique contribution of housing assistance across various dimensions of the residents' quality of life. Once the best questions are identified through this survey, they will be used uniformly across HUD's program evaluations. This project is a joint project with Canada Mortgage and Housing Corporation (CMHC) and they hope to use it for the same purpose. Ultimately, it will allow better comparison of programs between the U.S. and Canada.

Members of affected public: A total of 600 renters in a select number of assisted and unassisted developments in the Columbus, OH Metropolitan Statistical Area will be surveyed.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information will be collected to result in 600 one-time interviews with renters. To test the question utility using different methods of administration, 200 renters will be surveyed in-person, 200 residents will be surveyed by telephone, and 200 will be surveyed by mail. The in-person interviews are estimated to take approximately 1 hour and 10 minutes each. The shorter telephone and mail surveys are estimated to take 40 minutes each. This means a total of 500 hours of response for the information collection.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 23, 1996.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 96–28977 Filed 11–12–96; 8:45 am]

BILLING CODE 4210–62–M

[Docket No. FR–4086–N–71]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: Comments due: January 13, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Sheila E. Jones, Department of Housing and Urban Development, 451 7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ophelia H. Wilson (202) 708–2186 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Quarterly Performance Report for John Heinz Neighborhood Development Program.

OMB Control Number, if applicable: OMB No. 2506–0158.

Description of the need for the information and proposed use: The reports provide information to HUD necessary for program monitoring and evaluation.

Agency form numbers, if applicable: Only as necessary the grantee may have occassion to submit the following forms:

HUD–27053 (if requesting draw down of funds)

HUD–27054 (if there is a change in access authorization)

SF–1199A (if banking information changes)

SF–269A (if funds are still being raised to meet matching requirements)

Members of affected public: Grantees that have received HUD funding from FY '94 to the present.

Estimation of the total numbers of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response:

Activity	Number of respondents	Frequency of response	Response hours	Burden hours
Report Prep.	100	Quarterly (4)	42	4,200

Status of the proposed information collection: Information is currently being collected from each grantee.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 4, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–28981 Filed 11–12–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4086–N–72]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comments due: January 13, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Todd Richardson, Economist and Social Science Analyst, Office of Policy Development and Research—telephone (313) 226–6896 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the qualify, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: A Survey of Rents, Vacancy, and Amenities in Multifamily Projects in Michigan.

Description of the need for the information and proposed use: HUD has three primary needs for the information to be collected from this survey. The first is for our Portfolio Re-engineering Demonstration. Under that demonstration, the department is to explore ways to resolve the over-subsidization of HUD insured projects receiving project based Section 8. If Portfolio Re-engineering is to be implemented, it is crucial that HUD know what the appropriate market rent is for different unit sizes at individual developments.

The second is HUD's annual adjustment factors for Section 8 project based subsidy. With this survey, we will know what are the appropriate adjustments.

The third is to assist HUD in its overall underwriting process. The department insures mortgages for market rate multi-family developments. As part of its determination on whether HUD should insure the project, HUD conducts a market study and does an appraisal. This survey will greatly improve the accuracy and efficiency of this process.

Members of affected public: We estimate that 3,000 housing managers in the state will be surveyed.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information will be collected from approximately 3,000 managers of multifamily rental developments in the State of Michigan. The 15 minute mail survey is planned to be conducted annually. The information being requested is information normally maintained by housing managers. The total annual burden for respondents is estimated at 750 hours.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 23, 1996.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 96–28982 Filed 11–12–96; 8:45 am]

BILLING CODE 4210–62–M

[Docket No. FR–4086–N–68]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 13, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 30, 1996.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Evaluation of the HUD Lead-Based Paint Hazard Reduction Grant Program.

Office: Lead Hazard Control.

OMB Approval Number: 2539–0004.

Description of the Need for the Information and its Proposed Use: Public and private organizations concerned with both environmental health and the provision of affordable housing need information on how to control lead-based paint hazards in housing in the most cost effective manner. Data from the evaluation study will be used by HUD and other Federal agencies to determine the cost and efficacy of various strategies for controlling lead-based paint hazards and reducing childhood lead exposure. Results will affect Federal regulations and guidelines required under law, and the actions of State, local and private-sector organizations will be affected as well.

Form Number: None.

Respondents: Individuals or Households and State, Local, or Tribal Government.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	14		1,791		.52		13,162

Total Estimated Burden Hours: 13,162.

Status: Extension, without changes.

Contact: Barbara Haley, HUD, (202) 755–1805 x126; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 30, 1996.

[FR Doc. 96–28978 Filed 11–12–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–69]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 13, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and

Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 31, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Mortgagee Questionnaire.

Office: Housing.

OMB Approval Number: 2502–0121.

Description of the Need for the Information and Its Proposed Use: The information collected on form HUD–9800 provides an overview of the mortgagee's operations for servicing HUD-insured single family mortgages. HUD uses this information to forecast possible weaknesses in a servicing operation prior to an on-site review of the mortgagee's office procedures.

Form Number: HUD–9800.

Respondents: Business or Other For-Profit.

Frequency of Submission: Biennially.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–9800	2,800		.1428		1.5		600

Total Estimated Burden Hours: 600.

Status: Reinstatement, without changes.

Contact: Ted Green, HUD, (202) 708–1719, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 31, 1996.

[FR Doc. 96–28979 Filed 11–12–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–70]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 13, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 24, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Request for Occupied Conveyance.

Office: Housing.

OMB Approval Number: 2502–0268.

Description of the Need for the Information and Its Proposed Use: Tenants will provide certain information to HUD that will determine if the occupant is financially able to pay the fair market rent and/or whether a member of the immediate family suffers from a temporary illness or injury which

would prevent a physical move from the property.

Form Number: HUD–9535.

Respondents: Individuals or Households and Business or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Mortgagees	3,000		17.83		.25		13,375
Mortgagors	8,025		1.00		.50		4,013

Total Estimated Burden Hours: 17,388.

Status: Extension, without changes.

Contact: Rose Donnelly/Art Orton, HUD, (202) 708–4767, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 24, 1996.

[FR Doc. 96–28980 Filed 11–12–96; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Permit

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–820586

Applicant: Leslie Colley, Clinch River Community Project, Sneedville, Tennessee

The applicant requests a permit to take (collect and retain relic shells) endangered and threatened mussel species native to the upper Clinch River, Hancock County, Tennessee for the purpose of enhancement of survival of the species.

PRT–820707

Applicant: Dr. Gary D. Schnell, Oklahoma Biological Survey, Norman, Oklahoma

The applicant requests a permit to take (capture and release for population surveys, or temporarily hold for translocation or behavioral research) the endangered American burying beetle, *Nicrophorus americanus,* throughout the species range in Arkansas and Oklahoma for the purpose of enhancement of survival of the species.

PRT–820585

Applicant: Alejandro N. Lima, Miami-Dade Community College, Wolfson Campus, Miami, Florida

The applicant requests a permit to take (collect cuttings and fruits, and manipulate blossoms) the endangered Key tree- cactus, *Pilosocereus robinii,* at Key Deer National Wildlife Refuge, Monroe County, Florida for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: November 1, 1996.

Garland B. Pardue,

Acting Regional Director.

[FR Doc. 96–28987 Filed 11–12–96; 8:45 am]

BILLING CODE 4310–55–P

Notice of Receipt of an Application, and Availability of an Environmental Assessment and Finding of No Significant Impact for an Incidental Take Permit by Union Camp Corporation, Woodlands Division, for Forest Management in South-Central Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Union Camp Corporation, Woodlands Division (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), (Act) as amended. The ITP would authorize for a period of 30 years, the incidental take of a threatened species, the Red Hill's salamander (*Phaeognathus hubrichti*). The proposed take is incidental to forest management activities on about 3,810 acres owned by the Applicant in Butler, Conecuh, Covington, and Crenshaw Counties, Alabama. The Service also announces the availability of an Environmental Assessment (EA) and Habitat Conservation Plan (HCP) for this ITP application. The HCP, which is required by Section 10(a)(2)(A) of the Act, was prepared and submitted by the Applicant with the permit application. Copies of the EA and/or HCP may be obtained by making a request in writing to the Regional Office (see **ADDRESSES**). This notice also advises the public that the Service has made preliminary determinations that issuing an ITP to the Applicant is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, (NEPA) as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the application, EA and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before December 13, 1996.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Jackson, Mississippi, Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit number PRT–821527 in such comments, or in requests for the documents discussed herein. Requests for the documents

must be in writing to be adequately processed.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, Atlanta, Georgia (see **ADDRESSES** above), telephone: 404/679–7110; or Mr. Will McDearman at the Jackson, Mississippi, Field Office (see **ADDRESSES** above), telephone: 601/965–4900 ext. 24.

SUPPLEMENTARY INFORMATION: The Red Hill's salamander (RHS), *Phaeognathus hubrichti*, is a plethodontid salamander known only from the Red Hills region of south-central Alabama in portions of Butler, Conecuh, Covington, Crenshaw, and Monroe Counties. This physiographic subdivision of the Gulf Coastal Plain is distinguished by hilly, dissected terrain, frequently with steep side slopes extending 200 feet from the ridge to the base of the lower slope. Natural vegetation of these moist, steep, sheltered slopes and ravines consists of a beech-magnolia forest community. Characteristic woody species in the forest overstory include American beech (*Fagus grandifolia*), bigleaf magnolia (*Magnolia macrophylla*), southern magnolia (*M. grandiflora*), white oak (*Quercus alba*), and tulip tree (*Liriodendron tulipifera*). Portions of this and closely related forest types in the Red Hills region are underlain by clays, claystones, and siltones of the Tallahatta and Hatchetigbee formations. RHS occupy subterranean burrows within the fissures and channels of these formations on relatively steep slopes beneath undisturbed and moderately disturbed hardwood and hardwood-pine dominated forests. RHS, which rarely leave their burrows, prey upon ground-dwelling arthropods located within burrows or outside burrows near the burrow entrance. Substrates of the Tallahatta and Hatchetigbee formation apparently are important for maintaining suitable moisture required for these amphibians. Other important factors preventing the dessication of RHS microhabitat include loamy soils, leaf litter from deciduous trees, and a well developed overstory canopy of hardwoods that intercepts direct sunlight. Timber management practices that reduce or eliminate the forest canopy, disturb or compact soils, and convert hardwood-dominated forests to pine-dominated forests can incidentally kill or injure RHS in violation of Section 9 of the Act. Such practices can involve timber harvest, the operation of vehicular logging equipment, timber regeneration, and site preparation in habitat occupied by RHS. Based on RHS surveys conducted by the Applicant, RHS may occur on about 3,810 acres of lands owned or managed by Union Camp Corporation. This represents about seven percent of the rangewide total habitat estimated to remain in 1978.

The EA considers the environmental consequences of two alternatives. The proposed action is the issuance of the ITP based upon the submittal of the HCP. This action is based on a preliminary determination by the Service that the HCP will satisfy the requirements of Section 10(a)(2)(B) of the Act. By this alternative, the HCP restricts timber management activities in habitat preferred by RHS. Preferred habitat occupies about 1,816 acres with steep (>30 degree) slopes, underlain by the Tallahatta or Hatchetigbee formations, with a hardwood or mixed hardwood-pine forest. Pine will be harvested by limited single tree selection while maintaining a hardwood canopy coverage over at least 90 percent of a site. To minimize disturbance to soils and destruction of burrows, no vehicular logging equipment will operate within preferred habitat. Felled timber will be pulled from preferred habitat by cable from vehicular or other logging equipment located in adjacent, non-preferred habitat. In habitat marginally suitable for RHS, about 1,994 acres, normal industrial forest silvicultural practices will be applied. Marginally suitable habitat consists of slopes less than 30 degrees, with Tallahata or Hatchetigbee formations and forest cover of mixed hardwood-pine or pine. RHS populations in marginally suitable habitat will be significantly reduced or eliminated as a result of clearcutting, site preparation, and conversion to pine forests. Because RHS are more common and abundant in preferred (optimal) habitat, the HCP will conserve core RHS populations where most RHS exist. Populations in preferred habitat are expected to remain viable, contributing to the recovery of the species. The HCP also includes maintaining forest buffer zones adjacent to preferred habitat, staff training to implement the HCP, funding, and monitoring and reporting of management actions in preferred and marginally suitable habitat.

The second alternative in the EA is the no action alternative in which the Service would not issue the ITP. The basis for this alternative would be the failure of the Applicant to satisfy requirements of Section 10(a)(2)(B) of the Act for ITP issuance. Without the authority to incidentally take RHS, the Applicant is expected to continue to manage forests in occupied habitat according to existing current company guidelines or modified guidelines that substantially reduce or eliminate the likelihood of incidental take in preferred and marginally suitable habitat.

Such measures, in comparison to the first alternative, would be expected to involve additional restrictions on timber harvest and managing habitat occupied by RHS in a manner to avoid incidental take.

As stated above, the Service has made a preliminary determination that the issuance of this ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA and will result in the FONSI. This preliminary determination is based on information in the EA and HCP. The determination may be revised due to public comment received in response to this notice. An excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP would not have significant effects on the human environment in the project area.

2. The proposed take is incidental to an otherwise lawful activity.

3. The Applicant has ensured that adequate funding will be provided to implement the measures proposed in the submitted HCP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the Section 7 biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: November 11, 1996.

Garland B. Pardue,

Acting Regional Director.

[FR Doc. 96–28986 Filed 11–12–96; 8:45 am]

BILLING CODE 6450–01–P

Geological Survey

Request for Public Comment on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below will be 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 may be obtained by contacting the Bureau's clearance officer at the phone number

listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 208 National Center, 12201 Sunrise Valley Drive., Reston, Virginia, 20192, telephone (703) 648–7313.

Title: National Mapping Division Data Grant Program for Land Processes Research.

OMB approval number: 1028–0052.

Abstract: Respondents supply information and awardees supply a final report. Application information identifies the land processes research project and remotely sensed data requirements. Final report identifies utility of Data Grant Program in the completion of the nonprofit institution's research project.

Bureau form number: None.

Frequency: Annually.

Description of respondents: Non-profit institutions.

Estimated completion time: 25 hours.

Annual responses: 520.

Annual burden hours: 13,000 hours.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: November 4, 1996.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 96–28944 Filed 11–12–96; 8:45 am]

BILLING CODE 4310–31–M

Federal Geographic Data Committee (FGDC); Public Meeting of the FGDC Facilities Working Group

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice is to invite public participation in meetings of the FGDC Facilities Working Group and its subgroups. The major topic for these meetings is development of a Facility ID standard, a utility data content standard, and an environmental hazard data content standard.

TIME AND PLACE: 9 December 1996, at Headquarters U.S. Army Corps of Engineers, in Room 8124C of the Pulaski Building, 20 Massachusetts Avenue, NW, Washington, DC. The Pulaski building is located just a few blocks west of Union Station. The Facilities Working Group will meet from 1:00 p.m. until 3:00 p.m.; the Facility ID and Environmental Hazard Data Content Standard teams will meet from 10:00 a.m. until 12:00 noon; and Utility Data Content Standard team will meet from 3:15 until 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Jennifer Fox, FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; telephone (703) 648–5514; facsimile (703) 648–5755; Internet ''gdc@usgs.gov''.

SUPPLEMENTARY INFORMATION: The FGDC is a committee of Federal agencies engaged in geospatial activities. The FGDC Facilities Working Group specifically focuses on geospatial data issues related to facilities and facility management. A facility is an entity with location, deliberately established as a site for designated activities. A facility database might describe a factory, a military base, a college, a hospital, a power plant, a fishery, a national park, an office building, a space command center, or a prison. The database for a complex facility may describe multiple functions or missions, multiple buildings, or even a county, town, or city. The objectives of the Working Group are to: promote standards of accuracy and currentness in facilities data which are financed in whole or in part by Federal funds; exchange information on technological improvements for collecting facilities data; encourage the Federal and non-Federal community to identify and adopt standards specifications for facilities data; and promote the sharing of facilities data among Federal and non-Federal organizations.

Dated: November 1, 1996.

Wendy A. Budd,

Associate Chief, National Mapping Division.

[FR Doc. 96–28949 Filed 11–12–96; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the current list of tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792).

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–4641–MIB, 1849 C Street, NW, Washington, D.C. 20240. Telephone number: (202) 208–2475.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below are lists of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list is updated from the last such list published in February 16, 1995 (60 FR 9250), to include tribes acknowledged through the Federal acknowledgment process. The listed entities are acknowledged to have ''the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes.'' 25 CFR 83.2 (1996 ed.). We have, however, continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of Papago Indians of the Maricopa, Ak Chin Reservation, Arizona
Alabama and Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town of the Creek Nation of Oklahoma
Alturas Indian Rancheria of Pit River Indians of California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan
Bear River Band of the Rohnerville Rancheria of California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria of Smith River Indians of California

Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Rancheria of Pomo & Pit River Indians of California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria of California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Indian Tribe of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
  Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
  Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Tribe of South Carolina
Cayuga Nation of New York
Cedarville Rancheria of Northern Paiute Indians of California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation of Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Coast Indian Community of Yurok Indians of the Resighini Rancheria, California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Indian Tribe, Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
Death Valley Timbi-Sha Shoshone Band of California
Delaware Tribe of Indians, Oklahoma
Delaware Tribe of Western Oklahoma
Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria of California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation, California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada
Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona
Grand Traverse Band of Ottawa & Chippewa Indians of Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin (formerly known as the Wisconsin Winnebago Tribe)
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe of the Hoopa Valley Reservation, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Huron Potawatomi, Inc., Michigan
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan

Kialegee Tribal Town of the Creek Indian Nation of Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Indian Tribe of Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
La Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians of Michigan
Little Traverse Bay Bands of Odawa Indians of Michigan
Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation of Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Nation of Arizona, New Mexico & Utah
Nez Perce Tribe of Idaho
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Wisconsin
Onondaga Nation of New York
Osage Nation of Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Indian Tribe of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Rancheria of Pomo Indians of California
Pit River Tribe of California (includes Big Bend, Lookout, Montgomery Creek & Roaring Creek Rancherias & XL Ranch)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians of Michigan
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Rancheria of Pomo Indians of California
Prairie Band of Potawatomi Indians, Kansas
Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota
Redding Rancheria of California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California

Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California (formerly known as the Covelo Indian Community)
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Tribe of the Santee Reservation of Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress & Brighton Reservations
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)
Sheep Ranch Rancheria of Me-Wuk Indians of California
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria of California
Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California
Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation
St. Regis Band of Mohawk Indians of New York
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge-Munsee Community of Mohican Indians of Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians of California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of Diegueno Mission Indians of California
Table Bluff Rancheria of Wiyot Indians of California
Table Mountain Rancheria of California
Te-Moak Tribes of Western Shoshone Indians of Nevada
Thlopthlocco Tribal Town of the Creek Nation of Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona (formerly known as the Papago Tribe of the Sells, Gila Bend & San Xavier Reservation, Arizona)
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres-Martinez Band of Cahuilla Mission Indians of California
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Luiseno Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians of Oklahoma
Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wyandotte Tribe of Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Village of Afognak
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak

Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government) Native Village of Atka
Atqasuk Village (Atkasook)
Village of Atmautluak
Native Village of Barrow
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Village
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chanega (aka Chenega)
Chalkyitsik Village
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Native Village of Chignik
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Kluckwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chistochina
Native Village of Chitina
Native Village of Chuatbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks's Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Native Village of Deering
Native Village of Dillingham
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Native Village of Kasigluk
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
Agdaagux Tribe of King Cove
King Island Native Community
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
Koliganek Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Lake Village
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Native Village of Mountain Village
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Toyagungin Tribe of Sand Point Village
Rampart Village
Village of Red Devil
Native Village of Ruby
Native Village of Russian Mission (Yukon)
Village of Salamatoff
Organized Village of Saxman
Native Village of Savoonga
Saint George (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Sheldon's Point
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller

Native Village of Tetlin

Central Council of the Tlingit & Haida Indian Tribes

Traditional Village of Togiak

Native Village of Toksook Bay

Tuluksak Native Community

Native Village of Tuntutuliak

Native Village of Tununak

Twin Hills Village

Native Village of Tyonek

Ugashik Village

Umkumiute Native Village

Native Village of Unalakleet

Qawalingin Tribe of Unalaska

Native Village of Unga

Village of Venetie (See Native Village of Venetie Tribal Government)

Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)

Village of Wainwright

Native Village of Wales

Native Village of White Mountain

Wrangell Cooperative Association

Yakutat Tlingit Tribe

Dated: November 4, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–28935 Filed 11–12–96; 8:45 am]

BILLING CODE 4310–4J–P

Bureau of Land Management

[OR–958–1430–01; GP7–0007; OR–50856]

Public Land Order No. 7215; Withdrawal for the Pacific Ocean Coastline; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In Public Land Order No. 7215, 61 FR 47954–55, published September 11, 1996, as FR Doc. 96–23248, make the following correction:

On page 47954, the heading which reads ''Proposed Withdrawal for the Pacific Ocean Coastline'', is hereby corrected to read ''Withdrawal for the Pacific Ocean Coastline, Oregon.''

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services, Oregon/Washington.

[FR Doc. 96–28946 Filed 11–12–96; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–752 (Preliminary)]

Crawfish Tail Meat From China; Import Investigation

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of crawfish tail meat, provided for in subheadings 0306.19.00 and 0306.29.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, as amended in 61 FR 37818 (July 22, 1996), the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the Federal Register as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On September 20, 1996, a petition was filed with the Commission and the Department of Commerce by the Crawfish Processors Alliance, Breaux Bridge, LA, alleging that an industry in the United States is materially injured by reason of LTFV imports of crawfish tail meat from China. Accordingly, effective September 20, 1996, the Commission instituted antidumping investigation No. 731–TA–752 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 27, 1996 (61 FR 50868). The conference was held in Washington, DC, on October 11, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 4, 1996. The views of the Commission are contained in USITC Publication 3002 (November 1996), entitled ''Crawfish Tail Meat from China: Investigation No. 731–TA–752 (Preliminary).''

Issued: November 7, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–29053 Filed 11–12–96; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[Investigations Nos. 731–TA–753–756 (Preliminary)]

Cut-to-length Carbon Steel Plate From China, Russia, South Africa, and Ukraine; Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping Investigations Nos. 731–TA–753–756 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of cut-to-length carbon steel plate [1] from China, Russia,

[1] For the purpose of these investigations, cut-to-length carbon steel plate is defined as hot-rolled

South Africa, and Ukraine provided for in provisions of headings 7208 through 7212 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by December 20, 1996. The Commission's views are due at the Department of Commerce within five business days thereafter, or by December 30, 1996.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended in 61 FR 37818 (July 22, 1996).

EFFECTIVE DATE: November 5, 1996.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on November 5, 1996, by Geneva Steel Co., Provo, UT, and Gulf States Steel, Inc., Gadsden, AL.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the Federal Register. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on November 26, 1996, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Douglas Corkran (202–205–3177) not later than November 21, 1996, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 2, 1996, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: November 7, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–29046 Filed 11–12–96; 8:45 am]

BILLING CODE 7020–02–P

iron and nonalloy steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1,250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, and whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and nonalloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, and whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included in this definition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges.

[Investigation No. 731–TA–747 (Final)]

Fresh Tomatoes From Mexico; Investigation Suspension

AGENCY: United States International Trade Commission.

ACTION: Suspension of investigation.

SUMMARY: On November 1, 1996, the United States Department of Commerce published notice of a preliminary determination of sales at less than fair value (61 FR 56608) and a suspension of its antidumping investigation (61 FR 56618) of fresh tomatoes from Mexico. The basis for the suspension is an agreement between Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico wherein each signatory producer/exporter has agreed to revise its prices to eliminate completely the injurious effects of exports of this merchandise to the United States. Accordingly, the United States International Trade Commission

gives notice of the suspension of its antidumping investigation involving imports from Mexico of fresh tomatoes,[1] provided for in subheadings 0702.00.20, 0702.00.40, 0702.00.60, and 9906.07.01 through 9906.07.09 of the Harmonized Tariff Schedule of the United States.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov or ftp://ftp.usitc.gov).*

Authority: This investigation is being suspended under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.40 of the Commission's rules (19 CFR § 207.40).

Issued: November 5, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–29051 Filed 11–12–96; 8:45 am]

BILLING CODE 7020–02–P

[1] The products covered by this investigation are all fresh or chilled tomatoes (fresh tomatoes) except for cocktail tomatoes and those tomatoes which are for processing. For purposes of this investigation, cocktail tomatoes are greenhouse-grown tomatoes, generally larger than cherry tomatoes and smaller than roma or common round tomatoes, and are harvested and packaged on-the-vine for retail sale. For purposes of this investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying or the addition of chemical substances, or converting the tomato product into juices, sauces or purees. Further, imports of fresh tomatoes for processing are accompanied by an ''Importer's Exempt Commodity Form'' (FV–6) (within the meaning of 7 C.F.R. section 980.501(a)(2) and 980.212(l)). Fresh tomatoes that are imported for cutting up, not further processed (*e.g.,* tomatoes used in the preparation of fresh salsa or salad bars), and not accompanied by an FV–6 form are covered by the scope of this investigation.

All commercially-grown tomatoes sold in the United States, both for the fresh market and for processing, are classified as *Lycopersicon esculentum*. Important commercial varieties of fresh tomatoes include common round, cherry, plum, and pear tomatoes, all of which, with the exception of cocktail tomatoes, are covered by this investigation.

[Inv. No. 337–TA–386]

Certain Global Positioning System Coarse Acquisition Code Receivers and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: On March 28, 1996, the Commission instituted an investigation based on a complaint filed by Trimble Navigation (Trimble) alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain global positioning system (GPS) code receivers by reason of infringement of claims 1 and 7 of U.S. Letters Patent 4,754,465 (the '465 patent). 61 FR 13876. NovAtel Communications Ltd., of Canada was the only respondent named in either Trimble's complaint or the Commission's notice of investigation.

On May 8, 1996, Trimble filed a motion to add Harris Canada, Inc. (Harris) as a respondent to the investigation. That motion was granted in an ID issued on July 3, 1996.

On July 18, 1996, while the ID adding Harris as a new respondent was pending before the Commission, Trimble and NovAtel filed a joint motion to terminate the investigation based on a settlement agreement. On July 25, 1996, the Commission determined not to review the ID adding Harris as a respondent. On July 29, 1996, the Commission investigative attorney (IA) filed a response in support of the joint motion to terminate conditioned upon the subscription of newly-added respondent Harris to the settlement agreement and joint motion and the filing of a public version of the settlement agreement. On August 5, 1996, Trimble, NovAtel and Harris filed a reply to the IA's response, which stated that respondent Harris joined in the request to terminate the investigation.

On October 15, 1996, the ALJ issued an ID (Order No. 7) granting the joint motion to terminate the investigation on the basis of a settlement agreement. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42(h)(3) of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.42(h)(3).

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: November 1, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–29052 Filed 11–12–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 7, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley (202 219–5096 x 166). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202 219–4720 between 9:00 a.m. and 12:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, DC 20503 (202 295–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

• evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility, and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Women.

OMB Number: 1220–0110.

Frequency: Biennially.

Affected Public: Individuals or households.

Number of Respondents: 7,221.

Estimated Time Per Respondent:

Total Burden Hours: 7,762.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Department of Labor will use this information to help understand and explain the employment activities, unemployment problems, and retirement decisions of two groups of women: those aged 43–53 and those aged 60–74. The 43–53 year old women were 14–24 years of age when they were first interviewed in 1968. The 60–74 year old women were 30–44 years of age when they were first interviewed in 1967.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–29065 Filed 11–12–96; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October and November, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker 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 for Worker Adjustment Assistance

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–32,784; A.P. Green Industries, Inc., Rockdale, IL

TA–W–32,703; Niagara Cutter, Inc., North Tonawanda, NY

TA–W–32,682; BASF Corp., Graphics Group, Holland, MI & Operating at the Following Locations: A; Warsaw, IL, B; Salem, IL, C; Willard, OH, D; Nashville, TN, E; Brunswick, OH, F; Louisville, KY, G; Crawfordsville, IN, H; Dyersburg, TN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,676; NOWSCO, Midland, TX

TA–W–32,751; Detroit Gasket, Div of Indian Head Industries, Alcoa, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,825; Arco Pipe Line Co., Independence, KS

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,704; Temple Inland Forest Products Corp., Eastex Div., Evandale, TX

TA–W–32,699; Menominee Paper Co., Menominee, MI

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–32,840; Trinity Industries, Inc., New London, MN

The predominate reason for the workers layoffs was a decision by Trinity Industries to consolidate the firm's production to another affiliate in the US.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–32,706; Anderson Proffitt, Apparel, Sparta, TN: August 21, 1995.

TA–W–32,711; Fender Musical Instruments, Inc., Lake Oswego, OR: August 26, 1995.

TA–W–32,717; Andin International, Inc., New York, NY: August 29, 1996.

TA–W–32,768; Burlington Industries, Menswear Div., Forest City, NC: September 13, 1995.

TA–W–32,788; Tyrone Apparel Manufacturing USA, Inc., Tyrone, PA: September 13, 1995.

TA–W–32,849; Fruit of The Loom (Including Annex), Campbellsville, KY: October 8, 1995.

TA–W–32,802; Matsushita Electric Corp. of America, Matsushita Logistics Co., Fort Worth, TX: September 13, 1995.

TA–W–32,718 & A,B; The Olga Co., Div. of Warnaco, Inc., Fillmore, CA, Santa Paula, CA and Commerce, CA: July 16, 1995.

TA–W–32,820; Mercury Industries, Inc., Fayetteville, NC: September 27, 1995.

TA–W–32,777; P. Clayman & Sons, Inc., St. Louis, MO: September 13, 1995.

TA–W–32,753; JPS Converter & Industrial Corp., A Subsidiary of JPS Textile, Inc., Greenville, SC: September 3, 1995.

TA–W–32,746; Wolverine International, Inc., Bay City, MI: August 29, 1995.

TA–W–32,739; Mission Plastic of DeQueen, AR: August 29, 1995.

TA–W–32,803; Monon Corp., Monon, IN: October 7, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement

Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October and November, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01196; Weyerhaeuser Co., Western Timberlands Div., Vancouver, WA

NAFTA–TAA–01217; Temple Inland Forest Products Corp., Eastex Div., Evadale, TX

NAFTA–TAA–01236; Eastern Associated Coal Corp., Harris #1 Mine, Bald Knob, WV

NAFTA–TAA–01239; A.P. Green Industries, Inc., Rockdale, IL

NAFTA–TAA–01219; Steven Hirt Farms, Inc., Stanton, TX

NAFTA–TAA–01242; Tyrone Apparel Manufacturing USA, Inc., Tyrone, PA

NAFTA–TAA–0151; Saldan Bindery, Inc., Abaca Products, Brooklyn, NY

NAFTA–TAA–01205; Lucent Technologies, Custom Manufacturing Services (CMS) Unit, Little Rock, AR

NAFTA–TAA–01245; OPTO Technology, Inc., Platteville, WI

NAFTA–TAA–01225; W.W. Henry, Inc., South River, NJ

NAFTA–TAA–01237; Burlington Industrial, Inc., Burlington Menswear, (J.C. Cowan Plant), Forest City, NC

NAFTA–TAA–01263; Mueller Co., Decatur Plant, Decatur, IL

NAFTA–TAA–01252; F K Apparel, Inc., Charlotte, NC

NAFTA–TAA–01253; Weyerhaeuser Co., Klamath Falls, OR

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01247; Herdez Corp., Formerly Festin Foods, Carlsbad, CA

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01200; South West Fashion, Inc., El Paso, TX: August 19, 1995.

NAFTA–TAA–01238; Monon Corp., Monon, IN: September 20, 1995.

NAFTA–TAA–01271; Acme Boot Co., Inc. (A.K.A. Dan Post Boots), El Paso, TX: September 10, 1995.

NAFTA–TAA–01211; Mercury Industries, Inc., Fayetteville, NC: September 29, 1995.

NAFTA–TAA–01265; Fruit of The Loom, Raymondville Apparel, Raymondville, TX: October 2, 1995.

NAFTA–TAA–01264; Petersburg Garment Co., Petersburg, WV: September 27, 1995.

NAFTA–TAA–01240; Dana Corp., Victor Products Div., Robinson, IL: September 13, 1995.

I hereby certify that the aforementioned determinations were issued during the month of October and November, 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 4, 1996.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–29060 Filed 11–12–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,133]

Rau Fastener Company, LLC, Providence, RI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Rau Fastener Company, LLC, Providence, Rhode Island. 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–32,133; Rau Fastener Company, LLC, Providence, Rhode Island (October 28, 1996).

Signed at Washington, DC, this 31st day of October, 1996.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–29062 Filed 11–12–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,559]

United Technologies Automotive, Wiring Systems Division, Newton, IL; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply For Worker Adjustment Assistance issued by the department on August 16, 1996, for workers of United Technologies Automotive, Wiring Systems Division located in Newton, Illinois. The notice was published in the Federal Register on September 13, 1996 (61 FR 48504).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Findings show that the worker group is covered under an existing TAA certification (TA–W–32,261B).

Since the workers are already covered by a TAA certification, the continuation

of the certification would serve no purpose and the certification has been terminated.

Signed at Washington, DC, this 30th day of October 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–29058 Filed 11–12–96; 8:45 am]

BILLING CODE 4510–30–M

Federal-State Unemployment Compensation Program: Certifications Under the Federal Unemployment Tax Act for 1996

On October 31, 1996, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to State unemployment funds to obtain certain credits for their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Dated: November 1, 1996.

Timothy M. Barnicle,

Assistant Secretary of Labor.

October 31, 1996.

The Honorable Robert Rubin,
Secretary of the Treasury, Washington, D.C. 20220.

Dear Secretary Rubin: Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending on October 31, 1996. One is required with respect to normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986, and the other is required with respect to additional tax credit by Section 3303 of the Code. Both certifications list all 53 jurisdictions.

Sincerely,

Robert B. Reich

Enclosures

Department of Labor, Office of the Secretary, Washington, D.C.

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1996, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 1996.

Robert B. Reich,

Secretary of Labor.

Department of Labor, Office of the Secretary, Washington, D.C.

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 1996:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas

Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 1996.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 96–29063 Filed 11–12–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA—00633]

General Electric Company, GE Transportation Systems—Erie, Erie, Pennsylvania; Notice of Revised Determination on Reconsideration

On November 21, 1995, the Department issued a Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance, applicable to all workers of General Electric Company, GE Transportation Systems located in Erie, Pennsylvania. The denial notice was published in the Federal Register on December 1, 1995 (60 FR 61711).

The initial investigation resulted in a negative determination because criteria (3) and (4) of the Eligibility Requirements of Section 250 of the Trade Act, as amended, were not met for workers at the subject firm. There was no shift in production from General Electric Company of locomotives or locomotive parts from Mexico or Canada, nor did the subject firm import these products from Mexico or Canada.

Based on new information received from counsel for the petitioners, the department, on its own motion, reviewed the findings of the investigation. The petitioning workers were engaged in the production of locomotives and locomotive parts. New findings show that beginning in July 1995, the production of motor coils was shifted from the subject firm's Erie, Pennsylvania production facility to Mexico.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that there was a shift in production from the workers' firm to Mexico of articles that are like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Act, I make the following revised determination:

''All workers of General Electric Company, GE Transportation Systems, Erie, Pennsylvania, engaged in the production of motor coils who became totally or partially separated from employment on or after October 2, 1994, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, DC, this 31st day of October 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–29061 Filed 11–12–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are indentified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Program Manager of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Program Manager of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Program Manager of OTAA not later than November 25, 1996.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Program Manager of OTAA at the address shown below not later than November 25, 1996.

Petitions filed with the Governors are available for inspection at the Office of the Program Manager, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 5th day of November, 1996.

Russell Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Seams Right (Wkrs)	St. Mary's, MO	10/16/96	NAFTA–01274	Bras.
United Technologies Automotive (USWA).	North Manchester, IN	10/15/96	NAFTA–01275	Battery cables and wiring harnesses.
Dal-Tile International (Wkrs)	Pocatello, ID	10/11/96	NAFTA–01276	Tile.
U.S. Natural Resources (Wkrs)	Portland, OR	10/14/96	NAFTA–01277	Sawmill machinery.
Saranac (vabry) Glove and Mitten (Wkrs)	Marinette, WI	10/14/96	NAFTA–01278	Leather gloves.
Tri-Con Industries (Wkrs)	Livingston, TN	10/11/96	NAFTA–01279	Automotive seat covers.
Litco International (Co.)	Parkersburg, WV	10/19/96	NAFTA–01280	Wooden pallets.
Mont Source (Wkrs)	Newport Beach, CA	10/16/96	NAFTA–01281	Hair and shave care products and colognes.
Faneuil Research (Wkrs)	Chicago, IL	10/18/96	NAFTA–01282	Customer services.
Rexel, Inc. (Wkrs)	Miami, FL	10/17/96	NAFTA–01283	Distributor.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Horsehead Resource Development (USWA).	Palmerton, PA	10/22/96	NAFTA–01284	Electric arc furnace (EAF) recyling materials.
Assembly Services (Co.)	El Paso, TX	10/21/96	NAFTA–01285	Brooms.
Nicholson Manufacturing (IAM)	Seattle, WA	10/18/96	NAFTA–01286	Logging and sawmill machinery.
The Mead Corporation (Wkrs)	Fairless Hills, PA	10/22/96	NAFTA–01287	Folding cartons.
EWI, Inc. (Co.)	Southbend, IN	10/21/96	NAFTA–01288	Auto parts.
Magnetek (Co.)	Huntington, IN	10/08/96	NAFTA–01289	Electronic ballasts.
Sara Lee Bodywear (Co.)	New York, NY	10/24/96	NAFTA–01290	Sport bra.
Otari Corporation (Wkrs)	Hauppauge, NY	10/23/96	NAFTA–01291	Cicruit boards.
Haddon Craftsmen; R.R. Donnelley and Sons (IAM).	Scranton, PA	10/24/96	NAFTA–01292	Books.
Eleco Group (USWA)	East Hampton, MA	10/22/96	NAFTA–01293	Household brushes.
Delta Painting (Wkrs)	Deerfield Beach, FL	10/22/96	NAFTA–01294	Painters, interior and exterior.
Royals, Inc. (Co.)	High Point, NC	10/25/96	NAFTA–01295	Jeans.
Sportswear Associates (Co.)	Moss, TN	10/21/96	NAFTA–01296	Women's apparel.
Celina Apparel (Co.)	Celina, TN	10/21/96	NAFTA–01297	Women's apparel.
Will Knit (Wkrs)	Clayton, NC	10/22/96	NAFTA–01298	Circuler knit fabrics.
Advanced Metallurgy (Wkrs)	McKeesport, PA	10/28/96	NAFTA–01299	Electrical contacts for circuit breakers.
Ivax Corporation (Wkrs)	Shreveport, LA	10/25/96	NAFTA–01300	Generic liquid and solid pharmaceutical.
Masco Tech Stamping (Wkrs)	Oxford, MI	10/23/96	NAFTA–01301	Battery straps and fender molds.
United Technologies (UFCW)	Niles, MI	10/23/96	NAFTA–01302	Leather wrap assembly.
Armour Swift-Eckrich (Wkrs)	Kalamazoo, MI	10/23/96	NAFTA–01303	Smoked sausage.
Johnson Control (IAM)	Milwaukee, WI	10/22/96	NAFTA–01304	VT series terminal unit valves.
Borg-Warner Automotive (Wkrs)	Muncie, IN	10/24/96	NAFTA–01305	Manual transmissions.
Endicott Johnson (Wkrs)	Scranton, PA	10/25/96	NAFTA–01306	Retail.
WTTC, Inc. (Wkrs)	El Paso, TX	10/25/96	NAFTA–01307	Garments, pants, jackets.
Witco Corporation (Wkrs)	Bradford, PA	10/22/96	NAFTA–01308	Refined petroleum based lubricants and corrosion preventatives.
J.H. Collectibles (ILGWU)	Milwaukee, WI	10/25/96	NAFTA–01309	Ladies garments.
Burns Philp Food (USWA)	San Francisco, CA	10/28/96	NAFTA–01310	Food color line and famous sauce line.
Spectro Knit (Wkrs)	Mifflinburg, PA	10/28/96	NAFTA–01311	Ladies knit tank tops, t-shirts and fleece sweatshirts.
Warnaco (Wkrs)	Van Nuys, CA	10/28/96	NAFTA–01312	Sewing production of women's intimate apparel.
Alphabet (Co.)	Greenwood, SC	10/28/96	NAFTA–01313	Electrical wiring harnesses.
Kibak Tile (Wkrs)	Redmond, OR	10/28/96	NAFTA–01314	Hand painted tile.
Hecht Manufacturing (ILGWU)	Milwaukee, WI	10/30/96	NAFTA–01315	Women's clothing.
Lambda Electronics (Wkrs)	McAllen, TX	10/29/96	NAFTA–01316	Power supplies.
Timberline Forest Products (Wkrs)	Burlington, WA	10/29/96	NAFTA–01317	Lumber resaw production.
Tasus Corp. (Wkrs)	Bloomington, IN	10/30/96	NAFTA–01318	Printed materials.
Amp, Inc. (Wkrs)	Lowell, NC	10/31/96	NAFTA–01319	Slimline products.

[FR Doc. 96–29059 Filed 11–12–96; 8:45 am]
BILLING CODE 4510–30–M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meetings

Notice is hereby given of the dates and locations of the next two meetings of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold meetings on December 10–11, 1996, in Room S4215 A–C, and January 15–16, 1997, in Room N3437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. Both meetings are open to the public and will begin at 9:00 a.m. each day lasting until approximately 4:00 p.m. the first day and 3:00 p.m. the second day of each meeting.

Agenda items for December 10 will include: a brief overview of current activities in the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH); a description of a NIOSH Cooperative Research Agreement on hearing loss prevention; a regulatory update; and a discussion of the Government Performance and Results Act (GIPRA) in relation to OSHA as well as performance measurement and program evaluation within OSHA. On December 11 there will be a panel presentation on ergonomics including an update on the planned conference; enforcement activities; the development of a regulation; OSHA's ergonomics capability; and NIOSH research relating to ergonomics. The remainder of the day will be devoted to planning future NACOSH meetings and activities.

The January 15–16 meeting will be devoted to the subject of developing performance measurements and evaluating programs in addition to the regular updates on OSHA and NIOSH activities. Several panels will be formed to discuss the indicators and measures OSHA might use, as well as the data and mechanisms that would be needed for such measurement. The committee is interested in exploring what other organizations and groups are doing in terms of measuring performance and evaluating safety programs,

interventions and related issues such as employee participation. In this respect, the committee requests that members of the public who have participated in studies or programs related to performance measurement and evaluation of occupational safety and health programs share their findings and/or experiences with NACOSH either in written form or in oral presentations before the committee to the extent time permits. Those who are interested in making presentations on January 15 or 16 should notify, no later than December 9, Joanne Goodell, OSHA, Room N–3641, 200 Constitution Avenue NW, Washington, DC 20210, telephone (202) 219–8021, ext. 107, or FAX (202) 219–4383. Presenters must provide their name, the capacity in which the person will appear, a brief outline of the content of the presentation, preference of appearance date if there is one, mail address, telephone and FAX numbers. Presentations will be limited to 10 minutes with time allowed for questions from committee members.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies to Joanne Goodell at the address provided above. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Individuals with disabilities who need special accommodations should contact Tom Hall (phone: 202–219–8615; FAX: 202–219–5986) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–219–7500). For additional information contact Joanne Goodell (phone, FAX and address provided above.)

Signed at Washington, D.C. this 6th day of November, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–29064 Filed 11–12–96; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Application No. D–09988]

Proposed Class Exemption for Bank Collective Investment Fund Conversion Transactions

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of Proposed Class Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would permit an employee benefit plan (the Client Plan) to purchase shares of a registered investment company (the Fund), the investment adviser for which is a bank (the Bank) that serves as a fiduciary of the Client Plan, in exchange for plan assets transferred in-kind to the Fund from a collective investment fund (the CIF) maintained by the Bank. The proposed exemption, if granted, would affect participants and beneficiaries of the Client Plans that are involved in such transactions as well as the Bank and the Fund.

ADDRESSES: All written comments and requests for a public hearing (preferably 3 copies) should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue N.W., Washington, DC 20210, (Attention: ''CIF Conversion Class Exemption''). The application for exemption (Application No. D–09988) and all additional comments received from interested persons will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady or Mr. E.F. Williams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210 at (202) 219–8881 or (202) 219–8194, respectively, or Ms. Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210 at (202) 219–4600, ext. 105. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed class exemption from the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application dated March 28, 1995 submitted on behalf of Federated Investors (Federated) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).[1]

I. Paperwork Reduction Act Analysis

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed new collection of information under the Proposed Class Exemption for Bank Collective Investment Fund Conversion Transactions.

DATES: Written comments must be submitted on or before January 13, 1996 to Mr. Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, D.C. 20210. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

[1] Section 102 of Reorganization Plan No. 4 of 1978, 5 USC App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

In the discussion of the exemption, references to specific provisions of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title: Class Exemption for Bank Collective Investment Fund Conversion Transactions.

Summary: The proposed exemption would permit employee benefit plans to purchase shares of a registered investment company in exchange for plan assets transferred in-kind from a bank maintained collective investment fund, where the bank that serves as a fiduciary of the plan is also the investment adviser for the investment company. The proposal is conditioned upon an independent fiduciary receiving advance notice concerning the transfer of assets and written confirmation after the completion of each transaction.

Needs and Uses: ERISA requires that the Department make a finding that the proposed exemption meets the statutory requirements of section 408(a) before granting the exemption. The Department therefore finds it necessary that certain information be provided to an independent fiduciary of each plan in advance of, and subsequent to, the proposed transaction, and that the independent fiduciary approve the proposed transaction.

Respondents and Proposed Frequency of Response: The Department staff estimates that approximately 50 parties will seek to take advantage of the class exemption in any given year. The respondents will be banks and trust companies acting as fiduciaries of plans investing in collective investment funds maintained by such entities.

Estimated Annual Burden: The Department staff estimates the annual burden for preparing the materials required under the proposed class exemption to be 892 hours. The total annual burden cost (operating/maintenance) is estimated to be $113,772.00. There are estimated to be no capital/start-up burden costs. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

II. Background

The application contains facts and representations with regard to the requested exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant. The applicant, Federated, requests retroactive and prospective exemptive relief for the in-kind transfer of assets from a CIF in which Client Plans invest to a Fund in exchange for shares of the Fund. The exemption is being requested in light of the Department's position that Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977) is unavailable for the purchase of shares in Funds other than for cash. In pertinent part, PTE 77–4 permits the purchase or sale by an employee benefit plan of shares of a Fund when a fiduciary with respect to the plan is also the investment adviser of the Fund.

Federated represents that it advises, administers and distributes its own Funds and also administers, distributes and provides related services to Funds that are advised by other financial institutions, including many Banks. In total, Federated provides such services with respect to over $70 billion in assets.

Since April 1989, Federated has assisted a number of Banks in establishing ''proprietary'' mutual funds, (i.e., mutual funds advised by the Bank and for which the Bank may provide other services, such as custody or shareholder recordkeeping). These Funds are often established through the complete or partial conversion of the Bank's CIFs into the Funds. Such conversions have been motivated by changes in the investment industry and the increasing trend toward the establishment of participant-directed plans under section 401(k) of the Code. Federated assists these Banks in the conversion process and may serve as administrator, as well as in other capacities (such as transfer agent and portfolio recordkeeper) with respect to such Funds.

Federated explains that these in-kind transfers have been completed in compliance with the banking rules governing CIFs and the requirements of the Investment Company Act of 1940 (the '40 Act). To avoid engaging in a prohibited transaction, the Banks have sought in good faith to comply with PTE 77–4 and have relied on the availability of that class exemption. Federated states that the conditions of PTE 77–4 (as they were interpreted by the banking industry at that time) were met, including the provision of disclosures regarding the Fund to an independent plan fiduciary (the Independent Fiduciary) and prior approval by that fiduciary. However, Federated notes that the Department's position that PTE 77–4 does not apply to in-kind exchanges of assets, such as occur in a CIF-to-Fund conversion, has created uncertainty as to what Banks should do with regard to past and future transactions. Therefore, Federated believes that class exemptive relief is warranted because of the large number of Banks that have entered into, or propose to enter into, such transactions. In Federated's view, the exemptive relief requested would reduce the burden that has been placed on Banks and would create certainty as to how such transactions may be structured to comply with provisions of the Act.

III. Discussion of the Application

The applicant represents that, as part of the conversion process, assets representing the Client Plans' interests in the CIFs are being transferred to the Funds in exchange for which the Client Plans receive shares of the Funds. The in-kind transfers are subject to the prior approval of Independent Fiduciaries and a number of additional safeguards that are discussed below.

The Banks that would be covered by the requested exemption include banks or trust companies that are regulated by federal or state law. The Banks may serve as trustees, investment managers or custodians for Client Plans that are subject to the Act. If a Bank has investment discretion over the assets of a Client Plan, it commonly manages such assets through CIFs. Where a Bank serves as a nondiscretionary trustee or a custodian, it has made CIFs available as investment options for participant-directed plans at the election of the plan sponsor. CIF investments have allowed Client Plans to pool their assets thereby permitting greater diversification and lower management fees than individually-managed portfolios.

Federated represents that over the past 15 years mutual funds have become increasingly popular investments for plan investors. Among the advantages of Funds over CIFs are daily pricing and redemption, published prices available in newspapers of general circulation and greater portability. Daily pricing and redemption permits: (a) immediate investment of plan contributions in various types of investments; (b) greater flexibility in transferring assets from one type of investment to another; and (c) faster distributions. CIFs, by contrast, generally have been valued quarterly and have not permitted daily withdrawals or transfers. Because of the advantages offered by Funds, many Banks have been converting their CIFs into Funds by transferring the assets out of the CIFs and into the Banks' proprietary Funds. In some cases, the Banks have terminated their CIFs. In other cases, the CIFs have been partially converted and not terminated because one or more clients has preferred to remain invested in the CIFs.

The applicant represents that the conversion transaction that is the subject of this exemption request is structured as an in-kind transfer of plan assets held by the CIF to the corresponding Funds, in exchange for shares of the Funds. This approach, according to the applicant, avoids incurring transaction costs in connection with liquidating the CIF investments and making the same investments for the Funds.

It is represented that the process used by Banks assisted by Federated has been designed to comply with the '40 Act and PTE 77–4, as applicable. In this regard, Federated represents that the Bank obtains the approval of an Independent Fiduciary prior to investing a Client Plan's assets in a Fund. The Independent Fiduciary is generally the Client Plan's named fiduciary or plan sponsor. In requesting the Independent Fiduciary's approval, the Bank provides such fiduciary with a description of the transaction, information about each Fund into which assets would be transferred and a current prospectus. It is represented that all disclosures and the form of approval are designed to meet the requirements of PTE 77–4.[2]

To the extent that the Independent Fiduciary of a Client Plan approves the investment in the Funds, the purchase of Fund shares by the Client Plan is accomplished in accordance with Securities and Exchange Commission Rule 17a–7 (Rule 17a–7 or the Rule) under the '40 Act (17 CFR 270.17a–7). Rule 17a–7 is an exemption from the prohibited transaction provisions of section 17(a) of the '40 Act (15 USC 80a–17(a)), which prohibit, among other things, transactions between an investment company and its investment adviser or affiliates of its investment adviser. Thus, Rule 17a–7 permits transactions between the Funds and other accounts that use the same or affiliated investment advisers, subject to certain conditions that are designed to assure fair valuation of the assets involved in the transaction and fair treatment of both parties to the transaction. Among the conditions of Rule 17a–7 is the requirement that the transaction be effected at the ''independent current market price'' for the security involved.[3] In this regard, the ''independent current market price'' for specific types of CIF securities involved in the transactions is determined as follows:

(a) If the security is a ''reported security'' as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the '34 Act) (17 CFR 240.11Aa3–1), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System); or, if there are no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the '34 Act) (17 CFR 240.11Ac1–1), as of the close of business on the CIF valuation date.

(b) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or, if there are no reported transactions on such exchange that day, the average of the highest current independent bid and lowest current independent offer on the exchange as of the close of business on the CIF valuation date.

(c) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on the CIF valuation date.[4]

(d) For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry from at least three independent sources as of the close of business on the CIF valuation date.

Federated represents that these valuation conditions are objective and require documentation to permit review by independent parties.

Federated represents that, in a conversion transaction, a portion of the plan assets in each CIF, representing the interests in the CIF of the Client Plans that approve the asset transfer, are transferred to the corresponding Funds using the then-current market value of the plans' assets in exchange for shares in the Fund. Simultaneously, each Client Plan's investment in the CIF is liquidated and Fund shares of equal value to the Client Plan's interest in the CIF are distributed to the Client Plan.

Prior to the transfers, the applicant states that the CIF assets must be reviewed to determine whether they are appropriate investments for the corresponding Fund, consistent with the Fund's investment objectives and policies and applicable requirements under the '40 Act and the Code. In addition, Federated notes that Rule 17a–7 permits transfers only of securities for which market quotations are readily available and does not include restricted securities (such as those described by SEC Rule 144) or other securities for which market quotations are not readily available.[5] If the class exemption were not available, the transferring plans would request cash distributions, causing the CIF to incur higher transaction costs in liquidating a larger proportion of its securities holdings.

Federated explains that if the CIF will be terminated, the Client Plans not transferring assets to a Fund will receive a distribution, prior to the transfer date, of their *pro rata* portions of each CIF asset. The remaining CIF assets are then transferred to the Funds on behalf of the Client Plans that approve the transaction. If the CIF will not be terminated, the assets of the CIF are divided, prior to the transfer, so that each Client Plan that chooses to remain invested in the CIF retains its *pro rata* share of the CIF assets.

Although the Bank will generally divide the assets held in a CIF among the Client Plans on a *pro rata* basis, Federated explains that in some instances, the CIF may hold ''small investments'' in fixed-income securities that are not divisible, or that can be divided only at substantial cost. Federated states that these investments will typically be issued in units of $1,000 or more. For example, a CIF may have 5 bonds in $1,000 denominations, for an aggregate principal value of $5,000, and 50 percent of the Client Plans participating in the CIF may elect to transfer their investments to a Fund.

[2] In pertinent part, PTE 77–4 requires that a fiduciary of a plan who is independent of and unrelated to the fiduciary/investment adviser, or any affiliate thereof, receive a prospectus issued by the investment company and full written disclosure of the investment advisory and other fees charged to, or paid by, the plan and the investment company. Such information should include: (a) the nature and extent of any differential between the rates of such fees; (b) the reasons why the fiduciary/investment adviser may consider such purchases of shares in the investment company to be appropriate for the plan; (c) whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company; and, if so, (d) the nature of such limitations.

[3] Rule 17a–7 also includes the following requirements: (a) the transaction must be consistent with the investment objectives and policies of the Fund, as described in its registration statement; (b) the security that is the subject of the transaction must be one for which market quotations are readily available; (c) no brokerage commissions or other remuneration may be paid in connection with the transaction; and (d) the Fund's board of directors (i.e., those directors who are independent of the Fund's investment adviser) must adopt procedures to ensure that the requirements of Rule 17a–7 are followed, and determine no less frequently than quarterly that the transactions during the preceding quarter were in compliance with such procedures.

[4] It is represented that Level 1 of NASDAQ provides the best bid and ask quotations for each NASDAQ security that has a minimum of two registered market-makers providing quotations. Level 2 provides the current bid and ask prices for each market-maker in any available NASDAQ securities, not just the best prices. Level 3 allows for market-makers instantaneously to insert new quotations into the system and is generally only used by market-makers and traders.

[5] The Department notes that the Bank retains ongoing responsibilities under ERISA's general standards of fiduciary conduct with respect to plans electing to remain as investors in the CIF and with respect to other aspects of the transfers.

A strict *pro rata* allocation to each Client Plan would require that $2,500 of the principal value of these bonds be transferred to the Fund. However, a $1,000 bond cannot be divided into two segments of $500 each. Federated states that securities, such as the bond in this example, that are incapable of division could be liquidated for cash prior to the transfer but, if there are many such securities, the transaction costs may become significant.

In these situations, solely for purposes of the prospective relief requested herein [6], Federated represents that the Banks will treat equivalent, ''small investment'' fixed-income securities as fungible for allocation purposes if such securities have the same coupon rates, maturities and credit ratings at the time of the transaction. For example, notes with variable interest rates will be treated as fungible only if they have the identical interest rate formulas. This requirement will ensure that all Client Plans receive securities that have equivalent terms and features. The Banks will allocate such fixed-income securities among the Client Plans in a manner such that each receives its pro rata share of the value of such securities.[7] Federated represents that providing Banks with the ability to allocate fixed-income securities other than on a strictly pro rata basis would permit the CIF, and, therefore, the Client Plans, to avoid the transaction costs involved in liquidating these small positions prior to maturity.

In order to establish what constitutes ''small investments,'' Federated proposes that this exception from the general *pro rata* division rule be available only for investment positions in fixed-income securities which, in the aggregate, constitute no more than one (1) percent of the CIF's assets. This one (1) percent limit will ensure that the ''small investment'' positions in fixed-income securities will represent a *de minimis* portion of the overall assets held by the CIF at the time of the transactions.

In implementing the asset transfers, Federated represents that the current market value of the assets of the CIFs have been and will be determined in accordance with Rule 17a–7 and the procedures adopted by the board of directors of the Fund pursuant to such Rule. The assets are valued by the CIF and the Fund in the same manner using the ''independent current market price'' of the securities as defined in Rule 17a–7 as of the close of business on the same business day. In addition, no brokerage commissions or other remuneration is charged to the Client Plans in connection with the asset transfer and any such costs or expenses are paid by the Bank.

Federated states that the same values are used for the securities both in determining the amount transferred from the CIF and the amount received by the Fund. Thus, the total net asset value of the Fund shares received by the Client Plan is equal in value to the Client Plan's share of the assets of the CIF exchanged for shares of the Fund on the date of transfer.

The valuations are based on prices, bids and offers as of the close of business on the date of the asset transfer. Federated states that, in the transactions in which it has been involved, the asset transfers have primarily been scheduled to occur over a weekend to allow sufficient time for processing. As applicable, securities have been valued based on their closing prices, or the average of bid and ask quotations (or prices obtained from pricing services) obtained from at least three independent sources, as of the close of business on the Friday preceding the weekend of the asset transfers. The transfer of the securities has been completed by the following Monday, at which time the Client Plans whose assets were formerly invested in a CIF hold shares in the corresponding Fund of equal value to their units in the CIF as of the close of business the previous Friday.

Subsequent to the transaction, Federated explains that compliance with Rule 17a–7 procedures of the Fund is reviewed by independent members of the Fund's board of directors and by independent auditors. In this regard, records pertaining to Rule 17a–7 transactions are reviewed by SEC staff during their periodic inspections of the Funds.

Thus, in Federated's view, the asset transfer transactions are ministerial in nature because they are performed in accordance with procedures that are prescribed by Rule 17a–7 and approved by the Fund's board of directors. Further, Federated states that the pricing of all securities transferred to a Fund is accomplished by reference to independent sources. In each case, the affected Client Plans receive shares of the Funds that are of equal value to the previously-held CIF units.

IV. Description of the Proposed Exemption

The proposed class exemption consists of four sections. Section I would provide conditional exemptive relief for transactions occurring from October 1, 1988 until the date the notice granting the final exemption is published in the Federal Register. Section II would provide prospective relief for transactions which must meet certain additional conditions which are described below. Section III provides that a transaction that meets the applicable conditions of the proposed exemption will be deemed a purchase by the Client Plan of shares of an open-end investment company registered under the Investment Company Act of 1940 for purposes of PTE 77–4. Accordingly, if the exemption is granted, a Bank that complies with the terms of this exemption and with the terms of PTE 77–4 would be able to receive investment management and investment advisory fees from the Fund and the Client Plan with respect to the plan's assets invested in shares of the Fund to the extent permitted under PTE 77–4. Section III also provides that compliance with the proposed exemption will constitute compliance with paragraphs (a), (d) and (e) of section II of PTE 77–4. Finally, Section IV contains definitions for certain terms used in the proposed exemption.

Specifically, the proposed class exemption set forth in Section I would provide retroactive relief from the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act for the purchase of Fund shares by an employee benefit plan, where a Bank that serves as investment adviser to the Fund is also a fiduciary with respect to the plan, in exchange for plan assets transferred in-kind to the Fund from a CIF maintained by the Bank. The exemption is generally similar to a number of individual exemptions that have been granted by the Department for such transactions, but the operative language of this proposal differs from that of the individual exemptions.[8] The principal purpose of the language in the proposal is to make clear that the class exemption would not provide relief for any prohibited transactions that may arise in connection with terminating a CIF, permitting certain plans to

[6] In this regard, the Department wishes to emphasize that the proposed class exemption would provide no retroactive relief for any past in-kind transfer of CIF assets to a Fund unless all or a pro rata portion of the assets of the CIF were transferred to the Fund in exchange for shares of such Fund. (See Section I(c) below.)

[7] The applicant represents that the valuation of fixed income securities will be performed in accordance with Rule 17a–7.

[8] See, for example, PTE 94–82 involving Marshall & Ilsley Trust Company (59 FR 62422, December 5, 1994); PTE 94–86 involving The Bank of California, N.A. (59 FR 65403, December 19, 1994); PTE 95–33 involving Bank South, N.A. (60 FR 20773, April 27, 1995); PTE 95–48 involving Mellon Bank, N.A. (60 FR 32995, June 26, 1995); and PTE 95–49 involving Norwest Bank (60 FR 33000, June 26, 1995).

withdraw from a CIF that is not terminating, or liquidating or transferring any plan assets held by the CIF. The class exemption would provide relief only for the purchase of Fund shares by a Client Plan in exchange for assets that are transferred from a CIF. Although the Department interprets the individual exemptions as being similarly limited in their scope, the language of the proposed class exemption is intended to clarify this limitation. The Department believes that the scope of the proposed class exemption is consistent with the applicant's request for relief based on the applicant's mistaken reliance on PTE 77–4. The Department, however, specifically solicits comments on whether the scope of the proposed exemption should be modified to include other aspects of in-kind transfers of CIF assets. The Department also notes that the proposal defines the term ''Client Plan'' in section IV so as to exclude exemptive relief for purchases of Fund shares by plans sponsored by the Bank for its own employees.

The conditions applicable to the retroactive exemption set forth in Section I of the proposal are described below.

Under section I(a) of the proposal, no sales commissions or other fees are paid by Client Plan in connection with the transaction.

Section I(b) and (c) of the proposed exemption requires that the transferred assets be securities for which market quotations are readily available and consist of the Client Plan's *pro rata* portion of all the transferable assets held by the CIFs immediately prior to the transfer. Under section I(d), the Client Plan must receive shares of a Fund to which the CIF assets have been transferred that have a total net asset value that is equal to the value of the Client Plan's *pro rata* portion of the transferred assets on the date of the transfer, based on the current market value of such assets, as determined in a single valuation for each asset, with all valuations performed in the same manner at the close of the same business day, in accordance with Rule 17a–7 of the '40 Act (using sources independent of the Bank) and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. The same valuation must be used for each asset in determining the amount transferred from the CIF and the amount received by the Fund.

Section I(e) provides that an Independent Fiduciary must receive advance written notice of the transaction, as well as the following written information concerning the Funds: (a) a current prospectus for each Fund in which a Client Plan is considering investing; (b) full and detailed written disclosure of the investment advisory and other fees charged to, or paid by, the Client Plan (and by such Fund) to the Bank or any unrelated third party, including the nature and extent of any differential between the rates of the fees; (c) the reasons why the Bank may consider an exchange of the Client Plan's CIF assets for investments in the Fund to be appropriate for the Client Plan; and (d) a statement describing whether there are any limitations applicable to the Bank with respect to which assets of the Client Plan may be invested in the Fund, and, if so, the nature of such limitations.

Moreover, under section I(f), the Independent Fiduciary gives prior approval in writing of each in-kind transfer of the Client Plan's CIF assets to a Fund in exchange for shares of the Fund, on the basis of the information disclosed to the Independent Fiduciary. In addition, section I(g) requires that the Independent Fiduciary receive written confirmation of the transaction no later than 105 days after the transaction. This written confirmation must disclose the number of CIF units held by the Client Plan immediately before the transaction and the number of Fund shares held by the Client Plan immediately following the transaction, the related per unit and per share values, and the dollar amounts of the CIF units and the Fund shares involved in the transaction.

Section I(h) requires that, for each Client Plan, the combined total of all fees received by the Bank for the provision of services to the Client Plan, and in connection with the provision of services to a Fund in which a Client Plan invests, must not exceed ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act. Finally, section I(i) provides that all dealings between a Client Plan and a Fund are on a basis no less favorable to the Client Plan than such dealings are with other shareholders of the Fund.

On a prospective basis, Section II requires that the transactions meet certain conditions in addition to those described in Section I of the proposal. These additional conditions are described below.

Section II(c) provides an exception to the general requirement that the assets transferred to a Fund consist of the Client Plan's *pro rata* portion of each of the assets of the CIF. This exception applies to certain investments in fixed-income securities. The fixed-income securities which are allocated between the CIF and the Fund must have the same coupon rates, maturities and credit ratings at the time of the transaction and cannot exceed one (1) percent of the aggregate assets held by the CIF as of each transfer. In this regard, section IV(j) defines the term ''fixed-income security'' as any interest-bearing or discounted government or corporate security with a face amount of $1,000 or more that obligates the issuer to pay the holder a specified sum of money, usually at specific intervals, and to repay the principal amount of the loan at maturity.

Under section II(f) of the proposal, the Independent Fiduciary must give prior approval in writing of each in-kind transfer of the Client Plan's CIF assets to a Fund in exchange for shares of the Fund. The advance notice required by section II(e) will include the identity of securities that will be valued in accordance with Rule 17a–7(b)(4) of the '40 Act and allocated under section II(c), and the identity of any fixed-income securities allocated under section II(c).[9]

Section II(g)(1) requires a Bank to send the Independent Fiduciary of a Client Plan an additional written confirmation, not later than 30 days after the completion of the transaction, for securities that were valued in accordance with Rule 17a–7(b)(4). The additional confirmation must contain the following information: (a) the identity of each such security; (b) the current market price as of the date of the transaction of each such security involved in the transaction; and (c) the identity of each pricing service or market-maker consulted in determining the value of such securities.

In addition, section II(h) requires the Bank to provide certain ongoing disclosures to the Independent Fiduciary of a Client Plan. Such written disclosures must include: (a) a copy of an updated prospectus for each Fund in which such plan has invested, which is to be provided at least on an annual basis; and (b) upon the request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information, or some other written statement) containing a description of

[9] Rule 17a–7(b)(4) describes the method for determining the current market price of securities that are not reported securities under Rule 11Aa3–1 (17 CFR 240.11Aa3–1), are not traded principally on an exchange and are not quoted in the NASDAQ system. 17 CFR 270.17a–7(b)(4). Because the proper valuation of such securities may require more extensive inquiry than in the valuation of securities described in Rule 17a–7(b)(1)–(b)(3), the Department believes that the Independent Fiduciary should receive advance notice that the transfer will entail such valuations.

all fees paid by the Fund to the Bank. The purpose of this additional disclosure is to ensure that the Independent Fiduciary will continue to have the information necessary to effectively monitor the Fund investments made by the Client Plan.

The Department wishes to note that the requirement under sections I and II of the proposal that all valuations of all plan assets transferred from a CIF to a Fund be determined in accordance with Rule 17a–7 under the '40 Act is designed to provide flexibility for future transactions. Thus, for example, if Rule 17a–7 is subsequently amended by the SEC to accommodate new pricing systems, Banks could take advantage of the amended Rule without having to request an amendment to the class exemption. However, the Department cautions that the exemption would not be available for transactions involving assets that are not valued by reference to sources independent of the Bank.

Unlike the individual exemptions cited above, this proposed class exemption does not grant relief for fees that the Bank may receive from the Fund as a result of the Client Plans' purchase of Fund shares. However, section III of this proposal provides that a purchase of Fund shares that complies with sections I and II will be deemed a purchase of shares of an open-end investment company for purposes of PTE 77–4, and in compliance with paragraphs (a), (d) and (e) of section II of that exemption. Compliance with all of the conditions of PTE 77–4 would permit the Bank to receive investment advisory and similar fees from the Fund with respect to shares acquired by a Client Plan in accordance with the proposal.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties with respect to the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans;

(3) If granted, the proposed exemption will be applicable to a transaction only if the conditions specified in the class exemption are met; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Exemption

The Department has under consideration the grant of the following class exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.)

Section I. Retroactive Exemption for the Purchase of Fund Shares With Assets Transferred In-Kind From A CIF

For the period from October 1, 1988, to [date of publication of final class exemption], the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E), shall not apply to the purchase by an employee benefit plan (the Client Plan) of shares of one or more diversified open-end management investment companies (the Fund or Funds) registered under the Investment Company Act of 1940, the investment adviser for which is a bank (the Bank) that is also a fiduciary of the Client Plan, in exchange for assets of the Client Plan transferred in-kind to the Fund from a collective investment fund (the CIF) maintained by the Bank, if the following conditions are met:

(a) No sales commissions or other fees are paid by the Client Plan in connection with the purchase of Fund shares.

(b) All transferred assets are securities for which market quotations are readily available.

(c) The transferred assets constitute the Client Plan's *pro rata* portion of such assets that were held by the CIF immediately prior to the transfer.

(d) The Client Plan receives Fund shares that have a total net asset value equal to the value of the Client Plan's *pro rata* share of transferred assets on the date of the transfer, as determined in a single valuation for each asset, with all valuations performed in the same manner, at the close of the same business day, in accordance with Securities and Exchange Commission Rule 17a–7 (using sources independent of the Bank and the Fund) and the procedures established by the Funds pursuant to Rule 17a–7.

(e) With respect to each Client Plan owning assets held by the CIF, an Independent Fiduciary with respect to such plan receives advance written notice of the in-kind transfer and purchase and full written disclosure of information concerning the Funds which includes the following:

(1) A current prospectus for each Fund to which the CIF assets may be transferred;

(2) A statement describing the fees to be charged to, or paid by, a Client Plan and the Funds to the Bank or any unrelated third party, including the nature and extent of any differential between the rates of the fees;

(3) A statement of the reasons why the Bank may consider the transfer and purchase to be appropriate for the Client Plan; and

(4) A statement of whether there are any limitations on the Bank with respect to which plan assets may be invested in shares of the Funds, and, if so, the nature of such limitations.

(f) On the basis of the foregoing information, the Independent Fiduciary gives approval, in writing, for each purchase of Fund shares in exchange for the Client Plan's transferred CIF assets, consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(g) The Bank sends by regular mail to the Independent Fiduciary of each

Client Plan that purchases shares in connection with the in-kind transfer, no later than 105 days after completion of each purchase, a written confirmation of the transaction containing—

(1) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units; and

(2) The number of shares in the Funds that are held by the Client Plan immediately following the transfer, the related per share net asset value and the total dollar amount of such shares.

(h) As to each Client Plan, the combined total of all fees received by the Bank for the provision of services to the Client Plan, and in connection with the provision of services to a Fund in which a Client Plan holds shares purchased in connection with the in-kind transfer is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(i) All dealings in connection with the in-kind transfer and purchase between the Client Plan and a Fund are on a basis no less favorable to the Client Plan than dealings between the Fund and other shareholders.

Section II. Prospective Exemption for the Purchase of Fund Shares With Assets Transferred In-Kind From A CIF

Effective [date of publication of final class exemption], the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase by an employee benefit plan (the Client Plan) of shares of one or more diversified open-end management investment companies (the Fund) registered under the Investment Company Act of 1940, the investment adviser for which is a bank (the Bank) that is also a fiduciary of the Client Plan, in exchange for assets of the Client Plan transferred in-kind to the Fund from a collective investment fund (the CIF) maintained by the Bank if the following conditions are met:

(a) No sales commissions or other fees are paid by the Client Plans in connection with the purchase of Fund shares through the transfer of assets from the CIF.

(b) All transferred assets are securities for which market quotations are readily available.

(c) The transferred assets constitute the Client Plan's *pro rata* portion of such assets that were held by the CIF immediately prior to the transfer. Notwithstanding the foregoing, the allocation of fixed-income securities held by a CIF among Client Plans on the basis of each Client Plan's *pro rata* share of the aggregate value of such securities will not fail to meet the requirements of section II(b) if:

(1) The aggregate value of such securities does not exceed one (1) percent of the total value of the assets held by the CIF immediately prior to the transfer; and

(2) Such securities have the same coupon rate and maturity, and at the time of the transfer, the same credit ratings from nationally recognized statistical rating agencies.

(d) The Client Plan receives Fund shares that have a total net asset value equal to the value of the Client Plan's *pro rata* share of transferred assets on the date of the transfer, as determined in a single valuation for each asset, with all valuations performed in the same manner, at the close of the same business day, in accordance with Securities and Exchange Commission Rule 17a–7 (using sources independent of the Bank and the Fund) and the procedures established by the Funds pursuant to Rule 17a–7.

(e) With respect to each Client Plan owning assets held in the CIF, an Independent Fiduciary for such Client Plan receives advance written notice of the in-kind transfer and purchase of assets and full written disclosure of information concerning the Funds which includes the following:

(1) A current prospectus for each Fund to which the CIF assets may be transferred;

(2) A statement describing the fees to be charged to or paid by the Client Plan and the Funds to the Bank or any unrelated third party, including the nature and extent of any differential between the rates of such fees;

(3) A statement of the reasons why the Bank may consider the transfer and purchase to be appropriate for the Client Plan;

(4) A statement of whether there are any limitations on the Bank with respect to which plan assets may be invested in shares of the Funds, and, if so, the nature of such limitations;

(5) The identity of securities that will be valued in accordance with Rule 17a–7(b)(4) and allocated under section II(c); and

(6) The identity of any fixed-income securities allocated pursuant to section II(c).

(f) On the basis of the foregoing information, the Independent Fiduciary gives prior approval, in writing, for each purchase of Fund shares in exchange for the Client Plan's assets transferred from the CIF, consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(g) The Bank sends by regular mail to the Independent Fiduciary of each Client Plan that purchases Fund shares in connection with the in-kind transfer, the following information:

(1) Not later than 30 days after the completion of the purchase, a written confirmation which contains—

(i) The identity of each security that was valued for purposes of the purchase of Fund shares in accordance with Rule 17a–7(b)(4);

(ii) The current market price, as of the date of the in-kind transfer, of each such security involved in the purchase of Fund shares; and

(iii) The identity of each pricing service or market-maker consulted in determining the current market price of such securities.

(2) Within 105 days after the completion of each purchase, a written confirmation which contains—

(i) The number of CIF units held by the Client Plan immediately before the in-kind transfer, the related per unit value, and the total dollar amount of such CIF units; and

(ii) The number of shares in the Funds that are held by the Client Plan immediately following the purchase, the related per share net asset value and the total dollar amount of such shares.

(h) With respect to each of the Funds in which a Client Plan continues to hold shares acquired in connection with the in-kind transfer, the Bank provides the Independent Fiduciary of the Client Plan with—

(1) A copy of an updated prospectus of such Fund, at least annually; and

(2) Upon request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information, or some other written statement) containing a description of all fees paid by the Fund to the Bank.

(i) As to each Client Plan, the combined total of all fees received by the Bank for the provision of services to the Client Plan, and in connection with the provision of services to a Fund in which a Client Plan holds shares acquired in connection with the in-kind transfer, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(j) All dealings in connection with the in-kind transfer and purchase between the Client Plan and a Fund are on a basis no less favorable to the Client Plan than dealings between the Fund and other shareholders.

Section III. Availability of Prohibited Transaction Exemption (PTE) 77–4

Any purchase of Fund shares that complies with the conditions of either Section I or Section II of this class exemption shall be treated as a ''purchase or sale'' of shares of an open-end investment company for purposes of PTE 77–4 and shall be deemed to have satisfied paragraphs (a), (d) and (e) of section II of that exemption. 42 FR 18732 (April 8, 1977).

Section IV. Definitions

For purposes of this proposed exemption:

(a) The term ''Bank'' means a bank or trust company, and any affiliate thereof [as defined below in paragraph (b)(1)], which is supervised by a state or federal agency.

(b) An ''affiliate'' of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person.

(2) Any officer, director, employee or relative of such person, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''collective investment fund'' or ''CIF'' means a common or collective trust fund or pooled investment fund maintained by a ''Bank'' as defined in paragraph (a) of this Section IV.

(e) The term ''Fund'' or ''Funds'' means any diversified open-end management investment company or companies registered under the '40 Act for which the Bank serves as an investment adviser, and may also serve as a custodian, shareholder servicing agent, transfer agent or provide some other secondary service (as defined below in paragraph (i) of this section).

(f) The term ''net asset value'' means the amount calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities chargeable to each portfolio, by the number of outstanding shares.

(g) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term ''Independent Fiduciary'' means a fiduciary of a Client Plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Independent Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank or any affiliate thereof;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of such fiduciary, is an officer, director, partner, employee of the Bank (or is a relative of such persons) or any affiliate thereof;

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, employee of the Bank (or relative of such persons) or any affiliate thereof, is a director of such Independent Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, and (ii) the approval of any purchase or sale between the Client Plan and the Funds, as well as any transaction described in Sections I and II above, then paragraph (h)(2) of this Section IV shall not apply.

(i) The term ''secondary service'' means a service provided by a Bank to a Fund other than investment management, investment advisory or similar services.

(j) The term ''fixed-income security'' means any interest-bearing or discounted government or corporate security with a face amount of $1,000 or more that obligates the issuer to pay the holder a specified sum of money, at specific intervals, and to repay the principal amount of the loan at maturity.

(k) The term ''Client Plan'' means a pension plan described in 29 CFR 2510.3–2, a welfare benefit plan described in 29 CFR 2510.3–1, and a plan described in section 4975(e)(1) of the Code, but does not include an employee benefit plan established or maintained by the Bank or by an affiliate thereof, for its own employees.

(l) The term ''security'' shall have the same meaning as defined in section 2(36) of the '40 Act, as amended, 15 U.S.C. 80a–2(36) (1996).

Signed at Washington, D.C., this 5th day of November, 1996.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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[Prohibited Transaction Exemption 96–82; Exemption Application No. D–10034, et al.]

Grant of Individual Exemptions; Dimensional Fund Advisors Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon

the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Dimensional Fund Advisors Inc. (DFA) Located in Santa Monica, California

[Prohibited Transaction Exemption 96–82; Exemption Application No. D–10034]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the in-kind transfers of the assets of employee benefit plans (the Client Plans) for which DFA or an affiliate act as a fiduciary [1] and which are held in DFA sponsored group trusts (the Group Trusts) to the DFA Investment Trust Company (the Master Fund), in exchange for the shares of the Master Fund, an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act), for which DFA acts as investment advisor; provided that the following conditions are satisfied:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Client Plan and who is independent of and unrelated to DFA, as defined in paragraph (g) of Section III below, will receive advance written notice of the in-kind transfer of the Client Plan's assets held in a subtrust of a Group Trust to a corresponding series of the Master Fund in exchange for the shares of the Master Fund, and the investment of such assets in the corresponding series of the Master Fund, and will receive full written disclosures concerning the Master Fund described in paragraph (c) of Section II below;

(b) On the basis of such information described in paragraph (c) of Section II below, the Second Fiduciary will authorize in writing the in-kind transfer of the Client Plan's assets from a subtrust of a Group Trust to the corresponding series of the Master Fund in exchange for the shares of the Master Fund, and the investment of such assets in the corresponding series of the Master Fund. Such authorization is to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(c) No sales commissions, redemption fees or other fees are paid by the Client Plans in connection with the in-kind transfer of the Group Trust's assets, in exchange for the shares of the Master Fund;

(d) The transfers will be one-time transactions for each subtrust of a Group Trust for which a comparable series of the Master Fund exists;

(e) Each Group Trust receives shares of the Master Fund which have a total net asset value that is equal to the value of the Client Plans' all or pro rata share of the Group Trust's assets on the date of the transfer;

(f) The current market value of the Group Trust's assets to be transferred in-kind in exchange for the shares of the Master Fund, is determined in a single valuation performed in the same manner at the close of the same business day with respect to any such transfer, using independent sources in accordance with the procedures set forth in Rule 17a–7 (Rule 17a–7) under the 1940 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established by DFA pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sales price for transactions reported on a recognized securities exchange or NASDAQ, be valued based on the average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the day of the Group Trust transfer, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of DFA;

(g) No later than 30 days after completion of each in-kind transfer of Group Trust's assets to the Master Fund, DFA will send by regular mail to each Second Fiduciary, who is acting on behalf of each affected Client Plan and who is independent of and unrelated to DFA, as defined in paragraph (g) of Section III below, written confirmation containing the following information:

1. the identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the 1940 Act;

2. the price of each such security involved in the transaction; and

3. the identity of each pricing service or market maker consulted in determining the value of such securities;

(h) No later than 90 days after completion of each in-kind transfer of the Group Trust's assets to the Master Fund, DFA will send by regular mail to the Second Fiduciary, who is acting on behalf of each affected Client Plan and who is independent of and unrelated to DFA, as defined in paragraph (g) of Section III below, written confirmation that contains the following information:

1. the number of Group Trust's units held by the Client Plan immediately before the transfer (and the related per unit value and the total dollar amount of such Group Trust's units transferred); and

2. the number of shares in the Master Fund that are held by the Client Plan following the transfer (and the related per share net asset value and the total dollar amount of such shares received);

(i) The transferred securities will be valued using the same methodology in the Group Trusts and in the Master Fund;

(j) DFA will not execute an in-kind transfer of the Client Plan's assets unless the Second Fiduciary of each affected Client Plan affirmatively consents to the in-kind transfer in writing; and

(k) There will be no penalty to a Client Plan for not participating in the in-kind transfer.

Section II—General Conditions

(a) DFA maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of DFA, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than DFA shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b) (1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose

[1] The applicant states that no retirement plan established by DFA is invested in any of the Group Trusts, and no relief is being requested herein on behalf of any of DFA's own plans. Accordingly, the Department is not proposing relief for in-kind transfers involving any plan established and maintained by DFA or its affiliates or subsidiaries.

of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1)(ii) and (iii) of Section II shall be authorized to examine trade secrets of DFA, or commercial or financial information which is privileged or confidential; and

(c) A Second Fiduciary who is acting on behalf of a Client Plan and who is independent and unrelated to DFA, as defined in paragraph (g) of Section III below, will receive in advance of the investment by a Client Plan in the Master Fund full written disclosure of information concerning the Master Fund which shall include, but not be limited to the following:

(1) a current copy of SEC Form N–1A (regarding the registration of an open end investment company under the 1940 Act)[2] with respect to the Master Fund, plus certain additional information as specified in the Advisory Opinion 94–35A[3];

(2) a table listing management fees for the most recent completed fiscal period, all other expenses broken down by category and total portfolio operating expenses;

(3) a chart showing the effect of such fees on an investment in the Master Fund over one, three, five and ten years; and

(4) a list of per share income and capital changes for shares outstanding throughout the year, including investment income, expenses, net investment income, dividends from net investment income, net realized and unrealized gains (losses) on securities; distributions from net realized gains (losses) on securities; net increase (decrease) in net asset value, net asset value at the beginning of the period, net asset value at the end of the period, expenses to average net assets, portfolio turnover rate, and number of shares outstanding at the end of the period.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term ''DFA'' means Dimensional Fund Advisors Inc., and any affiliate thereof as defined below in paragraph (b) of this section.

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund'' or ''Funds'' shall include the DFA Investment Trust Company, such additional series as may be added to the DFA Investment Trust Company, or any other diversified open-end investment company or companies registered under the 1940 Act for which DFA serves as an investment advisor and may also serve as a custodian, shareholder servicing agent, or transfer agent.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's SEC Form N–1A and statement of additional information, and other assets belonging to each of the portfolios in the Fund or the Fund, less the liabilities charged to each such portfolio or the Fund, by the number of outstanding shares.

(f) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Second Fiduciary'' means a fiduciary of a Client Plan who is independent of and unrelated to DFA. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to DFA if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with DFA;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of DFA (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner or employee of DFA (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment manager advisor, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Section I above, then paragraph (g)(2) of this Section III shall not apply.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 18, 1996 at 61 FR 49156/49160.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Operating Engineers Local 150 Apprenticeship Fund (the Plan) Located in Plainfield, Illinois

[Prohibited Transaction Exemption 96–83; Exemption Application No. L–10279]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the sale by the Plan of a parcel of unimproved real property in Will County, Illinois (the Property) to the International Union of Operating Engineers Local 150, AFL–CIO, a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) All terms of the transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan incurs no costs or expenses related to the transaction; and

[2] Form N–1A requires the registrant to answer a series of questions regarding financial information, management of the fund, risk factors and expenses.

[3] In the Advisory Opinion 94–35A (AO 94–35A) issued by the Department to DFA, DFA requested an advisory opinion with regard to certain disclosures required by the Securities Act of 1933 (the 1933 Act), and which are provided by DFA to independent plan fiduciaries in connection with the plans' investment in a certain open-end investment company to which DFA serves as an investment advisor (the Core Fund), and which is registered under the 1940 Act, but not under the 1933 Act. Specifically, DFA requested an advisory opinion that a receipt by the independent plan fiduciary of the Core Fund's Form N–1A and the additional information as specified in AO 94–35A complies with the prospectus disclosure requirement of paragraph (d) of section II of PTCE 77–4. In AO 94–35A, the Department stated that the disclosure of the Core Fund's Form N–1A information and the additional information as specified in AO 94–35A to an independent plan fiduciary, in lieu of a prospectus, will satisfy the prospectus disclosure requirement of paragraph (d) of section II of PTCE 77–4, provided that the additional information as specified in AO 94–35A contains all the information, otherwise included in a prospectus, that is relevant to the independent fiduciary's decision as to whether to approve the purchase and sale of shares in the Core Fund.

(C) The Plan receives a purchase price no less than the greater of (1) $65,000, or (2) the fair market value of the Property as of the sale date.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on July 31, 1996 at 61 FR 40011.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

HSBC Securities, Inc. (HSBC) Located in New York, New York

[Prohibited Transaction Exemption 96–84; Exemption Application No. D–10316]

Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[4]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[5] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[6]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

[4] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[5] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[6] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. ''Certificate'' means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which HSBC is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) ''guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means:

(1) HSBC;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with HSBC; or

(3) any member of an underwriting syndicate or selling group of which HSBC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) the trust holds a security interest in the lease;

(2) the trust holds a security interest in the leased motor vehicle; and

(3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

The Department notes that this exemption is included within the meaning of the term ''Underwriter Exemption'' as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at 35932.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 18, 1996 at 61 FR 49163.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an

administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 7th day of November, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–29034 Filed 11–12–96; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–10108, et al.]

Proposed Exemptions; Morgan Stanley & Company Incorporated

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Morgan Stanley & Co. Incorporated; Located in New York, New York

[Application No. D–10108]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. Effective August 25, 1995, the restrictions of section 406(a)(1) (A) through (D) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975 (c)(1) (A) through (D) of the Code, shall not apply to any purchase or sale of a security between an employee benefit plan and a broker-dealer affiliated with Morgan Stanley & Co. and subject to British law (MSC/UK Affiliate), if the following conditions, and the conditions of Section II, are satisfied:

(1) The MSC/UK Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer.

(2) Such transaction is on terms at least as favorable to the plan as those which the plan could obtain in an arm's length transaction with an unrelated party.

(3) Neither the MSC/UK Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, and the MSC/UK Affiliate is a party in interest or disqualified person with respect to the plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the MSC/UK Affiliate shall not be deemed to be a fiduciary with respect to a plan solely by reason of providing securities custodial services for a plan.

B. Effective August 25, 1995, the restrictions of section 406(a)(1) (A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the lending of securities that are assets of an employee benefit plan to an MSC/UK Affiliate if the following conditions, and the conditions of Section II, are satisfied:

(1) Neither the MSC/UK Affiliate (the Borrower) nor an affiliate of the Borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(2) The plan receives from the Borrower, either by physical delivery or by book entry in a securities depository located in the United States, by the close of business on the day on which the securities lent are delivered to the Borrower, collateral consisting of U.S. currency, securities issued or

guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a person other than the Borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding business day, a market value (or, in the case of letters of credit, a stated amount) equal to not less than 100 percent of the then market value of the securities lent. The collateral referred to in this Section I(B)(2) must be held in the United States;

(3) Prior to the making of any such loan, the Borrower shall have furnished the following items to the fiduciary for the plan who is making decisions on behalf of the plan with respect to the lending of securities (the Lending Fiduciary): (1) the most recent available audited statement of the Borrower's financial condition, (2) the most recent available unaudited statement of the Borrower's financial condition (if more recent than such audited stated), and (3) a representation that, at the time the loan is negotiated, there has been no material adverse change in the Borrower's financial condition since the date of the most recent financial statement furnished to the plan that has not been disclosed to the Lending Fiduciary. Such representation may be made by the Borrower's agreement that each such loan shall constitute a representation by the Borrower that there has been no such material adverse change;

(4) The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the plan as those which the plan could obtain in an arm's-length transaction with an unrelated party. Such agreement may be in the form of a master agreement covering a series of securities-lending transactions;

(5) The plan (1) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (2) has the opportunity to derive compensation through the investment of cash collateral. Where the plan has that opportunity, the plan may pay a loan rebate or similar fee to the Borrower, if such fee is not greater than the plan would pay an unrelated party in an arm's-length transaction;

(6) The plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities;

(7) If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of trading on that day, the Borrower shall deliver, by the close of business on the following business day, an additional amount of collateral (as described in paragraph (2)) the market value of which, together with the market value of all previously delivered collateral, equals at least 100 percent of the market value of all the borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the collateral may be returned to the Borrower if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities;

(8) The loan may be terminated by the plan at any time, whereupon the Borrower shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (1) the customary delivery period for such securities, (2) three business days, or (3) the time negotiated for such delivery by the plan and the Borrower, whichever is lesser; and

(9) In the event the loan is terminated and the Borrower fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (8) above, then (i) the plan may, under the terms of the loan agreement, purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Borrower under the agreement, and any expenses associated with the sale and/or purchase, and (ii) the Borrower is obligated, under the terms of the loan agreement, to pay, and does pay to the plan, the amount of any remaining obligations and expenses not covered by the collateral plus interest at a reasonable rate. Notwithstanding the foregoing, the Borrower may, in the event the Borrower fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided such replacement is approved by the Lending Fiduciary.

(10) If the Borrower fails to comply with any condition of this exemption, in the course of engaging in a securities-lending transactions, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Borrower's failure to comply with the conditions of the exemption.

C. Effective August 25, 1995, the restrictions of sections 406(a)(1) (A) through (D) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code shall not apply to any extension of credit to an employee benefit plan by an MSC/UK Affiliate to permit the settlement of securities transactions or in connection with the writing of options contracts provided that the following conditions are met:

(a) The MSC/UK Affiliate is not a fiduciary with respect to any assets of such plan, unless no interest or other consideration is received by such fiduciary or any affiliate thereof in connection with such extension of credit; and

(b) Such extension of credit would be lawful under the Securities Exchange Act of 1934 and any rules or regulations thereunder if such act, rules or regulations were applicable.

Section II—General Conditions

A. The MSC/UK Affiliate is registered as a broker-dealer with the Securities and Futures Authority of the United Kingdom (the S.F.A.);

B. The MSC/UK Affiliate is in compliance with all requirements of Rule 15a–6 (17 CFR 240.15a–6) under the Securities and Exchange Act of 1934, which provides for foreign broker-dealers a limited exemption from U.S. registration requirements;

C. Prior to the transaction, the MSC/UK Affiliate enters into a written agreement with the plan in which the MSC/UK Affiliate consents to the jurisdiction of the courts of the United States with respect to the transactions covered by this exemption;

D.(1) The MSC/UK Affiliate maintains or causes to be maintained within the United States for a period of six years from the date of such transaction such records as are necessary to enable the persons described in this section to determine whether the conditions of this exemption have been met; except that a party in interest with respect to an employee benefit plan, other than the MSC/UK Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by this section, and a prohibited transaction will not be deemed to have occurred if, due to circumstances

beyond the control of the MSC/UK Affiliate, such records are lost or destroyed prior to the end of such six year period;

(2) The records referred to in subsection (1) above are unconditionally available for examination during normal business hours by duly authorized employees of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by such plan; except that none of the persons described in this subsection shall be authorized to examine trade secrets of Morgan Stanley & Co. or the MSC/UK or any commercial or financial information which is privileged or confidential.

Section III—Definitions

''Affiliate'' of a person shall include: (i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

''Security'' shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

Summary of Facts and Representations

1. Morgan Stanley & Co. Incorporated (MSC) is an international securities firm that performs securities underwriting, distribution and trading, merger, acquisition, restructuring and other corporate financial services for clients world wide. Clients include multinational corporations, governments, emerging growth companies, financial institutions and individual investors.

2. MSC has foreign affiliates world wide who are in the business of trading securities, including a broker-dealer affiliate in London, England (the MSC/UK Affiliate), currently Morgan Stanley & Co. International Limited. MSC represents that in the ordinary course of their business as broker-dealers, these foreign affiliates customarily operate as traders in dealers markets wherein the broker-dealer purchases and sells securities for its own account and engages in purchases and sales of securities with its clients, and that such trades are referred to as principal transactions. MSC states that in issuing Prohibited Transaction Class Exemption 75–1 (PTCE 75–1, 40 FR 50845, October 31, 1975) the Department has recognized the functions of registered broker-dealers in principal transactions on behalf of clients which are employee benefit plans covered by the Act. Part II of PTCE 75–1 provides exemptive relief from section 406(a) of the Act for principal transactions between plans and broker-dealers which are registered under the Securities Exchange Act of 1934, provided all requirements stated in Part II are satisfied. MSC represents that like the U.S. dealer markets, international equity and debt markets, including the options markets, are no less dependent on a willingness of dealers to trade as principals. In the absence of an exemption for principal transactions, such as PTCE 75–1, those responsible for trading activities on behalf of plan investors would be prevented from engaging in transactions with those broker-dealers and banks that provide the markets for the securities and are most capable of handling such transactions.

3. MSC represents that over the past decade, plans have increasingly invested in foreign equity and debt securities, including foreign government securities. MSC states that plans seeking to enter into such investments may wish to increase the number of trading partners available to them by trading with foreign broker-dealers such as the MSC/UK Affiliate. However, where MSC provides services to such plans which are covered by the Act, principal transactions with the MSC/UK Affiliate would be prohibited by the Act. The exemptive relief afforded U.S. broker-dealers by PTCE 75–1 would not be available with respect to the MSC/UK Affiliate because that class exemption is limited to broker-dealers registered with the U.S. Securities and Exchange Commission (S.E.C.) under the Securities Exchange Act of 1934 (the 1934 Act). MSC represents that its MSC/UK Affiliate is not so registered but, instead, is governed by the rules, regulations and registration requirements of the Securities and Futures Authority of the United Kingdom (the S.F.A.). Furthermore, MSC represents that Rule 15(a)–6 of the 1934 Act offers foreign broker-dealers limited exemption from the S.E.C. registration requirements pursuant to provisions with which the MSC/UK Affiliate is able to comply. However, MSC states that because of the S.E.C. registration requirement of PTCE 75–1, the MSC/UK Affiliate is prevented from engaging in principal transactions with plans with respect to which MSC is a party in interest, even though such affiliate is registered with the S.F.A., experienced in the markets, and able to satisfy the Rule 15(a)–6 requirements for S.E.C. registration exemption. Accordingly, MSC is requesting an individual exemption to permit its MSC/UK Affiliate to engage in principal transactions with plans under the terms and conditions set forth herein, which MSC represents are equivalent to those set forth in PTCE 75–1, Part II.[1]

4. The proposed exemption will be applicable only to transactions affected by an MSC/UK Affiliate which is registered as a broker-dealer with the S.F.A. and in compliance with Rule 15(a)–6. MSC represents that the role of a broker-dealer in a principal transaction in the United Kingdom is substantially identical to that of a broker-dealer in a principal transaction in the United States. MSC further represents that registration of a broker-dealer with the S.F.A. is equivalent to registration of a broker-dealer with the S.E.C. under the 1934 Act. MSC maintains that the S.F.A. has promulgated rules for broker-dealers which are equivalent to S.E.C. rules, relating to registration requirements, minimum capitalization, reporting requirements, periodic examinations, fund segregation, client protection, and enforcement. MSC represents that the rules and regulations set forth by the S.F.A. and the S.E.C. share a common objective: the protection of the investor by the regulation of securities markets. MSC explains that under S.F.A. rules, persons who manage investments or give advice with respect to investments must be registered as a ''registered representative''. If a person is not a registered representative and, as part of his duties, makes commitments in market dealings or transactions, that person must be registered as a ''registered trader''. MSC represents that the S.F.A. rules require each firm which employs registered representatives or

[1] The Department notes that the proposed principal transactions are subject to the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

registered traders to have positive tangible net worth and be able to meet its obligations as they fall due, and that the S.F.A. rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. In addition to demonstration of capital adequacy, MSC states that the S.F.A. rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and all records relating to a counterparty, and that all records must be produced at the request of the S.F.A. at any time. MSC states that S.F.A.'s registration requirements for broker-dealers are backed up by potential fines and penalties, and rules which establish a comprehensive disciplinary system.

5. MSC represents that in addition to the protections which are afforded by registration with S.F.A., compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) under the 1934 Act will offer additional protections in lieu of registration with the S.E.C. MSC states that Rule 15a–6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''U.S. major institutional investor'', provided that the foreign broker dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term ''U.S. institutional investor'', as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (the Act) if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment advisor, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors'' as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended. The term ''U.S. major institutional investor'' is defined as a person that is a U.S. institutional investor that has total assets in excess of $100 million. MSC represents that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

MSC represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor in accordance with Rule 15a–6 must, among other things:

(a) Consent to service of process for any civil action brought by, or proceeding before, the S.E.C. or any self-regulatory organization;

(b) Provide the S.E.C. with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the S.E.C. requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver, and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); and

(6) Participate in all oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the U.S. major institutional investor), and accompany the foreign associated person on all visits with both U.S. institutional and major institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.

6. MSC represents that a normal part of the execution of securities transactions by broker-dealers on behalf of customers, including employee benefit plans, is the extension of credit to customers to permit the settlement of transactions in the customary settlement period, and that such extensions of credit are also customary activities of broker-dealers in connection with the writing of option contracts. MSC notes that exemptive relief for such transactions is provided under Part V of PTCE 75–1. However, the exemptive relief under Part V of PTCE 75–1, like that under Part II, is available only with respect to broker-dealers which are registered with the S.E.C. under the 1934 Act. Accordingly, MSC requests that the exemption include relief for extensions of credit by the MSC/UK affiliate in the ordinary course of the purchase or sale of securities, regardless of whether they are effected on an agency or a principal basis. The proposed exemption provides relief for extensions of credit by the MSC/UK Affiliate to a plan to permit the settlement of securities transactions or in connection with the writing of options contracts, provided that the MSC/UK Affiliate is not a fiduciary with respect to any assets of the plan, unless no interest or other consideration is received by the MSC/UK Affiliate in connection with such extension of credit. The proposed exemption also requires that the extension of credit would be lawful under the 1934 Act and any rules or regulations thereunder if such act, rules, or regulations were applicable.

7. In addition to exemptive relief for principal transactions and extensions of credit in connection with the purchase or sale of securities, MSC is also requesting exemptive relief for the lending of securities, equivalent to that provided under the terms and conditions of Prohibited Transaction Class Exemption 81–6 (PTCE 81–6, 46 FR 7527, January 23, 1981, amended at 52 FR 18754, May 19, 1987), a class exemption to permit certain loans of securities by employee benefit plans. MSC represents that in PTCE 81–6 the Department has recognized that securities lending represents a low-risk means of enhancing the investment return of plans with respect to securities that would otherwise be idle. MSC represents that the conditions of Section I(B) of the proposed exemption will subject the MSC/UK Affiliate to all of the conditions imposed on broker-dealers under PTCE 81–6, other than registration under the 1934 Act. MSC notes that such conditions include requirements relating to daily marking to market, setting collateral at 100 percent of the market value of the securities, the rules for termination of the loan, and return of the borrowed securities. In addition, MSC notes that

the collateral will be in U.S. dollars and will be held in the United States.

8. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) With respect to principal transactions affected by the MSC/UK Affiliate, the exemption will enable plans to realize the same benefits of efficiency and convenience which derive from principal transactions executed pursuant to Part II of PTCE 75–1 by broker-dealers registered in the United States; (2) With respect to extensions of credit by the MSC/UK Affiliate in connection with purchases or sales of securities, the exemption will enable the MSC/UK to extend credit in the ordinary course of business to affect the transactions within the customary settlement period or in connection with the writing of options contracts; (3) With respect to securities lending transactions affected by the MSC/UK Affiliate, the exemption will enable plans to realize a low-risk return on securities that otherwise would remain idle, as in securities lending transactions executed pursuant to PTCE 81–6 by broker-dealers registered in the United States; and (3) The proposed exemption generally imposes terms and conditions upon the transactions executed by the MSC/UK Affiliate which are the same as those imposed on U.S. broker-dealers under PTCE 75–1 and PTCE 81–6.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Electric Pension Trust (the GE Trust), Located in Fairfield, Connecticut

[Application Nos. D–10285 Thru D–10287]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code,[2] shall not apply, effective July 12, 1996, to the past sale by the GE Trust of its stock in AmeriData Technologies, Inc. (the AmeriData Stock) to General Electric Capital Corporation (GECC) and GECC's indirect, wholly-owned subsidiary, GAC Acquisition I Corporation (GAC), both of which are parties in interest with respect to the GE Trust and affiliates of the General Electric Company (GE) the sponsor of the GE Trust, in connection with the merger (the Merger) of GAC and AmeriData Technologies, Inc. (AmeriData), provided that the following conditions were satisfied:

(a) The sale of the AmeriData Stock by the GE Trust was a one-time transaction for cash;

(b) The GE Trust received the fair market value for each share of the AmeriData Stock on the date of the sale;

(c) The GE Trust received no less consideration than that received by similarly situated AmeriData shareholders at the same time in the same transaction;

(d) The GE Trust paid no commissions, fees or other expenses in connection with the sale of the AmeriData Stock to GECC and GAC;

(e) The terms of the sale were no less favorable to the GE Trust than those obtainable by other similarly situated shareholders of AmeriData Stock;

(f) The GE Trust tendered its shares of AmeriData Stock only at the close of the tender-offer period and only after a majority of the outstanding shares of AmeriData had been tendered; and

(g) The transactions engaged in by the GE Trust with respect to the AmeriData Stock (including the acquisition, holding and subsequent sale to GECC and GAC) were not part of an arrangement designed to benefit GE, any of its affiliates, or any other party in interest with respect to the GE Trust.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of July 12, 1996, the closing date of the tender-offer period for the AmeriData Stock in connection with the Merger.

Summary of Facts and Representations

1. The GE Trust is a single pension trust through which three (3) defined benefit plans (the Plans) are funded. These Plans provide pension and death benefits to eligible employees and their beneficiaries. As of December 31, 1995, there were approximately 465,000 participants in the Plans. The Plans which participate in the GE Trust are: (a) the General Electric Company Pension Plan (the GE Plan), which is maintained by GE; (b) the Components Pension Plan for Puerto Rico, which is maintained by Caribe General Electric Products, Inc., an affiliate of GE; and (c) the ERC Retirement Plan, which is maintained by Employers Reinsurance Corporation, an affiliate of GE. As of December 31, 1995, the GE Trust had total net assets of approximately $30.3 billion.

2. The assets of the GE Trust are held in trust by seven (7) trustees (the Trustees) who are all employees of GE and who are appointed by the Benefit Plans Investment Committee (BPIC). The Board of Directors of GE appoints officers of GE to serve as members of BPIC. BPIC determines the investment policies with respect to the assets of the Plans in the GE Trust.

3. GE offers diversified manufacturing and technical services worldwide. An indirect, wholly-owned subsidiary of GE, GECC, provides financial services in the following categories: special insurance services, consumer services, specialized financing, equipment management, and mid-market financing. The affiliates of GE play a primary role in the proposed transaction. In this regard, GECC established GAC, as an indirect, wholly-owned special purpose subsidiary, to acquire AmeriData. In this regard, it is represented that GAC will be merged into AmeriData at which time AmeriData will become an affiliate of GE. Because GECC is a participating employer under the GE Plan, GECC and GAC are parties in interest with respect to the GE Trust.

4. AmeriData, with offices in Stamford, Connecticut, is a corporation registered under the laws of the State of Delaware. AmeriData is an international provider of computer products and services, as well as technology consulting services. Shares of AmeriData Stock are widely-held and publicly-traded on the New York Stock Exchange. It is represented that approximately 24,938,845 shares of AmeriData Stock are considered outstanding for purposes of Delaware General Corporation Law (DGCL), as of July 23, 1996.

5. The Applicants represent that, as of December 31, 1995, the readily identifiable shareholders of AmeriData Stock were: (1) the GE Trust; (2) two investment Partnerships; (3) SBC Technologies, Inc., a wholly-owned subsidiary of AmeriData; and (4) the officers and directors of AmeriData. It is represented that the remaining shares of AmeriData Stock were held by the general public.

As of December 31, 1995, the officers and directors of AmeriData owned 11.8 percent (11.8%) of the shares of AmeriData Stock. It is represented that, as of May 20, 1996, management shareholders of AmeriData owning approximately 6 percent (6%) of the

[2] For purposes of this proposed exemption references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

outstanding shares of AmeriData Stock had entered into binding agreements to tender their shares. None of the officers and directors of AmeriData are employed by GE or its affiliates.

With respect to the two investment partnerships, the combined ownership represented a total of 10.9% of the shares of AmeriData Stock. Neither investment partnership has any affiliation with GE.

6. As of December 31, 1995, the GE Trust owned approximately 2,101,404 shares of the AmeriData Stock. These shares represented approximately 9.7 percent (9.7%) of the total outstanding shares of the AmeriData Stock at that time. It is represented that the Trustees acquired the 2,101,404 shares of the AmeriData Stock in a number of transactions over the period from May 1993 through October 1994. The cost to the GE Trust of its 2,101,404 shares of AmeriData stock, as shown on the GE Trust's financial records, was $21,566,026. It is represented that the GE Trust acquired some of the AmeriData Stock in blind transactions on the open market. In addition, the remaining AmeriData Stock was acquired in various transactions with AmeriData or its predecessor, including but not limited to purchases, the exercise of warrants, and the receipt of stock dividends.[3] It is represented that at the time of these transactions neither AmeriData nor its predecessor was related to GE, nor was either a party in interest with respect to the GE Trust. The Applicants represent that the decisions made by the Trustees regarding the acquisition of the AmeriData Stock were made independent of, and without knowledge that in the future an affiliate of GE would attempt to acquire all of the outstanding shares of AmeriData Stock.

7. On May 20, 1996, GECC, GAC and AmeriData entered into an agreement and plan of merger (the Merger Agreement). In this regard, the Boards of Directors of these parties unanimously approved the acquisition of AmeriData by GECC and GAC by means of the merger of GAC with and into AmeriData. In connection with the Merger, GAC made a tender offer on May 24, 1996, for all outstanding shares of AmeriData Stock. The tender-offer period began on May 24, 1996, and was to expire on June 21, 1996, subject to the satisfaction or waiver of certain closing conditions. Because certain closing conditions could not be satisfied or waived before June 21, the tender-offer period was extended until July 12, 1996.

Pursuant to the tender, GAC offered to purchase the stock of AmeriData for $16 a share or approximately $490 million in the aggregate. The tender price represented a premium of approximately 47.1 percent (47.1%) over the closing price of $10⅞ per share for AmeriData Stock on April 19, 1996, thirty-one (31) days prior to the public announcement of the execution of the Merger Agreement. In this regard, it is represented the trading price of shares of AmeriData Stock on the open market during the tender-offer period, ranged from $15¾ to $15⅞ per share, except that the closing price per share was $15⅝ on May 27, and $16 on June 17, and July 5, 8, and 10, 1996. The Board of Directors of AmeriData unanimously approved such tender offer and recommended that its shareholders accept the tender.

8. While it would have been possible for the GE Trust, as a shareholder of AmeriData Stock to ignore the recommendation of the Board of Directors and sell its shares in the open market or in a private transaction before the close of the tender-offer period, it is represented that this approach would probably have resulted in loss of some profits to the GE Trust. Since any purchaser of the AmeriData Stock (either in the open market or in a private transaction) during the tender-offer period could normally expect to resell such shares for the tender-offer price, the transaction would be worthwhile for such purchaser only if it paid to the GE Trust a price less than the tender-offer price so as to realize a profit from the spread. By accepting the tender offer, the GE Trust avoided losing part of the profit on its investment and was able to sell its shares for the full tender-offer price.

9. Regardless of whether or not the GE Trust tendered its shares, once a majority of the outstanding shares of AmeriData Stock were tendered by shareholders other than the GE Trust, in no event could the GE Trust have continued to hold its shares of AmeriData Stock. In this regard, under the terms of the Merger Agreement, GAC was not required to proceed with the purchase of the tendered shares, if less than a majority of AmeriData Stock was tendered as of the close of the tender-offer period. However, if a majority, but less than 100 percent (100%) of the shares of AmeriData Stock were tendered, then GAC was bound to acquire the tendered shares. Further, under the terms of the Merger Agreement once a majority of shares had been tendered, GAC in its capacity as the acquiring corporation, was obligated to cause a forced redemption of all the shares of AmeriData Stock which had not been tendered initially. In this regard, under the terms of the Merger Agreement, such follow-on merger would redeem, at the same $16 per share consideration, all the remaining shares of AmeriData Stock held by parties other than GAC. GAC was assured under Delaware law, that once a majority of shares had been tendered, it would be able to acquire all of the shares of AmeriData either through a short-form merger or a shareholder vote followed by a merger. In the event that at least 90 percent (90%) of the shares of AmeriData Stock were tendered in the tender offer, such follow-on merger would be a ''short-form'' merger under Section 253 of the DGCL and would not require a vote of shareholders. In the event that less than 90 percent (90%) of the shares were tendered, a follow-on merger under Section 251 of DGCL would be accomplished by a shareholder vote.

It is represented that the total number of shares of AmeriData Stock tendered to GAC at the close of the tender-offer period was 22,421,080 out of a total of 24,938,845 shares. The number of shares tendered represented 89.9 percent (89.9%) of the total number of outstanding shares of AmeriData Stock. In order to proceed with a ''short-form'' merger under Section 253 of the DGCL which would not require a vote of shareholders, GAC subsequently purchased a sufficient number of shares of AmeriData Stock directly from AmeriData at the same $16 per share price so that GAC became a 90 percent (90%) shareholder. AmeriData was then merged with GAC using the ''short-form'' merger provisions of DGCL with the result that AmeriData as a surviving company is now a wholly owned subsidiary of GECC.

10. The Applicants represent that the Trustees made a fiduciary decision not to tender the GE Trust's shares of AmeriData Stock until the close of the tender-offer period, and then to do so only if at that time at least 51 percent (51%) of the other shareholders had already tendered their shares. The Trustees determined that such a conditional tender should be made, and that the shares of AmeriData Stock held by the GE Trust should be tendered only if the specified conditions were met immediately prior to the close of the

[3] In this regard, the Department is not providing any opinion in this proposed exemption as to whether the acquisition and holding of the AmeriData Stock by the GE Trust violated any of the provisions of Part IV of Title I of the Act. However, the Department notes that section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the participants and beneficiaries of a plan, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions for such plan.

tender-offer period, so that the arm's length nature of the transaction by the Trustees would be confirmed by the actions of independent parties, prior to the tender by the Trustees. Also, the Trustees concluded that by waiting for a majority of shareholders other than the GE Trust to tender, no issue would arise as to whether the Trustees had facilitated the acquisition by GAC of AmeriData Stock, since once a majority of other shareholders had tendered their shares, GAC was obligated to redeem all of the outstanding shares of AmeriData Stock.

11. The Trustees carried out the conditional tender in a two part process. First, several days prior to the close of the tender-offer period, the Trustees filed a letter with the Chase Manhattan Bank, in its capacity as Depository for the tender-offer, which stated that the Trustees' tender of the shares of AmeriData Stock held by the GE Trust was conditional and was to be effective if and only if immediately prior to the expiration of the tender-offer period, at least 51 percent (51%) of the shares of AmeriData Stock had been validly tendered and not withdrawn. In addition, the Trustees dispatched a letter which would effectuate the transmittal of its shares of AmeriData Stock, providing that the conditions of its tender were met. As more than a majority of shares of AmeriData Stock were tendered by independent shareholders at the close of the tender-offer period, the GE Trust tendered its shares to GAC on July 12, 1996. In this regard, it is represented that, as of July 17, 1996, a check in an amount of approximately $33,622,464 million representing a purchase price of $16 per share, payable to the GE Trust for its 2,101,404 shares of AmeriData Stock tendered to GAC was received by State Street Bank, acting as custodian for the GE Trust. Accordingly, the GE Trust and the Plans (collectively, the Applicants) request retroactive relief from the prohibited transactions provisions of the Act provided certain conditions were met for the past sale to GAC under the terms of the tender offer of AmeriData Stock which, prior to the effective date of this exemption, was held by the GE Trust.

12. The Applicants maintain that the proposed sale is administratively feasible in that the transaction would be a one-time cash sale. In this regard, there will be no need for the Department to monitor or supervise the transaction. It is represented that the cost of filing the application for exemption will be borne by GE Trust and that the cost of notifying interested persons will be borne by GE or one of its affiliates.

13. It is represented that the transaction is protective of the GE Trust and the Plans, because the terms of transaction to the Plan were no less favorable than those received by other similarly situated shareholders of AmeriData Stock. In this regard, the terms of the tender were carefully negotiated on an arm's length basis as to all AmeriData shareholders by parties independent of the Applicants.

It is represented that the transaction has sufficient safeguards for the protection of the Plans. Among such safeguards included in this exemption, is the fact that the GE Trust could only tender its shares of AmeriData Stock at the close of the tender-offer period and then only if at the close of such period a majority of the outstanding shares of AmeriData Stock had already been tendered by parties other than the GE Trust. In this regard it is represented that GE Trust could not have caused the transaction to occur because of their decision to tender. In addition, because the GE Trust did not tender its shares until the end of the tender-offer period and then tendered only after a majority of independent investors in AmeriData had tendered, it is represented that the arm's length nature of the tender was confirmed.

It is further represented that the GE Trust was protected, because a majority of the shares of AmeriData Stock were tendered by independent shareholders before the GE Trust tendered its shares. Since all tenders were revocable up to the close of the tender-offer period, had a third party made a more favorable offer, then all the shareholders, including the GE Trust, would have revoked their tender to GAC in favor of such competing offer. Accordingly, it is represented that there was no potential for abuse. In addition, it is represented that during the tender-offer period, there was in fact no competing tender offer made by a third party.

14. It is represented that the transaction is in the interest of the GE Trust and the Plans, because accepting the tender resulted in the highest and best sales price of AmeriData Stock for the GE Trust and the Plans. In this regard, the GE Trust and the Plans avoided disposing of their shares of AmeriData Stock on the open market at less than the tender-offer price. It is represented that the GE Trust was informally advised by outside investment counsel that, because the GE Trust would be disposing of a large block of AmeriData Stock, if such shares were sold on the open market the price would likely be reduced to as low as $15½ per share. It is estimated that if the GE Trust had disposed of the AmeriData Stock on the open market at $15½ per share, rather than tendering such shares at $16 per share, the Plans would have received $1,050,702 less.

Further, the GE Trust and the Plans benefit from being able to tender the AmeriData Stock, rather than sell the shares on the open market. In this regard, in a sale on the open market the Plans would have paid commissions, which were not incurred by the Plans by accepting the tender offer.

15. In summary, the Applicants represent that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The sale of the AmeriData Stock by the GE Trust was a one- time transaction for cash;

(b) The GE Trust, and the Plans received the fair market value for each share of the AmeriData Stock on the date of the sale;

(c) The GE Trust received no less consideration than other similarly situated shareholders of the AmeriData Stock received at the same time in the same transaction;

(d) The GE Trust paid no commissions, fees, or other expenses in connection with the sale of the AmeriData Stock to GECC and GAC;

(e) The terms of the sale were no less favorable to the GE Trust, and the Plans, then those obtainable in an arm's length transaction engaged in by other similarly situated shareholders of AmeriData Stock; and

(f) The GE Trust tendered its shares of AmeriData Stock only at the close of the tender-offer period and only after a majority of the outstanding shares of AmeriData had been tendered.

Notice to Interested Persons

The Applicants represent that because of the large number of potentially interested persons, it is not possible to provide a separate copy of the Notice of Proposed Exemption (the Notice) to each participant in the Plans. However, GE will post a photocopy of the Notice, as published in the Federal Register, plus a copy of the supplemental statement (the Supplemental Statement), in the form set forth in the Department's regulations under 29 CFR 2570.43(b)(2), on bulletin boards normally used for employee notices in each of its offices and operating facilities and in the offices and operating facilities of its affiliates within fifteen (15) days of the publication of such Notice in the Federal Register. Apart from this method of notifying all interested persons, the Applicants represent that the only practical form of providing notice to former employees,

retirees, and other employees, is to publish a notice in the 1995 Summary Annual Report which will be distributed to such person on or before December 15, 1996, via first class mail. Such notice in the Summary Annual Report will notify former employees, retirees, and other employees that they may obtain a copy of the proposed exemption and information on how to comment from Joseph C. Keifer, Controller of the GE Trust at (203) 921–2167. The comment period will end thirty (30) days after the mailing of the Summary Annual Report.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

First Chicago NBD Corporation (FCNBD), Located in Chicago, Illinois

[Application No. D–10361]

Proposed Exemption

I. Transactions

A. Effective October 8, 1996, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[4]

B. Effective October 8, 1996, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[5] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certifi cates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective October 8, 1996, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[6]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. Effective October 8, 1996, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated

[4] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[5] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[6] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) above for which FCNBD or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) ''Guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);[7]

(2) property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) FCNBD;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with FCNBD; or

(3) Any member of an underwriting syndicate or selling group of which FCNBD or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

[7] It is the Department's view that the definition of ''trust'' contained in III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services receivables contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(1) The trust holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *FCNBD* means First Chicago NBD Corporation and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term ''Underwriter Exemption'' as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at 35932.

Summary of Facts and Representations

1. FCNBD, a Delaware corporation, is a Chicago, Illinois based bank holding company formed by the merger of First Chicago Corporation with and into NBD Bancorp, Inc., which has assets of over $113 billion and through its subsidiaries operates more than 763 branches in various cities in Florida, Illinois, Indiana, Michigan and Wisconsin, as well as various overseas locations. FCNBD also owns and operates subsidiaries that engage in trust, brokerage, investment management, equipment leasing, venture capital, mortgage banking, consumer finance and insurance.

First Chicago Capital Markets, Inc. (FCCM), a Delaware corporation, is a wholly-owned indirect subsidiary of FCNBD. FCCM was organized in 1988 and pursuant to an August 1988 order (the 1988 Order) of the Federal Reserve Board (FRB) is authorized to engage, to a limited extent, in underwriting and dealing in certain mortgage-backed securities, municipal revenue bonds, commercial paper and consumer receivables-related securities transactions. In March, 1994, FCCM received further authorization from the FRB to: (i) underwrite and deal in all types of debt securities, including rated and unrated long-term debt, medium term notes and convertible debt securities; (ii) privately place and act as riskless principal in all types of securities, including equity securities; and (iii) engage in certain related investment and advisory activities. These orders are currently subject to the condition that FCNBD does not derive more than 10% of its total gross revenues from such activities. FCCM does not at this time have authority to underwrite equity securities. FCCM is a broker-dealer registered with the Securities and Exchange Commission and in all 50 states, and is a member of the National Association of Securities Dealers, Inc. In addition, FCNBD affiliates have the power to sell interests in their own assets in the form of asset-backed securities.

FCNBD's investment banking department has served as senior manager with full structuring responsibilities for over $16.4 billion in public asset-backed securities transactions since 1988 and agented $1.1 billion of private placement transactions in 1994 alone. It has one of the largest departments specializing in asset-backed securities of any bank or Wall Street firm, with approximately 50 professionals. The asset-backed securities staff has extensive experience in structuring both taxable and tax-exempt obligations having a wide range of structural characteristics as well as security arrangements. FCNBD originated and placed $22.8 billion in asset-backed commercial paper transactions through October 1995.

Trust Assets

2. FCNBD seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) single and multi-family residential or commercial mortgage investment trusts;[8] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[9]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[10]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[11]

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. FCNBD, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by FCNBD on a firm commitment basis. In addition, FCNBD anticipates that it may privately place certificates on both a firm commitment and an agency basis. FCNBD may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it

[8] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. FCNBD requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, FCNBD has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[9] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[10] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[11] It is the view of the Department that section III.B.(4) includes within the definition of the term ''trust'' rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreement or other notional principal contracts.

will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. FCNBD requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[12]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[13]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) a special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to FCNBD, the trust sponsor or the servicer. FCNBD represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be ''subserviced'' by their respective originators and a single entity may ''master service'' the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this ''sold flag'' will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing,

[12] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(l)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[13] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to FCNBD. In other cases, however, affiliates of FCNBD may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[14] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the

[14] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

24. To date, no forward delivery commitments have been entered into by FCNBD in connection with the offering of any certificates, but FCNBD may contemplate entering into such commitments. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and FCNBD may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

25. It is FCNBD's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter. FCNBD anticipates that it will make a market in certificates.

Retroactive Relief

26. FCNBD represents that it has not engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would be granted prior to the date of their application. However, FCNBD requests the exemptive relief granted to be retroactive to October 8, 1996, the date of their application, and would like to rely on such retroactive relief for transactions entered into prior to the date exemptive relief may be granted.

Summary

27. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain ''fixed pools'' of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which FCNBD seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) FCNBD anticipates that it will make a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [46 FR 7520, January 23, 1981], Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections

406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406 (a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificate holders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[15]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

FCNBD represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[16] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[17] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, FCNBD represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. FCNBD represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, FCNBD represents that to the extent there is a plan asset ''look through'' to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

NOTICE TO INTERESTED PERSONS: The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the Federal Register. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code,

[15] In referring to different ''types'' of asset-backed securities, the Department means certificates representing interests in trusts containing different ''types'' of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been ''seasoned'' (e.g., originated at least one year prior to the plan's investment in the trust).

[16] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which FCNBD or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

[17] The applicant represents that where a trust sponsor is an affiliate of FCNBD, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if FCNBD is not a fiduciary with respect to plan assets to be invested in certificates.

including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of November, 1996.

Ivan Strasfeld

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 96–29035 Filed 11–12–96; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials; Correction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Correction.

SUMMARY: This document corrects the hours that the tape recordings described in the notice published in the Federal Register on October 11, 1996, will be made available to the general public in NARA's research room at 8601 Adelphi Road, College Park, MD.

In notice document 96–26174 beginning on page 53460 in the issue of Friday, October 11, 1996, make the following correction:

In the second full paragraph in the second column of page 53460, the hours are corrected to read ''between 9 a.m. and 4:30 p.m.''

Dated: November 8, 1996.

Nancy Y. Allard,

Alternate Federal Register Liaison.

[FR Doc. 96–29142 Filed 11–12–96; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 10:00 a.m., Friday, November 1, 1996.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy) and 9(B) Disclosure would significantly frustrate implementation of a proposed Agency action* * *).

MATTERS TO BE CONSIDERED: Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated: Washington, D.C., November 7, 1996.

By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 96–29194 Filed 11–8–96; 3:17 pm]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336, and 50–423; License Nos. DPR–21, DPR–65, and NPF–49]

Northeast Nuclear Energy Company (Millstone Nuclear Power Station Units 1, 2 and 3); Order Requiring Independent, Third-Party Oversight of Northeast Nuclear Energy Company's Implementation of Resolution of Millstone Station Employees' Safety Concerns

I

Northeast Nuclear Energy Company (Licensee) is the holder of Facility Operating License Nos. DPR–21, DPR–65, and NPF–49 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Part 50 on October 31, 1986,[1] September 26, 1975, and January 31, 1986, respectively. The licenses authorize the operation of Millstone Units 1, 2 and 3 in accordance with conditions specified therein. All three facilities are located on the Licensee's site in Waterford, Connecticut.

II

Over the past several years, the Licensee's management has failed to ensure compliance with regulatory requirements. In an attempt to address this compliance problem, the NRC issued an Order on August 14, 1996 establishing independent, third-party oversight of corrective actions for design and plant operation deficiencies. The August 14, 1996 Order, directing the implementation of an Independent Corrective Action Verification Program (ICAVP) for the Millstone facilities, summarizes the Licensee's failures to meet Criterion XVI of Appendix B to 10 CFR Part 50 and other NRC requirements. The August 14, 1996 Order also outlines what the NRC found to be ineffective implementation of the Licensee's oversight programs, including its NRC-approved quality assurance (QA) program. The purpose of the ICAVP is to provide independent verification, for selected systems, that the Licensee's own Configuration Management Plan (CMP) has identified and resolved existing problems, documented and utilized licensing and design bases, and established programs,

[1] Millstone Unit 1 was issued its provisional operating license on October 7, 1970, and commenced operation on March 1, 1971. This unit received a full term operating license on October 31, 1986.

processes, and procedures for effective configuration management in the future.

This Order addresses past failures in management processes and procedures for handling safety issues raised by employees, and in ensuring that the employees who raise safety concerns are not discriminated against. As discussed below, the Commission is concerned about the manner in which the Licensee has treated employees who brought safety and other concerns to the attention of the Licensee's management. As evidenced by the large number of deficiencies currently being identified at all three Millstone plants, it appears that some employees have been reluctant to identify safety issues. Both the NRC and the Licensee rely on a defense-in-depth approach to ensuring safety. The persistence of an environment where employees are reluctant to raise safety concerns can erode the safety-consciousness of the work-place and, thereby, can affect safety. As the Commission has stated, it expects that licensees will establish and maintain a safety-conscious work environment in which employees feel free to raise concerns both to their own management and the NRC without fear of retaliation, and in which such concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to employees. Such an environment is critical to a licensee's ability to safely carry out licensed activities[2] in the work-place; thus it can affect safety.

Over the past several years, numerous Licensee assessments, audits, and internal task group studies have been conducted to assess employee safety concerns programs at the Millstone Station.

In January 1996, the Licensee completed a review[3] of the effectiveness of its Nuclear Safety Concerns Program (NSCP) in taking corrective actions related to employee concerns and ensuring that the employees who raise concerns are treated appropriately. The findings of the Licensee's 1996 review were similar to those of previous Licensee assessments, studies, and audits performed since 1991. Some of the common findings were that management (1) lacked accountability, (2) inadequately resolved identified problems, and (3) tended to punish rather than reward employees who raised safety concerns. The Licensee's 1996 study team found that many of these problems still exist, because the Licensee had not implemented past recommendations in a coordinated and effective manner. The review also found that a concurrent lack of commitment to and accountability in implementing corrective actions had resulted in a continuing failure to proactively resolve emerging issues. It commented that this situation was compounded by the general inability on the part of individual Licensee managers to admit when they are in error. All of these factors have contributed to a strained and ineffective relationship between management and some employees. Finally, the study team concluded that the effectiveness of the NSCP has been historically undermined by a lack of executive management support.

In May 1996, the Nuclear Committee of the Licensee's Board of Trustees established a Nuclear Committee Advisory Team (NCAT) to evaluate the performance of the Licensee's nuclear program. A Fundamental Cause Assessment Team (FCAT) was also formed to evaluate whether management actions are effectively addressing the causes of declining performance.

The FCAT identified[4] the following fundamental causes of the decline in performance:

- The top level of the Licensee's management did not consistently exercise effective leadership and articulate and implement appropriate vision and direction;
- The nuclear organization did not establish and maintain high standards and expectations; and
- The nuclear organization's leadership, management, and interpersonal skills were weak.

The NRC has also performed several assessments of the way that the Licensee has dealt with technical and safety concerns raised at the Millstone facilities and the manner in which the Licensee has treated those employees who have raised safety concerns. On December 12, 1995, the NRC staff initiated an historical review of both the Licensee's and the NRC's handling of Millstone employee concerns and allegations, covering the past 10 years.[5] The staff's review included indepth case studies of selected employees' concerns and allegations to identify root causes, common patterns between cases, and lessons learned. The Millstone Independent Review Group reported:[6]

1. A large number of allegations (an average of 42 per year) were being raised to the NRC, which indicated that the Licensee's own programs were not effective in resolving its employee concerns.
2. The Licensee's employees believed that the managers responsible for discrimination were not appropriately disciplined.
3. The Licensee's management frequently identified problems but was ineffective in implementing corrective actions.
4. The Licensee's management was reluctant to admit mistakes.
5. The Licensee's managers lacked skill in handling concerns and were generally not supportive of their employees raising concerns. There was a lack of communication along the chain of command and across parallel organizational lines.

The Millstone Independent Review Group and the Licensee's recent internal reviews have produced consistent findings for which corrective actions have not yet been effectively implemented. It is clear that the licensee has not established a safety-conscious environment.

III

In light of the foregoing, I have concluded that the Licensee must take action to correct and improve its handling of safety concerns raised by its employees so that the NRC can have confidence that concerns will be acted on promptly and adequately, and that employees who bring forth such concerns can do so without fear of retaliation or retribution.

In this Order, the NRC directs that, prior to resumption of power operations, the Licensee shall develop, submit to the NRC, and implement a comprehensive plan for reviewing and dispositioning safety issues raised by the Licensee's employees and ensuring that employees who raise safety concerns are not subject to discrimination. Additionally, the Licensee shall retain an independent third-party, subject to the approval of the NRC, to oversee its implementation of its comprehensive plan. The employees of the third-party organization shall have unfettered site access after meeting the NRC's access authorization requirements.

The independent third-party is to develop and submit for NRC approval

[2] Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation; Policy Statement, 61 FR 24336 (May 14, 1996). The attributes of a safety-conscious environment are described in the Policy Statement.

[3] Millstone Employee Concerns Assessment Team Report, dated January 29, 1996.

[4] Report of the Fundamental Cause Assessment Team, dated July 12, 1996.

[5] Millstone Independent Review Group—Handling of Employee Concerns and Allegations at Millstone Nuclear Power Station, Units 1, 2, and 3. Prior NRC studies are discussed in this report.

[6] Transcribed public meetings to report the review group findings, held on August 7 and 8, 1996 in the vicinity of the plant.

an oversight plan. The independent third-party shall monitor and oversee the Licensee's efforts to correct and prevent repetition of its past failures in its treatment of employee concerns and of those employees who raised such concerns. The oversight plan shall include observation and monitoring of the Licensee's activities, performance of technical and audit reviews, investigation of concerns, and assessment of changes in the Licensee's treatment of employee concerns as compared to past practices. This oversight must be comprehensive in scope and cover all NRC-regulated activities at the Millstone facilities. Recommendations are to be made to address the handling of specific concerns as well as the Licensee's programs and processes for handling concerns.

The qualifications of the independent third-party must include the expertise necessary to audit technical reviews of employee concerns, monitor corrective actions, recognize technical weaknesses in approaches to concerns taken by the Licensee, audit and determine the adequacy of the Licensee's investigations into harassment, intimidation, and discrimination complaints, and conduct employee surveys to determine the views of the Licensee's employees on the success and completeness of these activities. The factors to be examined by the independent organization include actions taken or to be taken by the Licensee to create an environment in which employees of both the Licensee and onsite contractors are encouraged to raise concerns and the timeliness and thoroughness with which such concerns are reviewed and resolved, including how employees are informed of results. The third-party organization chosen to oversee the conduct of the Licensee's comprehensive plan must be independent of the Licensee, such that none of its members has had any direct, previous involvement with the activities at the Millstone Station that the organization will be overseeing.

The independent third-party is to report concurrently to the NRC and Licensee, on at least a quarterly basis, the results of its oversight activities, including all findings and recommendations.

After the NRC receives the Licensee's comprehensive plan and the independent third-party oversight plan, a notice of availability of the plans will be published in the Federal Register and one or more public meetings will be held to allow members of the public to comment on the plans. The results of the NRC review and public comments on the third-party oversight plan will be forwarded to the Licensee and the independent third-party for evaluation and implementation as appropriate.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *It is hereby ordered* That, prior to restart of any Millstone units:

1. Within 60 days from the date of this Order, the Licensee shall develop, submit for NRC review, and begin to implement a comprehensive plan for (a) reviewing and dispositioning safety issues raised by its employees and (b) ensuring that employees who raise safety concerns are not subject to discrimination. The comprehensive plan shall address the root causes of past performance failures as described in the Licensee's July 12, 1996 report of the Fundamental Cause Assessment Team and the NRC's September 1996 report of the Millstone Independent Review Group, with the objective of meeting a goal of achieving a safety-conscious environment.

2. Within 30 days from the date of this Order, the Licensee shall submit, for NRC approval, a proposed independent, third-party organization to oversee implementation of the above comprehensive plan. The independent third-party shall be approved by the NRC and its activities, under this Order, are subject to continuing NRC oversight. The independent third-party shall oversee plan implementation by (a) observing and monitoring the Licensee's activities; (b) performing technical reviews; (c) auditing and investigating, when necessary, cases of alleged harassment, intimidation, and discrimination; (d) auditing and reviewing the Licensee's handling of employee safety concerns; and (e) assessing and monitoring the Licensee's performance. Within 30 days of the NRC's approval of the third-party, an oversight plan for conduct of this third-party oversight shall be developed by the third-party and forwarded for NRC review. NRC approval of the oversight plan is required prior to its implementation. Reports on oversight activities, findings, and recommendations shall be provided to both the licensee and the NRC at least quarterly following NRC approval of the oversight plan. The plan shall specify procedures for concurrent reporting of oversight activities, findings, and recommendations to the NRC and the Licensee. The Licensee will provide a response to each recommendation. The Licensee's comprehensive plan shall allow for revisions based upon the Licensee's experience in implementation of its plan and comments and recommendations of the independent third-party and/or the NRC.

3. If the independent third-party receives allegations of safety concerns, it is to encourage the alleger to bring those concerns to the attention of the Licensee. If the alleger elects not to do so, the independent third-party is to encourage the alleger to report the concerns to the NRC. If the alleger does not elect to report the safety concerns to either the Licensee or the NRC, the independent third-party is to accept the allegation and forward it directly to the NRC. The independent third-party is to develop procedures for protecting the identity of any such allegers and limiting the disclosure of the allegers' identity to those with a need to know.[7]

4. The plan for independent, third-party oversight will continue to be implemented until the Licensee demonstrates, by its performance, that the conditions which led to the requirement of that oversight have been corrected to the satisfaction of the NRC.

V

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind this Order upon demonstration by the Licensee of good cause.

VI

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension.

The Licensee's answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact or law on which the Licensee or any other person adversely affected relies and the reasons as to why the Order should not

[7] Such procedures may not withhold the identity of any alleger or any information related to allegations from the NRC.

have been issued. Any answer or request for a hearing shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies shall also be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406–1415; and to the Licensee if the answer or hearing request is by a person other than the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

In the absence of any request for a hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 24th day of October 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–28996 Filed 11–12–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company; Comanche Peak Steam Electric Station, Units 1 and 2

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80 of an application concerning the proposed corporate restructuring of Texas Utilities Company (TUC), the parent holding company, for Texas Utilities Electric Company (TUEC), the licensee for Comanche Peak Steam Electric Station (CPSES), Units 1 and 2. By letter dated September 20, 1996, TUEC informed the Commission that TUC proposes to acquire ENSERCH Corporation (ENSERCH), which is a company engaged in natural gas and oil exploration and production, natural gas pipeline gathering, processing and marketing, and natural gas distribution and power generation. TUC's acquisition of ENSERCH will be accomplished through the following merger transactions: (1) The formation of a new Texas Corporation, TUC Holding Company, and two new subsidiaries of TUC Holding Company (i.e., TUC Merger Corporation and Enserch Merger Corporation); (2) the merger of TUC Merger Corporation with and into TUC with TUC being the surviving corporation; and (3) the merger of Enserch Merger Corporation with and into ENSERCH with ENSERCH being the surviving company. Upon the consummation of these transactions, TUC and ENSERCH will both become wholly owned subsidiaries of TUC Holding Company, which will change its name to Texas Utilities Company. TUEC would continue to remain the sole owner and operator of CPSES. Upon consummation of the restructuring, current stockholders of TUC would become stockholders of the new Texas Utilities Company and would hold approximately 94 percent of the issued and outstanding shares of common stock of the new Texas Utilities Company.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this action, see the licensee's letter dated September 20, 1996, with the following attachments: TUEC's Request for Consent and the Joint Proxy Statement/Prospectus filed with the Securities and Exchange Commission. These documents are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Dated at Rockville, Maryland, this 6th day of November 1996.

For the Nuclear Regulatory Commission.

William D. Beckner,

Director, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–28995 Filed 11–12–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Probabilistic Risk Assessment will hold a meeting on November 21 and 22, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, November 21, 1996—8:30 a.m. until the conclusion of business.

Friday, November 22, 1996—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the NRC staff's approach to codify risk-informed, performance-based regulation through development of Standard Review Plan (SRP) section(s) and associated regulatory guide(s). The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the

Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: November 5, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–28999 Filed 11–12–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 11, 18, 25, and December 2, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 11

Wednesday, November 13

2:00 p.m.
Briefing on Control and Accountability of Licensed Devices (Public Meeting)
(Contact: John Lubinski, 310–415–7868)
3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

Thursday, November 14

2:00 p.m.
Briefing on Spent Fuel Pool Study (Public Meeting)
(Contact: Ernie Rossi, 301–415–7379)
3:30 p.m.
Discussion of Management Issues (Closed—Ex. 2)

Week of November 18—Tentative

Thursday, November 21

9:00 a.m.
Affirmation Session (Public Meeting) (if needed)
1:30 p.m.
Briefing by DOE on International Nuclear Safety Program (Public Meeting)
3:00 p.m.
Discussion of Management Issues (Closed—Ex. 2)

Friday, November 22

1:30 p.m.
Briefing on Integrated Materials Performance Evaluation Program (Public Meeting)
(Contact: Don Cool, 301–415–7197)

Week of November 25—Tentative

Wednesday, November 27

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of December 2—Tentative

Friday, December 6

9:30 a.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS)
(Contact: John Larkins, 301–415–7360)
11:00 a.m.
Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary. Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: November 8, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–29233 Filed 11–8–96; 2:37 pm]

BILLING CODE 7590–01–M

All Power Reactor Licensees; Issuance of Final Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Acting Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC) has granted in part and denied in part a Petition, dated April 13, 1994, submitted by Mr. Paul M. Blanch (Petitioner). The Petition requested that the NRC take action with regard to all power reactor licensees, concerning the potential failure of the fuel in the spent fuel pools for all reactors in the United States. Specifically, the Petitioner requested that the NRC: (1) immediately issue an information notice or other appropriate notification forwarding all information in its possession to all power reactor licensees regarding the potential failure of fuel in spent fuel pools, and reminding licensees of their responsibilities to perform timely operability determinations in accordance with their technical specifications and NRC Generic Letter 91–18; (2) direct each licensee to immediately perform an evaluation of this potential deficiency to determine compliance with its current licensing basis; (3) deny all requests for license amendments for the expansion of spent fuel pool capacity until these safety concerns are fully resolved; and (4) after evaluation by each licensee, if the NRC determines there is little or no risk to public health and safety, the NRC may issue a Notice of Enforcement Discretion. Request (3) was determined to be a request for a licensing action and so was beyond the scope of 10 CFR 2.206.

The Acting Director of the Office of Nuclear Reactor Regulation has granted in part Requests (1) and (2) of the April 13, 1994, Petition. With regard to Petitioner's Request (4), the Director has concluded that there has been no need for issuance of NOEDs regarding potential failure of fuel in spent fuel pools. The reasons for these decisions are explained in the ''Final Director's Decision Under 10 CFR 2.206'' (DD–96–18), the complete text of which follows this notice, and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for all power reactor licensees.

A copy of this Final Director's Decision has been filed with the Secretary of the Commission for review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided in this regulation, this Decision will constitute the final action of the Commission 25 days after the date of its issuance, unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 6th day of November 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

Final Director's Decision Under 10 CFR 2.206

I. Introduction

By a Petition submitted pursuant to 10 CFR 2.206 on April 13, 1994, Mr. Paul M. Blanch (Petitioner) requested that the U.S. Nuclear Regulatory Commission (NRC) take immediate action with regard to all power reactor

Licensees, concerning the potential failure of the fuel in the spent fuel pools for all reactors in the United States. Specifically, the Petitioner requested that the NRC: (1) immediately issue an information notice or other appropriate notification forwarding all information in its possession to all power reactor Licensees regarding the potential failure of fuel in spent fuel pools, and reminding Licensees of their responsibilities to perform timely operability determinations in accordance with their technical specifications and NRC Generic Letter 91–18; (2) direct each Licensee to immediately perform an evaluation of this potential deficiency to determine compliance with its current licensing basis; (3) deny all requests for license amendments for the expansion of spent fuel pool capacity until these safety concerns are fully resolved;[1] and (4) after evaluation by each Licensee, if the NRC determines there is little or no risk to public health and safety, the NRC may issue a Notice of Enforcement Discretion which represents a determination by the NRC not to enforce an applicable technical specification or license condition.

As a basis for his requests, the Petitioner asserted that approximately 1½ years before the Petition was submitted, the NRC was informed of a potential substantial nuclear safety hazard at the Susquehanna Steam Electric Station (SSES) operated by Pennsylvania Power and Light Company (PP&L or Licensee) and that the NRC overlooked the need to inform utilities of this potential problem. The Petitioner claimed that this hazard involves a major design flaw such that, during a design-basis loss-of-coolant-accident, the electrical power to the fuel pool cooling system would be turned off, resulting in loss of cooling for the spent fuel pool. Petitioner alleged that, as a result of the loss-of-coolant-accident, radiation levels in the reactor building would prohibit operators from entering the reactor building to restart the system. Petitioner claimed that, if cooling is not restored, the water in the spent fuel pool will boil, water will evaporate and, since the valves which must be opened to provide replacement water are located within the inaccessible reactor building, replacement water cannot be provided. Petitioner postulated that this would result in high onsite and offsite radiation levels and a failure of the spent fuel in the pool and a consequent release of massive amounts of airborne radioactivity outside of primary and secondary containment. Petitioner alleged further that the residual heat removal system could not cool the fuel pool under accident conditions, and that if replacement water could be provided, temperature and humidity conditions inside the reactor building would cause the emergency systems to fail, resulting in additional fuel failure and failure of the primary and secondary containment.

In a letter of May 5, 1994, the Director of the Office of Nuclear Reactor Regulation acknowledged receipt of the Petition and denied the Petitioner's requests for immediate relief. In the acknowledgement letter, he informed the Petitioner that the remaining requests were being evaluated under 10 CFR 2.206 of the Commission's regulations and that action would be taken in a reasonable time.

The NRC staff's review of the issues related to spent fuel storage pool safety raised in the April 13, 1994, Petition is now complete. As explained below, the NRC staff has taken actions which, in part, address Petitioner's requests. A discussion of these issues and the NRC response to the Petitioner's requests follows.

II. Discussion

On November 27, 1992, a report was filed pursuant to 10 CFR Part 21 by two contract engineers at SSES, which notified the Commission of potential design deficiencies in spent fuel pool decay heat removal systems and containment systems at the Susquehanna Steam Electric Station. The report noted that, under certain conditions, systems designed to remove decay heat from the spent fuel pool would be unable to perform their intended function and that, due to concurrent plant conditions, it would not be possible for operators to place backup systems in service or that backup systems would also otherwise be unable to perform their intended function. The report contended that, under such conditions, the spent fuel pool could reach boiling conditions and that the adverse environment created by a boiling pool would render systems designed to remove decay heat from the reactor core and systems designed to limit the release of fission products to the environment unable to perform their intended function. The ultimate consequence of this condition would be the failure of fuel in both the reactor vessel and the spent fuel pool and a substantial release of fission products to the environment that would cause significant harm to the public health and safety.

The NRC staff determined initially that the issues appeared to be of low safety significance because of the low probability that the necessary sequence of events would take place. Specifically, the NRC staff observed that a loss-of-coolant accident followed by multiple failures of emergency core cooling systems would be necessary to achieve the adverse radiological conditions that would preclude operator actions to ensure continued adequate decay heat removal from the spent fuel pool. On this basis, the NRC staff determined that immediate actions to assure public health and safety were not warranted.

However, because of the complex nature of the issues raised in the Part 21 report, the NRC staff undertook an extensive evaluation of the matter which continued from November 1992 to June 1995. The NRC staff review process included information-gathering trips to the Licensee's engineering offices and to the Susquehanna Steam Electric Station (SSES), public meetings with the Licensee, public meetings and written correspondence with the authors of the Part 21 report, and numerous written requests for information to the Licensee and corresponding responses. The staff issued Information Notice 93–83, ''Potential Loss of Spent Fuel Pool Cooling After a Loss-of-Coolant Accident,'' on October 7, 1993, which informed licensees of all operating reactors of the nature of the issues raised in the Part 21 report.

The NRC staff reviewed and evaluated the plant design and expected operation of plant equipment with respect to the various event sequences described in the Part 21 report. The staff also evaluated the response of plant equipment to a broader range of initiating events than was identified in the Part 21 report. For example, the staff considered the safety significance of a loss of spent fuel pool decay heat removal capability resulting from loss of offsite power events, from seismic events, and from flooding events. The staff considered the potential for such events to lead to spent fuel pool boiling sequences that could in turn jeopardize safety-related equipment needed to maintain reactor core cooling. The NRC staff conducted both deterministic and probabilistic evaluations to fully understand the safety significance of the issues raised. In addition, the staff evaluated the impact of certain modifications made by the Licensee during the course of the NRC staff's review. Finally, the staff examined

[1] This request by Petitioner is not within the scope of the 2.206 process as it does not request enforcement action as is more fully discussed in my letter transmitting this Director's Decision to Petitioner. Accordingly, it will not be further addressed in this Director's Decision.

issues associated with the design of the spent fuel pool cooling system to determine the extent to which the Licensee's design and operation met the applicable regulatory requirements.

The NRC staff issued a draft safety evaluation addressing the issues raised in the Part 21 report regarding SSES for comment on October 25, 1994. After receiving comments from the Licensee, the authors of the Part 21 report and the Advisory Committee on Reactor Safeguards, the staff issued a final safety evaluation regarding the issues raised in the Part 21 report for the Susquehanna Steam Electric Station on June 19, 1995 (SSES SE).[2]

In the SSES SE, the staff documented the deterministic and probabilistic evaluations regarding the spent fuel pool issues raised in the Part 21 report and resulting conclusions. On the basis of the deterministic analysis of the plant as it was configured at the time the SSES SE was prepared, the NRC staff concluded that systems used to cool the spent fuel storage pool are adequate to prevent unacceptable challenges to safety-related systems needed to protect the health and safety of the public during design-basis accidents.

On the basis of the probabilistic evaluation, the NRC staff concluded that the specific scenario involving a large radionuclide release from the reactor vessel, which was described in the Part 21 report, is a sequence of very low probability. The NRC staff's evaluation concluded that, even with consideration of the additional initiating events described above, ''loss of spent fuel pool cooling events'' represented events of low safety significance at the time the Part 21 report was submitted. However, the staff also concluded that the plant modifications and procedural upgrades made during the course of the staff's review, which included removal of the gates that separate the spent fuel storage pools from the common cask storage pit, installation of remote spent fuel pool temperature and level indication in the control room, and numerous procedural upgrades, provided a measurable improvement in plant safety and that these conclusions had potential generic implications. In summary, with regard to loss of spent fuel pool cooling events, the design of the SSES facility was adequate to protect public health and safety.

The staff issued Information Notice 93–83, Supplement 1, ''Potential Loss of Spent Fuel Pool Cooling After a Loss-of-Coolant Accident or a Loss of Offsite Power,'' to all power reactor licensees on August 24, 1995, in which the SSES SE was summarized. The information notice also described the staff's plans to undertake an action plan to evaluate the generic concerns raised in the SSES SE and to address certain additional concerns arising from a special inspection at a permanently shutdown reactor facility.[3] The generic action plan, entitled ''Task Action Plan for Spent Fuel Storage Pool Safety'' (Task Action Plan) was issued on October 13, 1994, and included the following actions: (1) a search for and analysis of information regarding spent fuel storage pool issues, (2) an assessment of the operation and design of spent fuel storage pools at selected reactor facilities, (3) an evaluation of the assessment findings for safety concerns, and (4) selection and execution of an appropriate course of action based on the safety significance of the findings.

As part of its review under the Task Action Plan, the staff performed assessment visits to four operating reactors. The staff also reviewed operating experience, as documented in Licensee Event Reports and other information sources, as well as in previous studies of spent fuel pool issues. Finally, the staff gathered detailed design data for every operating reactor and analyzed this data to identify potential safety issues.

The NRC staff completed its work under the Task Action Plan in July 1996. The staff forwarded the results of its review to the Commission on July 26, 1996.[4] In the report, the staff concluded that existing spent fuel storage pool structures, systems, and components provide adequate protection for public health and safety. Protection is provided by several layers of defense involving accident prevention (e.g., quality controls on design, construction, and operation), accident mitigation (e.g., multiple cooling systems and multiple makeup water paths), radiation protection, and emergency preparedness. Design features addressing each of these areas for spent fuel storage for each operating reactor have been reviewed and approved by the staff. In addition, the limited risk analyses available for spent fuel storage suggest that current design features and operational constraints cause issues related to spent fuel pool storage to be a small fraction of the overall risk associated with an operating light-water reactor.

Notwithstanding the findings resulting from the Task Action Plan, the NRC staff reviewed each operating reactor's spent fuel pool design to identify strengths and weaknesses, and to identify potential areas for safety enhancements. The NRC staff identified seven categories of design features that reduce the reliability of spent fuel pool decay heat removal, increase the potential for loss of spent fuel coolant inventory, or increase the potential for consequential loss of essential safety functions at an operating reactor. The NRC staff determined that these design features existed at twenty-two sites.

As the staff has concluded that present facility designs provide adequate protection of public health and safety, possible safety enhancements will be evaluated pursuant to 10 CFR 50.109(a)(3). The analyses for possible safety enhancement backfits will consider whether modifications to the plant design to address the plant-specific design features identified by the NRC staff could provide a substantial increase in the overall protection of public health and safety and whether such modifications could be justified on a cost-benefit basis.

The NRC staff also identified three additional categories of design features that may have the potential to reduce the reliability of spent fuel pool decay heat removal, increase the potential for loss of spent fuel coolant inventory, or increase the potential for consequential loss of essential safety functions at an operating reactor. The NRC staff preliminarily determined that these design features existed at eleven sites. However, the staff has insufficient information at this time to determine whether backfits pursuant to 10 CFR 50.109(a)(3) are warranted. For plants identified as having design features in these three categories, the NRC staff will gather and evaluate additional information prior to determining whether to require any backfits.

In addition to the plant-specific analyses described above for twenty-two

[2] Letter to R. Byram, PP&L, from J. Stolz, NRC, ''Susquehanna Steam Electric Station, Units 1 and 2, Safety Evaluation Regarding Spent Fuel Pool Cooling Issues'' (TAC NO. M85337), dated June 19, 1995.

[3] On January 25, 1994, the licensee for Dresden Unit 1, a permanently shutdown facility, discovered approximately 55,000 gallons of water in the basement of the unheated Unit 1 containment. The water originated from a rupture of the service water system that occurred due to freeze damage. The licensee investigated further and found that, although the fuel transfer system was not damaged, there was a potential for a portion of the fuel transfer system inside containment to fail and result in a partial drain-down of the spent fuel pool that contained 660 spent fuel assemblies. The NRC issued Bulletin 94–01, ''Potential Fuel Pool Draindown Caused by Inadequate Maintenance Practices at Dresden Unit 1,'' on April 8, 1994 to all licensees with permanently shutdown reactors who had spent fuel stored in spent fuel pools. The NRC requested that such licensees take certain actions to ensure that spent fuel storage safety did not become degraded.

[4] Memorandum to the Commission, from J. Taylor, ''Resolution of Spent Fuel Storage Pool Action Plan Issues,'' dated July 26, 1996.

sites which will address certain design features, the NRC staff plans to address issues relating to the functional performance of spent fuel pool decay heat removal, as well as the operational aspects related to coolant inventory control and reactivity control, for *all* operating reactors. The staff plans to expand the proposed, performance-based rule for shutdown operations at nuclear power plants (10 CFR 50.67) to encompass fuel storage pool operations to address these performance and operational considerations.

The NRC staff has sent the July 26, 1996, report to all licensees. For those licensees whose plants have one or more of the design features which warrant an analysis of possible plant-specific safety enhancements, the staff has provided an opportunity for licensees to comment on (1) the accuracy of the NRC staff's understanding of the plant design, (2) the safety significance of the design concern, (3) the cost of potential modifications to address the design concern, or (4) the existing protection from the design concern provided by administrative controls or other means. In developing a schedule and plans for conducting the plant-specific regulatory analyses, the NRC staff will consider comments received from licensees.

III. Response to Petitioner's Requests

A. Issuance of Generic Communications to Licensees on Failure of Spent Fuel

The NRC staff has issued three information notices on matters related to adequate decay heat removal from the spent fuel pool. Information Notice 93–83, ''Potential Loss of Spent Fuel Pool Cooling After a Loss-of-Coolant Accident,'' was issued on October 7, 1993, and described the concerns raised in the November 27, 1992, Part 21 report. Information Notice 93–83, Supplement 1, was issued on August 24, 1995, to inform licensees of the results of the NRC review of the concerns at SSES. Information Notice (IN) 95–54, ''Decay Heat Management Practices During Refueling Outages,'' was issued on December 1, 1995. It described recent NRC assessments of events at certain plants regarding licensee control of refueling operations and the methods for removing decay heat produced from the irradiated fuel stored in the spent fuel pool during refueling outages. In IN 95–54, the NRC staff communicated to licensees that the plant-specific events described in IN 95–54 and the previous information notices illustrated the importance of assuring that (1) planned core offload evolutions, including refueling practices and irradiated decay heat removal, are consistent with the licensing basis, including the Final Safety Analysis Report, technical specifications, and license conditions; (2) changes are evaluated through the application of the provisions of 10 CFR 50.59, as appropriate; and (3) all relevant procedures associated with core offloads have been appropriately reviewed.

As described in Section II, the NRC staff also forwarded the July 26, 1996, report on spent fuel to all licensees. The NRC has determined that these generic communications to power reactor licensees are sufficient to provide licensees with information on spent fuel pool cooling issues.

Petitioner's request that the NRC issue an information notice or other appropriate notification forwarding all information in its possession to all power reactor licensees regarding the potential failure of fuel in spent fuel pools is granted to the extent that the NRC staff has provided information on spent fuel storage safety issues by way of the generic communications and correspondence described above.

Petitioner's request that the NRC remind licensees of their responsibilities to perform timely operability determinations in accordance with their technical specifications is granted to the extent that the NRC has communicated to licensees the importance of conducting relevant spent fuel pool decay heat removal activities in accordance with technical specifications and other plant-specific applicable regulatory requirements in IN 95–54.

B. Licensee Evaluation of Compliance With the Licensing Basis

Petitioner requested that the staff direct each licensee to immediately perform an evaluation of the potential failure of the fuel in the spent fuel pool to determine compliance with the current licensing basis. The NRC staff examined the issue of the conformance of the existing plant design with the facility licensing basis in great detail for SSES.[5] As documented in the SSES SE, the NRC staff concluded that neither operation of spent fuel pool cooling during design-basis accident conditions nor mitigation of the effects of a loss of spent fuel pool cooling during normal and design-basis accident conditions could be considered part of the SSES licensing basis with the exception of mitigation of loss of spent fuel pool cooling following a design-basis seismic event. In general, the NRC staff's conclusion is based on the fact that, with respect to operation of the spent fuel pool cooling systems during normal and design-basis accident conditions, the SSES operating license safety evaluation report[6] (SER) did not cite the applicable General Design Criteria (GDC) (GDC 44 and GDC 61 in its entirety) as the basis for finding the system acceptable. With respect to the mitigation of the effects of a loss of spent fuel pool cooling during normal and design-basis accident conditions, in the SSES SE, the staff found no evidence that it expected secondary containment systems to accommodate the added heat and vapor loads that would follow a sustained loss of spent fuel pool cooling for any design-basis event with the specific exception of a design-basis seismic event.

The NRC staff's finding that mitigation of a loss of spent fuel pool cooling following a design basis seismic event was part of the licensing basis was based on specific statements in the SER that acceptance of a non-seismic spent fuel pool cooling system was an acceptable deviation from GDC 2, based, in part, on the existence of an adequate standby gas treatment system. At the time of the original licensing review, the staff did not attempt to extend the licensing basis for loss of spent fuel pool cooling following a design basis seismic event to any other design basis events.

During its review of spent fuel pool concerns at SSES, the NRC staff raised its concerns to the Licensee regarding the ability to mitigate a loss of spent fuel pool cooling following a seismic event. As discussed in the SSES SE, the Licensee took certain actions, including implementing routine operation of the adjacent spent fuel pools in a cross-connected manner, that adequately addressed NRC staff concerns. In summary, with regard to the spent fuel pool issues raised by Petitioner, SSES design and operation conform to the facility licensing basis.

As part of the Task Action Plan, the staff considered on a generic basis the history of regulatory requirements related to spent fuel pools as they were applied in plant licensing activities. The staff observed that such regulatory requirements evolved since the first nuclear power plants were licensed and

[5] In the SSES spent fuel pool design review, the NRC staff determined which regulations the licensee was required to comply with. In addition, operational limitations were extracted from plant-specific licensing documents including the Final Safety Analysis Report, technical specifications, license amendments and other docketed correspondence.

[6] U.S. Nuclear Regulatory Commission, ''Safety Evaluation Report Related to the Operation of Susquehanna Steam Electric Station, Units 1 and 2,'' NUREG–0776, April 1981.

observed that specific regulatory guidance on the design of spent fuel pool cooling systems was not issued until 1975 when the Standard Review Plan was issued, after construction permits for most currently operating reactors were issued. Because the regulatory requirements were not constant during the era when the staff was conducting licensing reviews for the current generation of operating reactors, the staff observed that approved designs varied from plant to plant. However, the staff did conclude, based on information available during the recent review of spent fuel pool system design, that all operating reactors had design features for spent fuel storage (addressing accident prevention functions, accident mitigation functions, radiation protection functions, and emergency preparedness functions) which had been reviewed and approved by the staff and that these facility designs were in compliance with the NRC requirements applied at the time of licensing.

Although the NRC staff concluded that plants were in compliance with the NRC design requirements applied at the time of licensing, the NRC staff also recently reviewed certain operating practices at all operating reactors to verify that the plants were being operated consistent with the plant design described in the licensing basis.[7] Specifically, the staff reviewed refueling outage practices with regard to offloading irradiated fuel into the spent fuel pool. The staff concluded on the basis of the information collected and reviewed and the specific licensee actions taken and commitments made during the course of this review, core offload practices are currently consistent with the spent fuel pool decay heat removal licensing basis for all plants or will be prior to the next refueling outage. However, during the course of the review, the staff determined that 9 sites (15 units) needed to perform evaluations or make modifications, pursuant to 10 CFR 50.59 or 10 CFR 50.90, to ensure that their reload practices adhered to their licensing basis. This is an indication that these plants may have previously performed full core offloads inconsistent with their licensing basis.

The staff has documented the details of its findings in recent NRC inspection reports for each of the nine sites. The staff will take regulatory action, as appropriate, to address these potential operational non-conformances.

[7] Memorandum to the Commission, from J. Taylor, dated May 21, 1996.

Petitioner requested that evaluations be performed of Petitioner's concern regarding spent fuel pool cooling by licensees to determine compliance with their licensing basis. This request is granted to the extent that the NRC staff has performed evaluations of both the design and operational aspects of spent fuel pool storage issues for all operating reactors to the extent described above.

C. Issuance of Notices of Enforcement Discretion

The Atomic Energy Act of 1954, as amended, (the Act) and the Energy Reorganization Act of 1974, as amended, give NRC the authority to take enforcement actions necessary to ensure compliance with certain provisions of those Acts and with NRC regulations, orders, and licenses. Licenses include specified license conditions and facility technical specifications which are part of the license. The NRC's enforcement policy is published in NUREG–1600, ''General Statement of Policy and Procedures for NRC Enforcement Actions,'' July 1995 (Enforcement Policy).

The Enforcement Policy recognizes that, on occasion, circumstances may arise concerning a licensee's compliance with a Technical Specification Limiting Condition for Operation or with some other license conditions which would involve an unnecessary plant transient or the performance of plant testing that is inappropriate for the specific plant conditions. For such occasions, the Enforcement Policy provides a process, referred to as a Notice of Enforcement Discretion (NOED), by which the NRC staff, upon request from the licensee, may choose not to enforce compliance with the applicable technical specifications or license conditions in limited circumstances. A NOED will only be issued if the NRC staff is satisfied that the action is consistent with public health and safety.

In Request 4, Petitioner seems to suggest that the exercise of enforcement discretion by issuance of a NOED may be appropriate concerning spent fuel pool issues raised in the Petition. As discussed in Section B, with regard to potential failure of fuel in spent fuel pools, the NRC staff has determined that spent fuel pools contain design features which were reviewed and approved by the staff. In addition, these facility designs have been found to be in compliance with NRC requirements applied at the time of licensing. Based upon the review of the information provided in the Petition, the NRC staff has not identified any circumstances warranting the issuance of a NOED. If a situation is presented to the staff involving a request for a NOED, such a request will be considered in accordance with the Enforcement Policy.

IV. Conclusion

Based on the NRC staff's evaluation described above, the NRC staff has issued generic communications responsive to Petitioner's Request 1. In addition, the NRC staff has reviewed the aspect of compliance of NRC-licensed facilities in the area of spent fuel pool design responsive in part to Petitioner's Request 2. To this extent, the Petition is granted. With regard to Petitioner's Request 4, the NRC staff has concluded that there has been no need for issuance of NOEDs regarding potential failure of fuel in spent fuel pools.

A copy of this Final Director's Decision will be placed in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room for all power reactor licensees.

A copy of this Final Director's Decision will also be filed with the Secretary of the Commission for review in accordance with 10 CFR 2.206(c) of the Commission's Regulations. This Decision will become the final action of the Commission 25 days after its issuance, unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 6th day of November 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–29007 Filed 11–12–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22324; 812–10116]

The Alternative Investment Fund and Pacific Corporate Advisors, Inc.; Notice of Application

November 6, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Alternative Investment Fund (the ''Fund'') and Pacific

Corporate Advisors, Inc. (the ''Adviser'').[1]

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act exempting applicants from section 12(d)(1)(A) of the Act and pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: The order would permit the Fund, which will be a registered closed-end investment company, to invest in unaffiliated private investment companies excepted from the definition of investment company by section 3(c)(1) of the Act.[2] The order also would permit the Fund to co-invest with other investment vehicles managed by the Adviser or its affiliates and/or, under certain circumstances, with the Adviser or its affiliates.

FILING DATES: The application was filed on April 30, 1996. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 3, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Brown & Wood LLP, One World Trade Center, New York, NY 10048–0557.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Alison E. Baur, Branch Chief, at (202) 942–0564 (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 from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a Delaware business trust that intends to register under the Act as a non-diversified, closed-end management investment company. The Fund will offer its shares only to ''accredited investors,'' as defined in rule 501 under the Securities Act of 1933 (''Securities Act''), and the offering will be exempt from registration under the Securities Act. Applicants presently contemplate that the Fund will have at least four individual trustees (''Trustees''), a majority of whom will not be ''interested persons'' of the Fund within the meaning of the Act.

2. The Fund's investment objective will be to achieve long-term capital gains through alternative investments. These investments, which generally are offered only to institutional investors, include indirect investments in limited partnerships and direct investments in privately-negotiated transactions with established companies. Indirect investments include interests in partnerships targeting opportunities in leveraged buyouts, mezzanine capital, venture capital, and project finance. Direct investments are expected to consist of structured investments in or with established corporations in their core areas of business.

3. Applicants expect that a majority of the Fund's alternative investments will constitute indirect investments. The Fund will not acquire 10% or more of the outstanding voting securities of any entity excepted from the definition of investment company under the Act by section 3(c)(1) thereof (''3(c)(1) Entities'')[3] and does not intend to invest more than 15% of its assets in any single investment. Indirect investments will be made in entities managed by parties who are not ''affiliated persons,'' as defined in section 2(a)(3) of the Act, of the Fund. The Fund will not invest in registered investment companies.

4. The Adviser is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and is a wholly-owned subsidiary of Pacific Corporate Group, Inc. The Fund will pay an advisory fee to the Adviser based on the net assets or capital of the Fund. This fee may include a performance-based component with respect to direct investments of the Fund that complies with the requirements of the Advisers Act and the rules thereunder. The Adviser will not, however, receive performance-based compensation with respect to indirect investments.

5. In addition to serving as the investment adviser to the Fund, the Adviser or its affiliates also may serve as investment adviser to private accounts on a discretionary basis, and as general partner (or equivalent position) and/or investment adviser to other investment vehicles that are not required to be registered under the Act pursuant to section 3(c)(1). These private accounts and vehciles, along with any similar entity created, advised, sponsored or otherwise organized by the Adviser or its affiliates in the future, are collectively referred to herein as the ''Private Funds.'' To the extent the Adviser acts as the general partner of a Private Fund, the Adviser may make a capital contribution in connection with the organization of such Private Fund, and maintain an interest in items of gain, loss, income, or expense of such Private Funds.

6. Applicants state that the Adviser or its affiliate may be required by a placement agent offering shares of the Fund or a Subsequent Fund at the time of the offering or by a Private Fund to make a commitment to co-invest in all direct investments with the relevant entity in an amount equal to 1% of the entity's investment.

7. Applicants request an order to permit the Fund and any Subsequent Funds to invest in unaffiliated 3(c)(1) Entities. Applicants also request an order to permit the Fund and any Subsequent Funds to make investments of the type described herein, concurrently with one or more Subsequent Fund and/or one or more Private Funds, and, under certain circumstances, with the Adviser or its affiliates (a ''Co-Investment''), subject to the conditions set forth below.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment

[1] Applicants request that any relief granted extend to any future registered investment company advised by the Adviser (''Subsequent Funds'') (together with the Fund, the ''Funds''). Subsequent Funds will be similar to the Fund in terms of structure, investment objective, eligible investors, and offering procedures.

[2] Applicants represent that the Fund's investments in such private investment companies are permitted under the amendments to section 3(c)(1) enacted on October 11, 1996 (''Section 3(c)(1) Amendments''). However, because the Section 3(c)(1) Amendments generally will not become effective until 180 days after the date of enactment, applicants submit that it is appropriate to grant the requested relief at this time.

[3] Section 3(c)(1) of the Act excepts from the definition of investment company issuers whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering.

companies, represent more than 10% of the acquiring company's total assets.

2. Section 3(c)(1) excepts from the definition of investment company issuers whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering. Under section 3(c)(1)(A), if a company owns 10% or more of the shares of a 3(c)(1) Entity, the 3(c)(1) Entity is deemed to be an investment company for purposes of section 12(d)(1). If a 3(c)(1) Entity is deemed to be an investment company for purposes of section 12(d)(1), the ability of any registered investment company, including the Fund, to acquire securities issued by that entity (even if the registered investment company is not itself a 10 percent owner) is restricted. Applicants believe that it is likely that a number of entities in which the Fund will seek to invest may be deemed investment companies solely for purposes of section 12(d)(1) by virtue of the provisions of section 3(c)(1). Although the Fund does not intend to acquire 10% or more of the outstanding voting securities of any 3(c)(1) Entity, it cannot similarly limit the investment by other investors purchasing interests in the same entity.

3. The Fund's investments in any 3(c)(1) Entity in which an investor owns 10% or more of the vehicle's outstanding voting securities become subject to the percentage limitations in section 12(d)(1)(A), including the overall ceiling of 10% of the Fund's assets in such investments in the aggregate. Since the Fund expects to invest in indirect alternative investments at the time they are structured, the Fund will not know at the time it is considering an investment whether the particular entity will have a 10% investor. Consequently, as a result of both the limitations contained in section 12(d)(1)(A) and the related obstacles in determining whether particular investments will be eligible for investment, in the absence of the exemption requested in this application, the Fund's ability to operate in accordance with its objective would be limited.

4. Section 6(c) provides that the SEC may exempt persons or transactions if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants believe that the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants do not believe that the concerns underlying section 12(d)(1) will be present in the case of the Fund. Applicants further believe that the terms and conditions of the requested order will provide significant protection to investors in the Fund.

6. Applicants state that the restrictions in section 12(d)(1) were intended to prevent abuses occurring as a result of pyramiding of investment companies. These abuses related primarily to the following: (i) unnecessary layering of fees and duplication of costs, (ii) undue influence by management of a fund holding company over underlying investment companies, (iii) threat of large scale redemptions out of the underlying funds, and (iv) investor confusion.

7. With respect to layering of fees and duplication of costs, applicants believe that the fees to be paid by the Fund are distinct from those paid by underlying vehicles. Further, the conditions to the relief requested require an express finding by the Trustees that the advisory fees are not based on services duplicative of those provided to entities in which the Fund will invest. The conditions also require that investment advisory fees not include performance-related components, except with respect to direct investments. Such limitation reflects the fact that indirect alternative investments in which the Fund invests will typically pay performance-based compensation to an advisory entity, and is included so that investors in the Fund do not pay duplicative performance compensation. In addition, the conditions limit direct and indirect placement fees and sales charges paid by investors in the Fund.

8. Applicants believe that the Fund's method of operation and the conditions set forth below address the other concerns underlying section 12(d)(1) and provide significant protection to investors. In this regard, the Fund will not have the ability to control underlying investment companies through the threat of large-scale redemptions because the Fund will not acquire 10% or more of a 3(c)(1) Entity and will not invest in securities issued by any investment company registered under the Act. Further, applicants represent that the Fund will not invest for the purpose of obtaining control over underlying investment entities.

9. The Fund will not be confusing to its investors because investors in the Fund will be limited to investors qualifying as accredited investors within the meaning of the Securities Act. In addition, the complexity of the Fund's structure will be limited because the conditions require that the Fund will make an investment in a particular issuer only if the issuer does not, at the time of the Fund's investment, hold securities of another investment company in excess of the limits in section 12(d)(1)(A) of the Act, and does not intend to invest in securities of other investment companies in excess of the section 12(d)(1)(A) limits.

B. Section 17(d)

1. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such company, or a company controlled by such company, is a joint or joint and several participant with the affiliated person in contravention of SEC rules. Rule 17d–1 provides that the SEC may approve a transaction subject to section 17(d) after considering whether the participation of such registered company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants request an order pursuant to section 17(d) and rule 17d–1 thereunder, permitting the Fund and any Subsequent Funds to make Co-Investments of the type described herein, subject to the conditions set forth below.

2. Applicants submit that the requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further assert that the terms and conditions of such relief will ensure that participation by the Fund and/or one or more Subsequent Funds in Co-Investments with one or more Private Funds, and, under certain circumstances, with the Adviser or its affiliates, and/or Subsequent Funds will not be on a basis different from or less advantageous than that of the Private Funds, or, if applicable, the Adviser or its affiliates, and/or Subsequent Funds, and will provide significant protection to investors from the abuses that section 17(d) was designed to protect against. Applicants state that such relief is in the best interest of investors in that it eliminates the concern over whether to allocate a Co-Investment to the Fund or to the Private Funds. Applicants also state that the participation by the Adviser or its affiliate has been formulated to be consistent with the expectations of the market for entities such as the Fund and the Private Funds

and, under the limited ''lock-step'' circumstances contemplated by the terms and conditions of the application, does not raise concerns beyond those raised by the participation of the Private Funds in Co-Investments.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. A majority of the Trustees of each Fund will not be ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund.

2. Before approving any investment advisory contract under section 15 of the Act with the Adviser, the Trustees of the Fund, including a majority of the Trustees who are not ''interested persons,'' as defined in the Act, must find that the advisory fees charged under the contract are based on services that are in addition to, rather than duplicative of, services provided to entities in which the Fund will invest. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund.

3. Investment advisory fees received by the Adviser from the Funds will be based on each Fund's net assets or capital and will not include performance-based compensation with respect to any indirect investments, but may include performance-based compensation in respect of direct investments to the extent permitted by the Advisers Act and the rules thereunder.

4. A Fund will not acquire 10 percent or more of the outstanding voting securities of an entity excepted from the definition of investment company under the Act by section 3(c)(1) thereof.

5. The Funds will not acquire securities issued by any investment company registered under the Act.

6. Any sales charges or placement fees charged with respect to securities of the Funds, when aggregated with any sales charge or service fees paid by the Funds with respect to securities of the underlying entities, will not exceed the limits set forth in section 2830(d) of the NASD Conduct Rules.

7. The Fund will not invest in an entity which, at the time of the Fund's investment, holds securities of another investment company in excess of the limits contained in section 12(d)(1)(A) of the Act applicable to such entity. Prior to committing to an investment, the Fund will make due inquiry to confirm that the issuer does not intend to invest in investment companies (except to the extent it may hold underlying investments through intermediary vehicles) in excess of the limits contained in section 12(d)(1)(A) of the Act applicable to such issuer. The provisions of this condition shall not be applicable to purchases of shares of money market funds registered under the Act which are acquired by issuers in which the Fund invests and are permitted by section 12(d)(1) of the Act.

8. No Co-Investments (except for follow-on investments made pursuant to condition 15 below) will be made pursuant to the requested order with respect to portfolio companies in which the Adviser, any Fund or Private Fund, or any of their affiliates has previously acquired an interest.

9. The Trustees of each Fund participating in a Co-Investment, including a majority of the non-interested Trustees, will approve Co-Investments in advance. To facilitate the Trustees' determinations, the Adviser will provide the Trustees of a Fund with periodic information listing all investments made by the other Funds, the Private Funds, and/or the Adviser or its affiliate, as applicable, that would be suitable for investment by a Fund.

10. (a) Before making a Co-Investment, the Adviser will make a preliminary determination as to whether each particular Co-Investment opportunity meets the Fund's investment objective, policies, and restrictions. Co-Investment opportunities will be offered to eligible Funds and Private Funds in amounts proportionate to capital available for investment at the time of such opportunities. The Adviser will maintain written records of the factors considered in any preliminary determination.

(b) Following the making of the determination referred to in (a), information concerning the proposed Co-Investment will be distributed to the Trustees. Such information will be presented in written form and will include the name of each Fund and each Private Fund that may participate and, if permitted by condition 11 below, the Adviser or its affiliate and the maximum amount offered to each entity.

(c) Information regarding the Adviser's preliminary determinations referred to in (a) will be reviewed by the Trustees, including the non-interested Trustees. The Trustees, including a majority of the non-interested Trustees, will make an independent decision as to whether to participate and the extent of participation in a Co-Investment based on such factors as are deemed appropriate under the circumstances. If a majority of the non-interested Trustees of the Fund determines that the amount proposed to be invested by the Fund is not sufficient to obtain an investment position that they consider appropriate under the circumstances, the Fund will not participate in the Co-Investment. Similarly, the Fund will not participate in a Co-Investment if a majority of the non-interested Trustees of the Fund determines that the amount proposed to be invested is an amount in excess of that which is determined to be appropriate under the circumstances, although the non-interested Trustees may make a determination that the Fund take other than their allotted portion of an investment, pursuant to condition 12 below. A Fund will only make a Co-Investment if a majority of the non-interested Trustees of the Fund prior to making the Co-Investment conclude, after consideration of all information deemed relevant (including the extent to which such participation is on a basis different from or less advantageous than that of other participants), that the investments by any Private Fund and/or the Adviser or its affiliates, as applicable, would not disadvantage the Fund in the making of such investment, in maintaining its investment position or in disposing of such investment, and that participation by the Fund would not be on a basis different from or less advantageous than that of such Private Fund and/or the Adviser or its affiliate, as applicable. The non-interested Trustees will maintain at the Fund's office written records of the factors considered in any decision regarding the proposed Co-Investment.

(d) The non-interested Trustees will, for purposes of reviewing each recommendation of the Adviser, request such additional information from the Adviser as they deem necessary for the exercise of their reasonable business judgment, and they will also employ such experts, including lawyers and accountants, as they deem appropriate for the reasonable exercise of this oversight function.

11. The Trustees, including a majority of the non-interested Trustees, will make their own decision and have the right to decide not to participate in a particular Co-Investment. There will be no consideration paid to the Adviser or its affiliates, directly or indirectly, including without limitation any type of brokerage commission, in connection with a Co-Investment. However, the Adviser and its affiliates (i) may seek reimbursement from direct investment issuers for documented out-of-pocket expenses approved by the Trustees incurred by the Adviser or its affiliates in connection with a direct investment, (ii) will continue to receive advisory and other fees from the Fund and the Private Funds, and (iii) may participate

in any Co-Investment that is a direct investment wherein the Adviser or its affiliate is required by the placement agent offering shares of the Fund or a Subsequent Fund at the time of the offering or by a Private Fund to commit to co-invest in all direct investments with such entity in the amount of 1% of the investment of each such entity participating in the offering.

12. The Fund will be entitled to purchase a portion of each Co-Investment equal to the ratio of its capital available for investment to the capital available for investment of each other Co-Investment participant (including the interest of the Adviser or its affiliate). Any Co-Investment participant may determine not to take its full allocation, as long as, in the case of a Fund, a majority of the non-interested Trustees determines that not doing so would be in the best interest of the Fund. All follow-on investments (as defined in condition 15 below), including the exercise of warrants or other rights to purchase securities of the issuer, will be allocated in the same manner as initial Co-Investments. If a Fund or Private Fund decides to participate in a Co-Investment opportunity to a lesser extent than its full allocation, that entity's portion may be allocated to the other Co-Investment participants based on their respective capital available for investment. If one or more Funds decline to participate in a Co-Investment opportunity, the remaining Funds and the Private Funds shall have the right to pursue such investment independently. Similarly, if one or more Private Funds decline to participate in a Co-Investment opportunity, the remaining Private Funds and the Funds shall have the right to pursue such investment independently.

13. Co-Investments in securities by a Fund with any other Fund, any Private Fund, and/or the Adviser or its affiliate, as applicable, will consist of the same class of securities, including the same registration rights (if any), and other rights related thereto, purchased at the same unit consideration, and the approval of such transactions, including the determination of the terms of the transactions by the Fund's non-interested Trustees, will be made in the same time period.

14. Except as described below, the Funds, the Private Funds and/or the Adviser or its affiliate, as applicable, will participate in the disposition of securities held by them as Co-Investments on a proportionate basis at the same time and on the same terms and conditions (a ''lock-step'' disposition). For this purpose, a distribution of securities to the partners or shareholders of a Private Fund upon dissolution shall not be deemed a ''disposition'' of securities. (However, to the extent that a Private Fund distributes securities in dissolution to partners or shareholders who are affiliates of the Funds, such partners or shareholders will be bound by the lock-step disposition procedures established herein.) If a Fund or a Private Fund elects to dispose of a security purchased in a Co-Investment with one or more Funds or Private Funds, notice of the proposed sale will be given to the non-interested Trustees of the relevant Fund(s) and to the relevant Private Fund(s) at the earliest practical time. The Funds, the Private Funds, and/or the Adviser or its affiliate, as applicable, will participate in the disposition of such security on a lock-step basis, unless the non-interested Trustees of a Fund determine that the Fund should not participate in such sale or not participate on a lock-step basis. A Fund need not participate on a lock-step basis in the disposition of securities sold by any other Fund or a Private Fund if the non-interested Trustees of the Fund find that the retention or sale, as the case may be, of the securities is fair to the Fund and that the Fund's participation or choice not to participate in the sale on a lock-step basis is not the result of overreaching by any other Fund, any Private Fund, and/or the Adviser or its affiliate, as applicable. If such a finding is not made, then the relevant Fund must participate in such sale on the basis of a lock-step disposition. Like a Fund, a Private Fund may elect not to participate in a sale of securities held as Co-Investments or not to participate on a lock-step basis. If at any time the result of a proposed disposition of any portfolio security held by a Fund or a Private Fund would alter the proportionate holdings of each class of securities held by the other Funds, Private Funds, and/or the Adviser or its affiliate, as applicable, holding the Co-Investment, then the non-interested Trustees of the Fund or Funds involved must determine that such a result is fair to the relevant Fund(s) and is not the result of overreaching by any other Fund, any Private Fund, and/or the Adviser or its affiliate, as applicable. The non-interested Trustees will record in the records of the Fund the basis for their decisions as to whether to participate in such sale.

15. If a Fund or a Private Fund determines that it should make a ''follow-on'' investment (i.e., an additional investment in a portfolio company in which a Co-Investment has been made pursuant to the order requested hereby) in a particular portfolio company whose securities are held by it and one or more Funds, or to exercise warrants or other rights to purchase securities of such an issuer, notice of such transaction will be provided to such other Fund(s), including its or their non-interested Trustees at the earliest practical time. The Adviser will formulate a recommendation as to the proposed participation by a Fund in a follow-on investment and provide the recommendation to the non-interested Trustees of the Fund along with notice of the total amount of the follow-on investment. Each Fund's non-interested Trustees will make their own determination with respect to follow-on investments. Follow-on investments will be entered into on the same basis as initial Co-Investments and will be subject to the same approval procedure as those required for initial Co-Investments. Assuming that the amount of a follow-on investment available to a Fund is not based on the amount of the Fund's initial Co-Investment, the relative amount of investment by each Fund participating in a follow-on investment will be based on a ratio derived by comparing the capital available for investment of each participating Fund, Private Fund and/or the Adviser or its affiliate, as applicable, with the total amount of the available follow-on investment. Each Fund will participate in such investment if a majority of its non-interested Trustees determines that such action is in the best interest of the Fund. The non-interested Trustees of each Fund will record in their records the recommendation of the Adviser and their decision as to whether to engage in a follow-on transaction with respect to that portfolio company, as well as the basis for such decision.

16. A decision by the Trustees of a Fund (i) not to participate in a Co-Investment, (ii) to take less or more than the Fund's full pro rata allocation, or (iii) not to sell, exchange, or otherwise dispose of a Co-Investment in the same manner and at the same time as another Fund or a Private Fund shall include a finding that such decision is fair and reasonable to the Fund and not the result of overreaching of the Fund or its securityholders by the Private Funds and/or the Adviser or its affiliate, as applicable. The non-interested Trustees of each Fund will be provided quarterly for review all information concerning Co-Investments made by the Funds, the Private Funds, and/or the Adviser or its affiliate, as applicable, including Co-

Investments in which the Fund declined to participate, so they may determine whether all Co-Investments made during the preceding quarter, including those Co-Investments they declined, complied with the conditions set forth above. In addition, the non-interested Trustees of each Fund will consider at least annually the continuing appropriateness of the standards established for Co-Investments by the Fund, including whether use of such standards continues to be in the best interest of the Fund and its securityholders and does not involve overreaching of the Fund or its securityholders on the part of any party concerned.

17. No non-interested Trustee of a Fund will be an affiliated person of a Private Fund or have had, at any time since the beginning of the last two completed fiscal years of any Private Fund, a material business or professional relationship with any Private Fund.

18. A Fund, each Private Fund, and/or the Adviser or its affiliate, as applicable, will each bear its own expenses associated with the disposition of portfolio securities. The expenses, if any, of distributing and registering securities under the Securities Act sold by the Fund, one or more Private Funds, and/or the Adviser or its affiliate, as applicable, at the same time will be shared by the Fund, the selling Private Fund(s), and/or the Adviser or its affiliate, as applicable, in proportion to the relative amounts they are selling.

19. Other than as provided in condition 11, neither the Adviser nor any of its affiliates (other than the Private Funds pursuant to any order issued on this application) nor any director of the Fund will participate in a Co-Investment with the Fund unless a separate exemptive order with respect to such Co-Investment has been obtained. For this purpose, the term ''participate'' shall not include either the existing interests of the Adviser or its affiliates in, or their management fee and expense reimbursement arrangements with, Private Funds, and the term ''participate'' shall also not include any reimbursement from direct investment issuers described in condition 11 above.

20. The Fund will maintain all records required of it by the Act, and all records referred to or required under these conditions will be available for inspection by the SEC. The Fund will also maintain the records required by section 57(f)(3) of the Act as if the Fund was a business development company and the Co-Investments were approved by the non-interested Trustees under section 57(f).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–29037 Filed 11–12–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22321; 811–9144]

E. Acquisition Corp.; Notice of Application

November 6, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: E. Acquisition Corp.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 27, 1996, and amended on October 23, 1996.

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 December 2, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC. 450 Fifth Street, N.W., Washington D.C. 20549. Applicants, 205 East 42nd Street, Suite 2020, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, Branch Chief, at (202) 942–0564 (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 from the SEC's Public Reference Branch.

APPLICANT'S REPRESENTATIONS

1. Applicant is a non-diversified, closed-end management investment company organized as a corporation under the laws of Delaware. On December 27, 1995, applicant filed a notification of registration on Form N–8A under the Act. Applicant never filed a registration statement under the Act or under the Securities Act of 1933.

2. In connection with its formation, on December 22, 1995, applicant sold 100 shares of common stock to its sole stockholder at a price of $100 per share. Upon dissolution, applicant distributed $10,000 in cash to the stockholder.

3. Applicant has no assets, debts or liabilities. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant has filed a certificate of dissolution under Delaware law.

5. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–29042 Filed 11–12–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22323; 812–10174]

SunAmerica Series Trust, et al.; Notice of Application

November 6, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: SunAmerica Series Trust (the ''Series Trust''), SunAmerica Equity Funds (the ''Equity Trust'' or collectively with the Series Trust, ''Trusts'') on behalf of SunAmerica Global Balanced Fund (''Global''), and SunAmerica Asset Management Corp (''SAAMCo'' or the ''Adviser'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 15(a) of the Act and rule 18f–2 thereunder; and from certain disclosure requirements set forth in item 22 of Schedule 14A under the Securities Exchange Act of 1934 (the ''Exchange Act''); items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A; item 3 of Form N–14; item 48 of Form N–SAR; and sections 6–07(2) (a), (b), and (c) of Regulation S–X.

SUMMARY OF APPLICATION: Applicants request an order permitting the Adviser

to enter into or amend contracts with subadvisers without obtaining shareholder approval and permitting applicants to disclose only aggregate subadvisory fees for each portfolio in their prospectuses and other reports.

FILING DATES: The application was filed on May 29, 1996, and amended on October 31, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 1, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Series Trust, P.O. Box 54299, Los Angeles, CA 90054–0299; Equity Trust and SAAMCo, The SunAmerica Center, 733 Third Avenue, New York, N.Y. 10017–3204.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (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 from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Trusts is an open-end management investment company registered under the Act and organized as a Massachusetts business trust. The Series Trust, currently composed of eighteen separate portfolios (each a ''Series Portfolio''), was established to provide a funding medium for certain annuity contracts issued by the Variable Separate Account and FS Variable Separate Account, which are separate accounts of Anchor National Life Insurance Company and First SunAmerica Life Insurance Company, respectively. The Equity Trust is currently composed of six separate portfolios (each an ''Equity Portfolio''). Global is the only Equity Portfolio to which the application currently applies (Global and each Series Portfolio are referred to herein as the ''Portfolios'').[1]

2. Each Portfolio has its own investment objectives and policies and each is managed as though it was a separate mutual fund issuing its own shares. Some Portfolios benefit from discretionary advisory services provided by one or more separate registered investment advisers (''Subadvisers''), which are retained and compensated by the Adviser. Applicants state that the Trusts' prospectuses disclose that the Adviser has the authority to hire one or more Subadvisers for a Portfolio, and that the Adviser is responsible for monitoring the Subadvisers' performance and recommending replacement Subadvisers to the Board from time to time.

3. The Adviser, a registered investment adviser under the Investment Advisers Act of 1940, as amended, has entered into an investment advisory agreement (''Advisory Agreement'') with each Trust. The Advisory Agreements provide that the Adviser shall manage the Trusts' investments, administer their business affairs, provide office space and other facilities and equipment for the management of the affairs of the Trusts, and pay the compensation of certain officers of the Trusts who are affiliated persons of SAAMCo. The Advisory Agreements further provide that the Adviser may delegate the management of a Portfolio's investments to the Subadviser of the Portfolio, if any. For its services, the Adviser receives from each Trust a fee based on the net assets of each Portfolio.

4. SAAMCo has in turn entered into an agreement with each Subadviser (''Subadvisory Agreement''). The Subadvisory Agreements are similar in all material respects except for the names of the Subadvisers and the rates of compensation, which are a portion of the management fee that is paid by each Portfolio to SAAMCo and which SAAMCo pays to the Subadvisers.

5. The Adviser, either alone or with the assistance of one or another of its SunAmerica corporate affiliates, is responsible for (a) supervising the Subadvisers' compliance with state and federal regulations, (b) analyzing the composition of the investment portfolios of the Portfolios and preparing reports thereon for the Board of Trustees of each Trust (the ''Trustees'' or the ''Board''), or any committee of the Board, (c) evaluating each Portfolio's performance in comparison to similar mutual funds and other market information, (d) conducting searches for replacement Subadvisers, and selecting, subject to the review and approval of the Trustees, Subadvisers who have distinguished themselves by able performance in their respective areas of responsibility and overseeing their continued performance, and (e) preparing presentations to shareholders analyzing the Portfolios' investment program and performance.

6. Under the Subadvisory Agreements, the Subadvisers manage the investment and reinvestment of the assets of the respective Portfolios for which they are responsible. Each of the Subadvisers is independent of SAAMCo and discharges its responsibilities subject to the policies of the Trustees and the oversight and supervision of SAAMCo, which pays the Subadvisers' fees. Currently, SAAMCo divides the subadvisory services for Global between itself and a Subadviser, while the other Portfolios each have either a single Subadviser or are managed solely by SAAMCo. Applicants intend that, in the future, a Portfolio may be managed by a single Subadviser or may be allocated by the Adviser between or among more than one Subadviser. None of the Subadvisers are affiliated persons of the Adviser, as defined in section 2(a)(3) of the Act.

7. Applicants request an exemption from section 15(a) of the Act and rule 18f–2 thereunder to permit the Adviser to enter into a Subadvisory Agreement for a Portfolio or to amend an existing Subadvisory Agreement without obtaining shareholder approval thereon. The exemption would cover new Subadvisory Agreements necessitated because the prior Subadvisory Agreements were terminated as a result of an assignment (as defined in section 2(a)(4) of the Act).

8. Applicants also request an exemption from certain disclosure requirements, as described below, that may require disclosure of fees paid to individual Subadvisers.

9. Item 2 of Form N–1A requires the Trusts to disclose in their prospectuses, as a percentage of average net assets, management fees paid by them. Item 5(b)(iii) of Form N–1A requires that the Trusts set forth in their prospectuses ''a brief description of the investment adviser's compensation.'' Item 16(a)(iii) of Form N–1A requires that the Trusts set forth in their Statements of Additional Information for each

[1] Applicants also request relief with respect to any series of either Trust, now existing or organized in the future, and for any open-end management investment company or series thereof advised by the Adviser, or a person controlling, controlled by or under common control with the Adviser in the future, provided that such investment company or series operates in substantially the same manner as the Portfolios and complies with the conditions to the requested order.

investment adviser its compensation and the method of computing the advisory fee.

10. Item 3 of Form N–14, the registration form for business combinations involving investment companies, requires the inclusion of a ''table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction using the format prescribed'' in item 2 of Form N–1A.

11. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Exchange Act. Subparagraphs (a)(3)(iv), (c)(1)(ii) and (c)(1)(iii) of Item 22 of Schedule 14A and paragraphs (c)(8) and (c)(9) of Item 22 of Schedule 14A, taken together, require that a proxy statement on a shareholder meeting at which an advisory contract is to be voted upon, shall include, among other information, the ''rate of compensation of the investment adviser'' and the ''aggregate amount of the investment adviser's fee.''

12. Item 48 of Form N–SAR provides that the Trusts must disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers. Items 6–07(2) (a), (b), and (c) of Regulation S–X may be deemed to require that the Trusts' financial statements contain information concerning fees paid to the Subadvisers by the Adviser.

13. Applicants propose to disclose (both as a dollar amount and as a percentage of the Portfolio's net assets) in each Trust's registration statement and other public documents only the ''Aggregate Fee Disclosure,'' which means: (a) the total advisory fee charged by the Adviser with respect to each Portfolio; (b) the aggregate fees paid by the Adviser to all Subadvisers managing assets of each Portfolio; (c) the net advisory fee retained by the Adviser with respect to each Portfolio after the Adviser pays all Subadvisers managing assets of the Portfolio; and (d) fees paid to any Subadviser who is an affiliated person (as defined in section 2(a)(3) of the Act) of either Trust or the Adviser other than by reason of serving as a Subadviser (an ''Affiliated Subadviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants assert that the requested exemption will permit the Adviser to more efficiently perform the functions the Portfolios are paying it to perform: selecting and monitoring the performance of Subadvisers, and changing Subadvisers with Board approval. Applicants believe that requiring shareholders to approve each new Subadviser would not only result in unnecessary administrative expense to the Portfolios, but could also result in harmful delays in executing changes in Subadvisers. Applicants note that primary responsibility for management of the Portfolios is vested in the Adviser, subject to oversight by the respective Board. Applicants also note that its contracts with the Trusts will remain fully subject to the requirements of section 15(a) of the Act and rule 18f–2 thereunder, including the requirements for shareholder voting.

3. Applicants also state that the Trusts' prospectuses disclose information concerning the identity, ownership, and qualifications of the Subadvisers in full compliance with Form N–1A. Further, the information statement described in condition 3 below would provide shareholders with all information regarding a new Subadviser or a material change in a Subadvisory Agreement to the same extent as would be set forth in a proxy statement. Applicants contend that investors therefore would be in a position to make a fully informed investment decision as to the purchase, redemption or retention of Portfolio shares. In addition, applicants assert that, if the exemptive relief is not granted, all shareholders would bear the higher expenses associated with formal proxy solicitations without receiving more meaningful disclosure.

4. Because of the desire of most investment advisers to price their services based on ''posted'' fee rates, applicants believe that, in the absence of the requested relief, the Adviser, the Trusts and shareholders of the Portfolios may be able to obtain a specific Subadviser's services only by the Adviser paying higher fee rates than it would otherwise be able to negotiate if the rates were not disclosed publicly. If the Adviser must pay higher fees, applicants argue that it must charge the Portfolios or the shareholders higher fees to cover its cost of doing business. Applicants submit that the nondisclosure of individual Subadviser's fees is in the best interest of the Portfolios and their shareholders, where disclosure of such fees would increase costs to shareholders without an offsetting benefit.

5. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The Adviser will provide general management and administrative services to the Trusts, including overall supervisory responsibility for the general management and investment of the Trusts' securities portfolios, and, subject to review and approval by each Board with respect to its respective Portfolios, will (a) set the Portfolios' overall investment strategies; (b) select Subadvisers; (c) monitor and evaluate the performance of Subadvisers; (d) allocate and, when appropriate, reallocate a Portfolio's assets among its Subadvisers in those cases where a Portfolio has more than one Subadviser; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with the Trusts' and the relevant Portfolio's investment objectives, policies, and restrictions.

2. Before a Portfolio may rely on any order granting the requested relief, the operation of the Portfolio in the manner described in the application will be approved by a majority of its outstanding voting securities (or, in the case of the Series Trust, by the unitholders of any separate account for which the Series Trust serves as a funding medium), as defined in the Act, or, in the case of a new Portfolio whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 4 below, by the sole shareholder before offering of shares of such Portfolio to the public.

3. Each Trust will furnish to its shareholders all information about a new Subadviser or Subadvisory Agreement for one of its Portfolios that would be included in a proxy statement, except as may be modified by the order with respect to the disclosure of fees paid to the Subadvisers (the ''Disclosure Order''). Such information will include disclosure as to the level of fees to be paid to the Adviser and each Subadviser of the Portfolio (unless the Trust is relying on the Disclosure Order, in

which case it will include Aggregate Fee Disclosure) and any change in such disclosure caused by the addition of a new Subadviser or any material change in a Subadvisory Agreement. Each Trust will meet this condition by providing its shareholders with an informal information statement complying with the provisions of Regulation 14C under the Exchange Act and Schedule 14C thereunder. With respect to a newly retained Subadviser, or a change in a Subadvisory Agreement, this information statement will be provided to shareholders of the Portfolio a maximum of sixty (60) days after the addition of the new Subadviser or the implementation of any change in a Subadvisory Agreement. The information statement will also meet the requirements of Schedule 14A, except as may be modified by the Disclosure Order. The Series Trust will ensure that the information statement is furnished to the unitholders of any separate account for which the Series Trust serves as a funding medium.

4. Each Trust will disclose in its prospectus the existence, substance and effect of the order.

5. No trustee, director, or officer of a Trust or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee or officer) any interest in any Subadviser except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or any entity that controls, is controlled by or is under common control with a Subadviser.

6. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

7. At all times, a majority of the members of each Board will be persons each of whom is not an ''interested person'' of the respective Trust as defined in Section 2(a)(19) of the Act (''Independent Trustees''), and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

8. When a Subadviser change is proposed for a Portfolio with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board's minutes, that such change is in the best interests of the Portfolio and its shareholders (or, in the case of the Series Trust, the unitholders of any separate account for which the Series Trust serves as a funding medium) and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

In addition to the above conditions, applicants agree to comply with the following conditions prior to relying on the Disclosure Order:

9. Each Trust will disclose both as a dollar amount and as a percentage of a Portfolio's net assets in its registration statement the respective Aggregate Fee Disclosure.

10. The Independent Trustees shall retain and be represented by independent counsel knowledgeable about the Act and the duties of Independent Trustees. The selection of such counsel shall at all times be within the discretion of the Independent Trustees.

11. The Adviser will provide the Board, no less frequently than quarterly, information about the Adviser's profitability on a per-Portfolio basis. Such information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

12. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board information showing the expected impact on the Adviser's profitability.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–29040 Filed 11–12–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22322; 811–9146]

T. Acquisition Corp.; Notice of Application

November 6, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: T. Acquisition Corp.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 27, 1996, and amended on October 23, 1996.

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 December 2, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 205 East 42nd Street, Suite 2020, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, Branch Chief, at (202) 942–0564 (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 from the SEC's Public Reference Branch.

Applicant's Representation

1. Applicant is a non-diversified, closed-end management investment company organized as a corporation under the laws of Delaware. On December 27, 1995, applicant filed a notification of registration on Form N–8A under the Act. Applicant never filed a registration statement under the Act or under the Securities Act of 1933.

2. In connection with its formation, on December 22, 1995, applicant sold 100 shares of common stock to its sole stockholder at a price of $100 per share. Upon dissolution, applicant distributed $10,000 in cash to the stockholders.

3. Applicant has no assets, debts or liabilities. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant has filed a certificate of dissolution under Delaware law.

5. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–29041 Filed 11–12–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (United Vision Group, Common Stock, $.001 Par Value and Redeemable Warrants) File No. 1–12812

November 6, 1996.

United Vision Group, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, the common stock is listed on the NASDAQ Bulletin Board and is held of record by less than one hundred (100) holders. The Redeemable Warrants are held of record by twenty-six (26) holders, and are quoted on NASDAQ. The Company cannot justify the expense of being listed on two exchanges and thereby wishes to withdraw from the Boston Stock Exchange, Inc.

Any interested person may, on or before November 29, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–29044 Filed 11–12–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37924; File No. SR–Amex–96–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Various Updates to Amex Trading Rules and Company Guide Section 402

November 6, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 16, 1996, 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 proposes to amend Exchange Rules 126, 132, 135, 152, 171, 340, 904, 950 and Section 402 of the *Company Guide* to update or clarify those provisions.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, 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

1. Purpose

The following is a description of the proposed rule changes:

Amex Rule 126: Precedence of Bids and Offers

This rule specifies the rules of precedence with respect to bids and offers. However, unlike Rule 108, which governs parity and priority at openings, Rule 126 does not specify how securities to be executed are to be divided between orders that are on parity. Rule 108 provides that all orders entitled to precedence are first paired off, and the balance of securities to be executed are divided as equally as practicable between the specialist and the brokers on parity. However, when the specialist has an accumulation of orders on his book representing a substantial amount of the security at a limit equal to the proposed opening price, the specialist is entitled to execution of the following percentages of the limit orders to be executed: 60% when there is one broker on parity, 40% when there are 2–5 brokers on parity, and 30% when there are 6 or more brokers on parity. Although in practice the Exchange has been using Rule 108 as a guideline for non-opening situations, this has been confusing at times to members. Therefore, the Exchange proposes that Rule 126 be amended to incorporate such procedures.

Amex Rule 132: Price Adjustment of Open Orders on ''Ex-Date''

When a security is quoted ex-dividend, ex-distribution, ex-rights, or ex-interest (except for stock dividends and distributions), Rule 132(a) provides that the specialist must generally reduce all open orders to buy and open stop orders to sell by the cash value of the payment or rights. However, there occasionally has been some confusion concerning stop limit orders because the rule does not specifically provide that both the limit and the stop price must be reduced. Therefore, the Exchange proposes that paragraph (a) be amended to provide such specificity. This change also will conform Rule 132 to New York Stock Exchange (''NYSE'') Rule 118.

Miscellaneous

The Exchange also proposes that the following rules be amended to make minor updating changes:

A. Rule 135—delete the reference to sales sheets published by ''Francis Emory Fitch, Inc.'' because the Exchange no longer utilizes this company's service.

B. Rule 152—delete the reference to Rule 570 because Rule 570 was rescinded.

C. Rule 340—change the reference to the Exchange's ''Market Operations Division'' to the ''Exchange.''

D. Rule 171—remove the prohibition against specialist units of less than three natural persons to conform with a comparable NYSE provision.

[1] 15 U.S.C. 78s(b)(1).

E. Rule 904—change the reference to the Exchange's ''Membership Compliance Division'' to the ''Exchange.''

F. Rule 950—delete Rule 170 from the list of rules that are applicable in their entirety to option transactions because all of that rule's commentary is not applicable (paragraph (n) of Rule 950 already specifies which portions of Rule 170 are applicable).

G. Section 402 of the *Company Guide*—add Bloomberg Business News to the list of approved services for disclosure of material information.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[2] of the Act in general and furthers the objectives of Section 6(b)(5)[3] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with Section 11(b)[4] of the Act which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes 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

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78k(b).

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–39 and should be submitted by December 4, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–29043 Filed 11–12–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37922; File No. SR–NASD–96–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending the Inclusion Criteria for the Supplemental List of the Mutual Fund Quotation Service

November 5, 1996.

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 October 18, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[5] 17 CFR 200.30–3(a)(12).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is submitting this rule filing to amend the minimum requirements for inclusion in the Mutual Fund Quotation Service (''Service''). Specifically, the NASD proposes to amend NASD Rule 6800 to provide new criteria to permit smaller mutual funds to disseminate their prices via the Service. The specific criteria are set forth below. (Additions are italicized; material to be deleted is bracketed).

NASD Rule 6800. MUTUAL FUND QUOTATION SERVICE

* * * * *

(d) Supplemental List

An eligible fund shall be authorized for inclusion in the Supplemental List released to vendors of Nasdaq Level 1 Service if *the fund: (1) has net assets of $10 million or more; or (2) has had two full years of operation.* [the fund has at least 300 shareholders at the time of initial application for inclusion in the Supplemental List.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD has determined to amend the criteria for inclusion of mutual funds and money market funds in its Service facility. The Service provides for the collection and dissemination of prices for both mutual funds and money market funds. The Service consists of two lists: the News Media List and the Supplemental List. The News Media List,[1] which is not being amended by this rule filing, consists of data on more

[1] The criteria for inclusion in the News Media List are: (1) for initial inclusion—least 1,000 shareholders or $25 million in net assets; (2) for continued inclusion—at least 750 shareholders or $15 million in net assets.

than 6,000 funds which Nasdaq distributes daily to newspapers and to vendors through its Level 1 Service.

Eligible funds that do not qualify for the News Medial List have been eligible for price dissemination solely through the Level 1 Service. The criteria for inclusion in this list of smaller funds has been a size test based on the number of fund shareholders at the time of initial application for inclusion in the Supplemental List. According to the Investment Company Institute (''ICI''), approximately 2,100 funds do not qualify for either the News Media or Supplemental Lists.

Because these funds do not qualify for the Nasdaq Stock Market, Inc. (''Nasdaq'') Service, these smaller funds do not have a centralized means of disseminating their prices to broker-dealers, rating services and individual investors. Instead, these funds distribute their prices to various entities by fax or telephone.

Because of the inefficiencies, costs and lack of transparency associated with the fax or telephone means of communication, the Nasdaq examined whether the Supplemental List criteria for its Service could be refined to permit more funds to provide Nasdaq with price information through its Level 1 Service which is distributed over more than 280,000 terminals. In the course of discussions with ICI, it became apparent that while many smaller funds may have smaller numbers of beneficial owners that keep such funds from meeting the 300 shareholder test, the same funds often have substantial net assets. Accordingly, Nasdaq determined to revise the Supplemental List criteria to delete the shareholder requirement and replace it with two, alternative standards. First, a mutual fund may meet the Supplemental List inclusion standard if the fund has net assets at the time of application of $10 million or more. In the alternative, a fund would qualify regardless of net assets or shareholder members if it has operated for two full years. Under this new criteria, Nasdaq believes that approximately 1,400 additional funds would qualify for the Supplemental List.

The NASD believes that distribution of Net Asset Value information for smaller funds significantly aids investors in such funds. The Service promotes efficient dissemination of critical information to a wide audience and thereby promotes the transparency of smaller fund prices. By providing a more efficient means of communicating this information, the service may help the affected funds in containing the costs associated with distributing this information by less efficient means. Accordingly, the NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) in that it promotes better processing of pricing information in securities, protects investors and the public interest, and is designed to produce fair and informative prices for smaller mutual funds.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 4, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–29038 Filed 11–12–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37923; File No. SR–PSE–96–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Incorporated Relating to Amending the Minor Rule Plan and the Recommended Fine Schedule

November 6, 1996.

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 October 10, 1996, the Pacific Stock Exchange Incorporated (''PSE'' 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 Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (e)(6) of Rule 19b–4 under the Act which renders the proposal effective upon receipt of this filing by the Commission.[1] 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 Exchange is proposing to amend its Minor Rule Plan (''MRP'') to add certain rules for which violations may be adjudicated pursuant to Rule 10.13, and to amend its Recommended Fine Schedule to establish recommended fines for violations of those rules and to increase the recommended fines for certain rules violations already subject to the MRP.

[1] The PSE has represented that this proposed rule change: (i) will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. The PSE also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(e)(6) under the Act.

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

1. Purpose

The Exchange is proposing to amend its MRP,[2] which provides that the Exchange may impose a fine not to exceed $5,000 on any member, member organization, or person associated with a member organization, for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. PSE Rule 10.13, subsections (h)–(j), sets forth the specific Exchange rules deemed to be minor in nature.

Options Floor Rule Violations

The Exchange is proposing to add the following Options Floor Decorum and Minor Trading Rule Violations to the MRP: (1) Failure to obtain Exchange approval for Member or Member Firm electronic devices or systems used for trading purposes on the Exchange Floor (with recommended fines of $250, $750 and $1,500 for first, second and third violations);[3] (2) Failure to answer a Trading Crowd/LMM Questionnaire as required (Option Floor Procedure Advices (''OFPA'') B–13(c)) (with recommended fines of $250, $500 and $750 for first, second and third violations); (3) Violations of rules on visitors to the Options Floor (Rule 6.2(a) and OFPA F–2) (with recommended fines of $250, $500 and $1,000 for first, second and third violations); and (4) Misuse of Member badge or Member Firm identification (OFPA F–1) (with recommended fines of $250, $500 and $1,000 for first, second and third violations).

The Exchange is also proposing to increase the recommended fines for the following rule violations, which are already included in the MRP: (1) increases for second and third violations of Rule 6.35, Commentary .03 (Failure to meet 75% Primary Appointment Zone Requirement) from $750 and $1,250 to $1,000 and $2,500; and (2) increases for second and third violations of Rule 6.37, Commentary .07 (Failure to meet 60% In-Person Trading Requirement) from $750 and $1,250 to $1,000 and $2,500.

Equity Floor Rule Violations

The Exchange is proposing to add the following Equity Floor Decorum and Minor Trading Rule Violation to the MRP: Failure to Clear the Post Properly (Rules 5.16 and Equity Floor Procedure Advice (''EFPA'') 1–B) (with an Official Warning and fines of $250 and $500 for first, second and third violations).

The Exchange is also proposing to increase the recommended fines for the following rule violations, which are already included in the MRP: (1) increases for first and second violations of the rule on Equity Floor Decorum (EFPA 1–A) from $25 and $100 to $100 and $250; (2) increases for second and third violations of the rule on Conduct of Members on the Equity Floor (EFPA 1–B and Rules 5.1(g) and 5.1(h)) from $100 and $250 to $250 and $500; (3) increases for second and third violations of the rule on Conduct of Guests (EFPA 1–B) from $50 and $100 to $250 and $500; (4) increases for second and third violations of the rule on Proper Reporting of Transactions Executed at the Exchange (EFPA 2–C and Rules 5.12 and 5.13) from $25 and $50 to $250 and $500; and (5) increases for first, second and third violations of the rule on Staffing at the Specialist Post (prior to the opening) (Rule 5.28 (c)–(d)) from $25, $50 and $100 to $100, $250 and $500.

Other Minor Rule Violations

The Exchange is proposing to increase the recommended fines for violations of the following rules, which are already included in the MRP: (1) increases for first, second and third violations of the rule on submitting trade data to the Exchange in a timely manner (Rule 10.2(c)) from $100, $200 and $500 to $250, $500 and $750); (2) increases for first, second and third violations of the rule on furnishing in a timely manner books, records or other requested information or testimony in connection with an examination of financial responsibility and/or operational conditions (Rule 2.12(c)) from $100, $250 and $500 to $250, $500 and $750; (3) increases for first, second and third violations of the rule on notifying the Exchange of a change of address where notices may be served (Rule 1.13) from $100, $250 and $500 to $250, $500 and $750; (4) increases for first, second and third violations of the rule on filing financial reports or financial information in the type, form, manner and time prescribed by the Exchange (Rule 2.12(a)) from $100, $250 and $500 to $250, $500 and $750; and (5) increases for first, second and third violations of the rule on delaying, impeding or failing to cooperate in an Exchange investigation (Rule 10.2(b)) from $100, $250 and $500 to $500, $1,000 and $2,000.

Other Related Rule Changes

The Exchange is proposing to add violations of EFPA 1–C(i) (Admission of Members to the Equity Floor) to those rules for which a summary sanction may be imposed pursuant to Rule 10.14(a).[4]

[2] Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (order approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). The PSE's MRP was approved by the Commission in 1985. *See* Securities Exchange Act Release No. 22654 (November 21, 1985), 50 FR 48853 (November 27, 1985) (order approving File No. SR–PSE–85–24). In 1993, the Exchange amended its MRP and adopted detailed procedures relating to the adjudication of minor rule violations. *See* Securities Exchange Act Release No. 32510 (June 24, 1993), 58 FR 35491 (July 1, 1993). Thereafter, the Exchange has modified its MRP several times. *See* Securities Exchange Act Release Nos. 34322 (July 6, 1994), 59 FR 35958 (July 14, 1994); 35144 (December 23, 1994), 59 FR 67743 (December 30, 1994); and 36622 (December 21, 1995), 60 FR 67384 (December 29, 1995). The Exchange currently has pending before the Commission a proposal to provide PSE staff with the authority to make findings of rule violations and to impose fines for violations of rules contained in the Exchange's MRP. *See* Securities Exchange Act Release No. 37592 (August 21, 1996), 61 FR 45468 (August 29, 1996) (File No. SR–PSE–96–26). *See also* Securities Exchange Act Release No. 37799 (October 9, 1996) (File No. SR–PSE–96–30).

[3] *Cf.* Amex Rule 590(h)(14). The PSE has informed the Commission that misuse of electronic devices by Exchange members, which was previously covered by Rule 10.13(h)(12), will be covered by the new rule violation added to the MRP under Rule 10.13(h)(13), ''Failure to obtain Exchange approval for Member or Member Firm electronic devices or systems used for trading purposes on the Exchange floor.'' The new Rule cover misuses of devices because, pursuant to the Rule, the Exchange grants approval for classes of uses of such devices or systems for member use and provides members with notice of the approved uses of such devices or systems, rendering any other uses not approved as unauthorized ones. Telephone conversation between Michael Pierson, Senior Attorney, PSE, and Heather Seidel, Attorney, SEC, dated October 28, 1996.

[4] The Exchange may summarily sanction a member, member organization or person associated with a member organization, in lieu of commencing a ''disciplinary action'' (as that term is used in Rule 10.3), provided that the procedures set forth in Rule 10.14(a) are followed.

The Exchange is also proposing to amend EFPAs 1–A, 1–B, 2–C and 3–A to conform with the proposed changes in recommended fine levels, and to eliminate references in the EFPAs to ''4th,'' ''5th,'' and ''Subsequent'' offenses.

In addition, the Exchange is proposing to remove the provision in EFPA 1–B that prohibits consumption of food and drink on the Los Angeles Trading Floor, and to remove the related provision from the MRP.

Finally, the Exchange is proposing to add its Recommended Fine Schedule to the text of the MRP. Accordingly, the Exchange is proposing to remove a provision from Rule 10.13(f) that requires the Exchange to maintain this Schedule and to circulate it to the Exchange's Membership periodically.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[5] in general, and Sections 6(b)(5) and 6(b)(7) of the Act, in particular, in that it is designed to promote just and equitable principles of trade and to assure that members, member organizations, and persons associated with members and member organizations are appropriately disciplined for violations of Exchange rules.

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.

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

This proposed rule change has been filed by the Exchange as a ''noncontroversial'' rule change pursuant to paragraph (e)(6) of Rule 19b–4.[6] Consequently, the rule change shall become operative 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (e)(6) of Rule 19b–4 thereunder.

One of the changes that the PSE has proposed it to amend EFPAs 1–A, 1–B, 2–C, and 3–A to eliminate references to ''4th'', ''5th,'' and ''subsequent'' offenses. The Commission believes that this amendment does not subsequently change the Exchange's flexibility with regard to discipline for 4th, 5th and subsequent violations of the MRP; the Exchange may still impose a fine or bring a formal disciplinary action for violation of a rule included in the MRP.

The Commission notes that the PSE still has general authority, subject to the requirements in Rule 10.13, to impose a fine, not to exceed $5000, on any member, member organization, or person associated with a member or member organization, for violation of an Exchange rule that is included in the MRP.[8] In addition, Exchange Rule 10.3 provides the PSE with the authority to bring formal disciplinary action for a violation of a rule included in the MRP.[9]

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–39 and should be submitted by December 4, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–29039 Filed 11–12–96; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b).

[6] 17 CFR 240.19b–4(e)(6).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] Exchange Rule 10.13(a).

[9] *See* Exchange Rule 10.3.

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2907]

Florida (and Contiguous Counties in Georgia); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 15, 1996, I find that the Counties of Baker, Citrus, Clay, Dixie, Duval, Hernando, Hillsborough, Levy, Manatee, Nassau, Pasco, Pinellas, Putnam, Sarasota, Taylor and Volusia in the State of Florida constitute a disaster area due to damages caused by storm surge, heavy rains, flooding and wind damage associated with Tropical Storm Josephine which occurred October 7, 1996 and continuing. Applications for loans for physical damages may be filed until the close of business on December 14, 1996, and for loans for economic injury until the close of business on July 15, 1997 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Alachua, Bradford, Brevard, Charlotte, Columbia, De Soto, Flagler, Gilcrest, Hardee, Jefferson, Lafayette, Lake, Madison, Marion, Polk, Seminole, St. Johns, Sumter, and Union Counties in Florida, and Camden, Charlton, Clinch, and Ware Counties in Georgia.

Interest rates are:

For Physical Damage:	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125

For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 290708. For economic injury the numbers are 922200 for Florida and 922300 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 4, 1996.

James Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 96–28960 Filed 11–12–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2909]

Commonwealth of Massachusetts (and Contiguous Counties in New Hampshire and Rhode Island); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 25, 1996, I find that the Counties of Essex, Middlesex, Norfolk, Plymouth, and Suffolk in the Commonwealth of Massachusetts constitute a disaster area due to damages caused by extreme weather conditions and flooding which occurred on October 20, 1996 and continuing. Applications for loans for physical damages may be filed until the close of business on December 24, 1996, and for loans for economic injury until the close of business on July 25, 1997 at the address listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Barnstable, Bristol, and Worcester Counties in Massachusetts; Hillsborough and Rockingham Counties in New Hampshire; and Providence County in Rhode Island.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 290906. For economic injury the numbers are 924200 for Massachusetts, 924300 for New Hampshire, and 924400 for Rhode Island.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 4, 1996.

James Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 96–28959 Filed 11–12–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2911]

New Hampshire; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 29, 1996, I find that the Counties of Hillsborough, Rockingham and Strafford in the State of New Hampshire constitute a disaster area due to damages caused by a fall northeaster rainstorm which occurred October 20–23, 1996. Applications for loans for physical damages may be filed until the close of business on December 28, 1996, and for loans for economic injury until the close of business on July 29, 1997 at the address listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Belknap, Cheshire, Merrimack, and Sullivan Counties in New Hampshire. Any counties contiguous to the above-named counties and not listed herein have been previously declared.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 291111 and for economic injury the number is 924800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 6, 1996.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 96–29019 Filed 11–12–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements

AGENCY: Bureau of Transportation Statistics (BTS).

ACTION: Notice.

SUMMARY: The Bureau of Transportation Statistics (BTS), announces a new information collection request in accordance with the Paperwork Reduction Act of 1995, and invites comments on ''Customer Satisfaction Surveys'' for which the BTS intends to request approval from the Office of Management and Budget.

DATES: Interested parties are invited to submit comments on or before February 15, 1997.

ADDRESSES: Please address written comments to Susan J. Lapham, 400 Seventh Street, SW, Room 3430, Washington, DC 20590, telephone number 202/366–9913. Requests for a copy of the information collection should be directed to Susan J. Lapham, 400 Seventh Street, SW, Room 3430, Washington, DC 20590, telephone number 202/366–9913.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies a collection that BTS is submitting to OMB for processing clearance.

Title: Customer Satisfaction Survey.

Affected Entities: Transportation statistics industry and the general public.

Abstract: Customer satisfaction surveys are required by Executive Order 12862, Setting Customer Service Standards, to ensure that the BTS provides the highest quality service to our customers. Steps will be taken to assure anonymity of respondents in each activity covered under this request.

Need for information: Executive Order 12862, Setting Customer Service Standards, directs BTS to conduct surveys to determine the kind and quality of services the transportation statistics industry and general public wants and expects.

Proposed Use of Information: This information will be used by the Bureau of Transportation Statistics to improve service delivery and determine whether additional services are needed.

Burden Statement: The current total annual respondent burden estimate is 1,273 hours. The average burden hour per response varies with each survey.

Issued in Washington, DC on November 6, 1996.

T.R. Lakshmanan,

Director, Bureau of Transportation Statistics.

[FR Doc. 96–28936 Filed 11–12–96; 8:45 am]

BILLING CODE 4910–FE–P

Federal Aviation Administration

[Docket No. 28730]

Issues Related to Availability and Accessibility of Aviation Safety Data

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of issue paper and request for comments.

SUMMARY: The FAA, in response to a request from Senators Wyden and Ford, has undertaken an effort to determine the best means of providing aviation safety information to the public while ensuring the integrity of the aviation safety system. The Senators asked the FAA to work with the aviation community, and others, to recommend the best means to educate the public and to make available to them information about commercial aviation safety. At FAA's request, GRA Inc. has prepared a paper entitled, ''A Review of Issues Related to Availability and Accessibility of Aviation Safety Data.'' This paper has not been approved by, and does not necessarily represent the views of, the FAA. The paper is intended to serve as a starting point for discussion, not as a statement of what should be done. This notice describes how the paper can be obtained and how comments may be provided.

DATES: Comments must be received on or before December 3, 1996.

ADDRESSES: Send or deliver comments in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28730, 800 Independence Ave., SW., Washington, DC 20591. Comments must be marked Docket No. 28730. Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28730.'' The postcard will be date stamped and mailed to the commenter. All comments submitted will be available for examination (both before and after the closing date for comments) in the FAA Rules Docket, at the above address, room 915G, on weekdays, except on Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Copies of the paper, and other information can be obtained by written, telephone, or fax request, or in person, from Mr. Dave Balderston, Program Analyst, System Safety Plans Division, Office of System Safety (ASY–300), Room 726, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone 202–267–7663 (voice), 202–267–5234 (fax). The paper, ''A Review of Issues Related to Availability and Accessibility of Aviation Safety Data,'' can be downloaded at the following Internet location: http://nasdac.faa.gov/safety__info__study/.

SUPPLEMENTARY INFORMATION:

Background

GRA Inc. has prepared a paper entitled ''A Review of Issues Related to Availability and Accessibility of Safety Data'' which reviews aviation safety data and measurement issues. In addition, the paper examines the more general subject of risk communication and how some non-aviation organizations approach issues related to informing the public. The purpose of the paper is to elicit input from FAA, the aviation industry, consumer groups, and other interested parties on this subject. As such, the paper makes no recommendations *per se*; rather, it identifies options that may be available to FAA and others regarding the dissemination of aviation safety information.

The paper is organized as a discussion of the following topics:

Safety Data

Accident and Incident Data
Inspection and Surveillance Data
Exposure Data

Analysis and Interpretation of Safety Data

Recent Research
Value of Safety Information to FAA
Value of Safety Information to Consumers
Conflicts Between FAA and Consumer Uses

Availability and Accessibility of Safety Data

Accident, Incident, and Exposure Data
Inspection and Surveillance Data

Experience of Other Federal Agencies

The FDIC and Measures of the Financial Strengths of Banks
NHTSA and Automobile Safety
The NRC and Nuclear Power

Public Access to Safety Information

Comments Invited

Interested parties are invited to submit such written data, views, or arguments as they may desire. Comments that address the following issues will be most helpful to the FAA concerning the public availability of safety information:

—What information is now publicly available concerning aviation safety?

—How accessible and timely is the aviation safety information that is currently available?
—What public needs for aviation safety information are not now being met?
—How could the availability and accessibility of safety information to the public be increased?
—To what extent would these increases in the availability and accessibility of safety information satisfy unmet public needs, and what are the other pros and cons of these increases?

Communications should identify the document number and be submitted to the address listed above. Comments should not be sent or directed to GRA Inc. All comments received on or before the closing date for comments will be considered.

Issued in Washington, D.C. on November 7, 1996.

Barry P. Bermingham,

Deputy Assistant Administrator for System Safety.

[FR Doc. 96–29067 Filed 11–12–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–53]

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.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 3, 1996.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 7, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28684.
Petitioner: COMAIR, Inc.
Sections of the FAR Affected: 14 CFR 121.163(b).
Description of Relief Sought: To permit COMAIR to conduct 10 hours of validation flights during revenue service in its Embraer EMB–120, in lieu of the 50 hours of proving tests required in that type of aircraft. The validation flights would be conducted on routes selected by the Federal Aviation Administration (FAA).

Docket No.: 28706.
Petitioner: Saperston & Day, P.C.
Sections of the FAR Affected: 14 CFR 91.315.
Description of Relief Sought: To permit the National Warplane Museum to carry passengers on local flights in its limited category Boeing B–17 aircraft in support of its fundraising activities.

[FR Doc. 96–29069 Filed 11–12–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–54]

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 December 3, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 28720, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 7, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28720.
Petitioner: Boeing Commercial Airplane Group.
Sections of the FAR Affected: 14 CFR 25.785(b) and 25.562.
Description of Relief Sought: To permit a stowable hospital berth installation, for non-ambulatory persons, be exempt from compliance with all dynamic testing and personal injury requirements defined in the preceding affected sections, for the

Boeing Model 777–200 and –300 airplanes.

[FR Doc. 96–29070 Filed 11–12–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board

[STB Finance Docket No. 33265]

Morris Leasing Co., Ltd. and Michigan Southern Railroad, Inc.—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation

Morris Leasing Co., Ltd. (Morris Leasing) and Michigan Southern Railroad, Inc. (Michigan Southern), Class III rail carriers, have filed a notice of exemption under 49 CFR 1150.41 to acquire and operate 10.9 miles of rail lines of Consolidated Rail Corporation: (1) between milepost No. 119.0 and milepost No. 120.1, at or near Kendallville, Noble County, IN, (a portion of the GR&I Industrial Track); and (2) between milepost No. 0.0 and milepost No. 9.8, at or near Elkhart, Elkhart and St. Joseph Counties, IN, (a portion of the E&W Secondary Track). Michigan Southern will be the operator of the lines.

The transaction was expected to be consummated on November 1, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33265, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on: Thomas F. McFarland, Jr., Esq., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902. Telephone: (312) 236–0204.

Decided: November 5, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–29016 Filed 11–12–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

1997 Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held at Federal Reserve Banks

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing the schedule of fees to be charged in 1997 on the transfer of book-entry Treasury securities between depository institution accounts maintained at Federal Reserve Banks and Branches, as well as transfers to and from Federal Reserve Bank accounts.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Carl M. Locken, Jr., Assistant Commissioner (Financing), Bureau of the Public Debt, Room 534, E St. Building, Washington, D.C. 20239–0001, telephone (202) 219–3350.

Diane M. Polowczuk, Government Securities Specialist, Bureau of the Public Debt, Room 534, E St. Building, Washington, D.C. 20239–0001, telephone (202) 219–3350.

SUPPLEMENTARY INFORMATION: On October 1, 1985, the Department of the Treasury established a fee schedule for the transfer of Treasury book-entry securities between one book-entry account to another book-entry account of the same depository institution, and between the accounts of one depository institution and the accounts of another depository institution that maintain their accounts at Federal Reserve Banks and Branches. This fee schedule also applies to the book-entry transfer of securities between depository institution accounts and Federal Reserve Bank accounts.

Based on the latest review of book-entry costs and volumes, the Treasury has decided that the fees for securities transfers in 1997 should remain unchanged from the levels currently in effect.

The fees described in this notice apply only to the transfer of Treasury book-entry securities. The Federal Reserve System assesses the fees to recover the costs associated with the processing of the funds component of Treasury book-entry transfer messages, as well as the costs of providing book-entry services for Government agencies. Information concerning book-entry transfers of government agency securities, which are priced by the Federal Reserve System, is set out in a separate notice published by the Board of Governors of the Federal Reserve System.

The following is the Treasury fee schedule that will be effective January 1, 1997, for the Treasury book-entry transfer service:

1997 FEE SCHEDULE

	Cost per transfer
On-line transfers originated	$1.65
On-line reversal transfers received	1.65
Off-line transfers originated	9.40
Off-line transfers received	9.40
Off-line reversal transfers received	9.40

Dated: November 6, 1996.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 96–29072 Filed 11–12–96; 8:45 am]

BILLING CODE 4810–35–P

Internal Revenue Service

Proposed Collection; Comment Request for Form 4810

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4810, Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

DATES: Written comments should be received on or before January 13, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

OMB Number: 1545–0430.

Form Number: Form 4810.

Abstract: Fiduciaries representing a dissolving corporation or a decedent's estate may request a prompt assessment of tax under Internal Revenue Code section 6501(d). Form 4810 is used to help locate the return and expedite the processing of the taxpayer's request.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, farms, and the Federal Government.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 6, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–29056 Filed 11–12–96; 8:45 am]

BILLING CODE 4830–01–P

[EE–147–87]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–147–87 (TD 8376), Qualified Separate Lines of Business (§§ 1.414(r)–3, 1.414(r)–4, and 1.414(r)–6).

DATES: Written comments should be received on or before January 13, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Separate Lines of Business.

OMB Number: 1545–1221.

Regulation Project Number: EE–147–87 (Final).

Abstract: Section 414(r) of the Internal Revenue Code requires that employers who wish to test their qualified retirement plans on a separate line of business basis, rather than on a controlled group basis, provide notice to the IRS that the employer treats itself as operating qualified separate lines of business. Additionally, an employer may request an IRS determination that such lines satisfy administrative scrutiny. This regulation elaborates on the notice requirement and the determination process.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 743.

Estimated Time Per Respondent: 3 hours, 55 minutes.

Estimated Total Annual Burden Hours: 2,907.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 6, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–29057 Filed 11–12–96; 8:45 am]

BILLING CODE 4830–01–P

Office of Thrift Supervision

[AC–51; OTS No. 3507]

Advance Financial Savings Bank, f.s.b., Wellsburg, WV; Approval of Conversion Application

Notice is hereby given that on November 5, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority,

approved the application of Advance Financial Savings Bank, f.s.b., Wellsburg, West Virginia, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 6, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–28942 Filed 11–12–96; 8:45 am]

BILLING CODE 6720–01–M

[AC–50; OTS No. 0756]

Empire Federal Savings and Loan Association of Livingston, Livingston, Montana; Approval of Conversion Application

Notice is hereby given that on October 30, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Empire Federal Savings and Loan Association of Livingston, Livingston, Montana, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the West Regional Office of Thrift Supervision, 1 Montgomery Street, Suite 400, San Francisco, California 94104.

Dated: November 6, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–28941 Filed 11–12–96; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register
Vol. 61, No. 220
Wednesday, November 13, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 271, 272, and 273

[Amendment No. 375]

RIN 0584–AB76

Correction

In rule document 96–26072, beginning on page 54270, in the issue of Thursday, October 17, 1996, make the following corrections:

1. On page 54278, in the third column, under Implementation, in the first paragraph, in the ninth line, ''June 30'' should read ''March 1''.

§ 272.1 [Corrected]

2. On page 54279, in the second column, in § 272.1(g)(151), in the eighth and in the last line from the bottom, ''June 30, 1997'' should read ''March 1, 1997''.

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AB41

Sale and Disposal of National Forest Timber; Indices To Determine Market-Related Contract Term Additions

Correction

In proposed rule document 96–26755, beginning on page 54589, in the issue of Monday, October 21, 1996, make the following correction:

On page 54589, in the third column, in the Dates: section, ''November 20, 1996'' should read ''January 21, 1977''.

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Programmatic Environmental Impact Statement: Destruction of Non-Stockpile Chemical Warfare Materiel Containing Chemical Agent

Correction

In notice document 96–26343 beginning on page 54421 in the issue of Friday, October 18, 1996, make the following corrections:

1. On page 54421, in the 2d column, in the **SUMMARY**, in the 2d paragraph, in the 19th line, after ''(NSCM)'' remove all text down through ''CWM'' in the fourth line from the bottom of the third column.

2. On page 54423, in Table 1, the following entries should appear as set forth below:

TABLE 1.—LOCATIONS WITH KNOWN OR POSSIBLE BURIED CHEMICAL WARFARE MATERIEL[1]

* * * * *

Indiana:
Camp Atterbury
Naval Surface Warfare Center, Crane Division
Newport Chemical Activity

* * * * *

New Jersey:
Fort Hancock
Naval Air Warfare Center, Lakehurst
Raritan Arsenal

* * * * *

[1] Based on a U.S. Army Non-Stockpile Chemical Materiel Program Survey and Analysis Report, November 1993 updated data base which is unpublished.

3. On the same page, in Table 2, the following entries should appear as set forth below:

TABLE 2.—LOCATIONS WITH RECOVERED CHEMICAL WARFARE MATERIEL AND RESEARCH, DEMONSTRATION, TESTING, AND EVALUATION MATERIEL[1]

* * * * *

Colorado:
Pueblo Army Activity
Rocky Mountain Arsenal
Johnston Island

TABLE 2.—LOCATIONS WITH RECOVERED CHEMICAL WARFARE MATERIEL AND RESEARCH, DEMONSTRATION, TESTING, AND EVALUATION MATERIEL[1]—Continued

* * * * *

[1] Based on a U.S. Army Non-Stockpile Chemical Materiel Program Survey and Analysis Report, November 1993 updated data base which is unpublished.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 58–1–7131–a; FRL–5634–4]

Arizona Redesignation of the Yavapai-Apache Reservation to a PDS Class I Area

Correction

In rule document 96–27849, beginning on page 56461, in the issue of Friday, November 1, 1996, make the following correction:

§ 52.150 [Corrected]

On page 56470, in the first column, under Subpart D, ''§ 150'' should read ''§ 52.150''.

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of Tank Weapon Technology

AGENCY: Picatinny Arsenal, New Jersey, DOA, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive Licenses under the patents, patent applications, and other technology as shown on the attached list. Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Goldberg, Chief, Intellectual Property Law Division, AMSTA–AR–GCL, U.S. Army ARDEC, Picatinny Arsenal, NJ 07806–5000, telephone number (201) 724–6950.

SUPPLEMENTARY INFORMATION: Written objections must be filed within 3 months from the date of publication of this notice in the Federal Register.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–28994 Filed 11–12–96; 8:45 am]

BILLING CODE 3710–08–M

federal register

Wednesday
November 13, 1996

Part II

Environmental Protection Agency

40 CFR Part 69

Final Conditional Special Exemption From Clean Air Act Requirements for the Territory of American Samoa, the Commonwealth of the Northern Mariana Islands, and the Territory of Guam; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[AD-FRL–5645–1]

Final Conditional Special Exemption From Requirements of the Clean Air Act for the Territory of American Samoa, the Commonwealth of the Northern Mariana Islands, and the Territory of Guam

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating a direct final rule conditionally exempting the Territory of American Samoa (American Samoa), the Commonwealth of the Northern Mariana Islands (CNMI), and the Territory of Guam (Guam), as well as certain owners and operators of sources in American Samoa, CNMI and Guam from the requirements of title V of the Clean Air Act (Act). EPA is revising its September 13, 1995 proposed rule with respect to Guam. In the proposed action, EPA granted American Samoa and CNMI, as well as owners and operators of certain sources within those territories, a conditional exemption from title V requirements. In the proposal, EPA also granted Guam an extension of time in which to adopt a title V permit program and owners or operators of certain sources an extension of time in which to obtain title V permits. EPA has revised the proposal and today is promulgating a direct final rule that maintains the conditional exemptions granted to American Samoa and CNMI and also conditionally exempts Guam from title V of the Clean Air Act. EPA is granting these conditional exemptions under the authority of section 325 of the Act.

DATES: The direct final rule for American Samoa, CNMI, and Guam is effective on January 13, 1997 unless adverse or critical comments are received by December 13, 1996. If the effective date is delayed, EPA will publish a timely notice in the Federal Register.

ADDRESSES: Copies of the petitions, the response to comments document, and other supporting information used in developing the final special exemption are available for inspection during normal business hours at the following location: Office of Pacific Islands and Native American Programs, US EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Norm Lovelace (telephone 415/744–1599, fax 415/744–1604), Chief, Office of Pacific Islands and Native American Programs, or Sara Bartholomew (telephone 415/744–1250, fax 415/744–1076), Operating Permits Section, Air and Toxics Division, at the EPA-Region IX address listed above.

I. Background

Section 325(a) of the Act authorizes the Administrator of EPA, upon petition by the Governor, to exempt any person or source or class of persons in Guam, American Samoa, and CNMI from any requirement of the Act except for requirements of Section 110 and Part D of subchapter I of the Act (where necessary to attain and maintain the National Ambient Air Quality Standards (NAAQS), and Section 112. Such exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.

The Governors of American Samoa, CNMI, and Guam each submitted a petition pursuant to section 325(a) of the Act for an exemption from title V of the Act. Title V requires states, including American Samoa, CNMI, and Guam, to adopt and submit to EPA a title V operating permit program for major sources and certain other stationary sources. If any state does not adopt an operating permit program, title V requires EPA to apply certain sanctions within that area and to promulgate, administer, and enforce a federal operating permit program for such area. EPA proposed regulations to implement a federal operating permit program on April 27, 1995 (60 FR 20804) and promulgated the final rule on July 1, 1996, at 40 CFR part 71 (61 FR 34202) (part 71). Title V also requires that sources located in states that do not adopt a title V permitting program obtain a federal operating permit from the EPA.

On September 13, 1995, EPA issued a proposed rule (60 FR 47515) (the proposal) in response to petitions from the Governors of American Samoa, Guam and CNMI. In the proposal, EPA granted the government of Guam a three-year extension of the deadlines for submitting a title V program and also proposed granting certain sources on Guam a similar three-year extension of time in which to obtain title V permits. After the proposal, Guam submitted comments requesting an exemption and committed to achieving several of the goals of title V by developing an alternate operating permit program. EPA is now granting the government of Guam an exemption from the requirement to adopt a title V program on the condition that Guam adopt and implement a local alternate operating permit program.

In the proposal, EPA also proposed granting American Samoa and CNMI exemptions from the requirement to implement a title V permit program and proposed granting owners or operators of certain sources subject to title V a similar exemption from the requirement to apply for a title V permit. Today's direct final rule exempts both American Samoa and CNMI from the requirement to adopt a title V program on the condition that American Samoa and CNMI adopt and implement programs to permit stationary sources and programs to protect the NAAQS. The programs to protect the NAAQS are described in the proposal and the petitions.

EPA is also granting owners or operators of certain sources on American Samoa, CNMI, and Guam a conditional exemption from the requirement to apply for a federal title V operating permit under part 71. This rulemaking does not waive part 71 permitting requirements for owners or operators of solid waste incinerators required to obtain a title V operating permit under section 129(e) of the Act or of major sources under Section 112 of the Act required to obtain title V permits. This rulemaking also does not waive or exempt the governments of Guam, American Samoa, or CNMI, or owners or operators of sources located in these territories, from complying with all other applicable Clean Air Act provisions.

EPA is promulgating this action as a direct final rule because the Agency views this as a noncontroversial action and anticipates no adverse comments. In fact, the public comments received to date support granting an exemption from title V requirements. In the Proposed Rules Section of this Federal Register, however, EPA has also published a proposal that allows the public 30 days to comment on the direct final rule for American Samoa, CNMI, and Guam. If adverse comments are received during the comment period, EPA will publish a subsequent document in the Federal Register before the effective date of the exemption and will withdraw the direct final rule for any territory for which adverse comments are received. All public comments received will then be addressed by the Agency in a subsequent final rule based on this action serving as a proposed rule. The

EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 13, 1997.

II. Final Action and Implications

A. Conditional Approval of Guam's Exemption Request

1. Guam's Commitment Letter

The Administrator of the Guam Environmental Protection Agency (GEPA) sent a letter to EPA on December 18, 1995. The GEPA Administrator committed to develop and implement an alternate air operating permit program that addresses many of the elements of a title V program in exchange for an exemption from title V. GEPA's commitment letter states that Guam would develop an alternate operating permit program that would: (1) permit all major sources; (2) incorporate all applicable federal requirements in permit conditions; (3) incorporate monitoring, recordkeeping and reporting requirements in permit conditions; (4) allow for public review and comment; (5) enhance enforcement authorities, including civil and criminal penalties; (6) identify the resources necessary to maintain an alternate program; (7) permit existing major sources within three years; (8) conduct regular inspections of permitted sources; and (9) coordinate the local program with EPA air programs.

EPA continues to believe that implementation of title V would enhance air quality by ensuring that a comprehensive and effective permitting program is implemented. However, in light of GEPA's new commitment to develop an alternate operating permit program that encourages compliance and allows public participation, EPA is allowing Guam the opportunity to demonstrate that the proposed alternative operating permit program can meet title V's goals. EPA is promulgating an exemption for Guam from the requirement to develop a title V permitting program on the condition that Guam adopt and implement the alternate operating permit program.

2. Additional Comments

EPA received similar comments from four other commenters supporting the Governor's petition for an exemption for Guam. Two commenters objected to EPA's proposed requirement that Guam implement title V within three years and requested that EPA grant an exemption from the requirement to develop a title V permit program instead. They commented that the costs of the title V program would be an economic burden and would require that GEPA develop additional technical resources. They also stated that thirty local businesses would be required to pay $10,000 per year for the program.

EPA believes that the alternate program addresses concerns over the program's costs by allowing Guam flexibility to develop a less expensive program based on local priorities. The alternate air operating permit program requires that Guam improve its air program and obtain additional technical resources, but allows Guam flexibility to reduce costs and address local needs. In addition, most of the local businesses cited in the comments, including several with no emissions, would not have been required to obtain a title V permit because they are not major sources.

Two of the commenters also stated that air quality is pristine because Guam is an isolated island and that title V will not improve air quality. Guam has a significant number of major sources of criteria pollutants and hazardous air pollutants. While Guam is unlikely to suffer from or contribute to regional air pollution problems due to its isolation, these major sources can contribute to localized air pollution problems. EPA believes that a comprehensive permitting program, such as title V, will help ensure that local air quality is not degraded by improving compliance with applicable Clean Air Act requirements. However, EPA is granting Guam flexibility to demonstrate that a local alternate operating permit program would adequately protect air quality under Guam's unique local circumstances.

Two of the commenters also stated that the title V permit program is excessively intrusive to Guam's government because it requires that Guam Power Authority, which is operated by Guam's government, obtain title V permits and pay title V fees. EPA notes, however, that the Clean Air Act requires that sources controlled by governments meet the same air quality standards as other sources. Therefore, sources controlled by Guam's government or the U.S. government must obtain an operating permit under the alternate operating permit program.

Please see the response to comments document in the docket for more details on the comments that were submitted and EPA's responses.

B. Final Conditions for the Alternate Operating Permit Programs for American Samoa, CNMI, and Guam

The final requirements for each alternate operating permit program address deficiencies in existing programs and generally reflect commitments made by the petitioners. The conditions for Guam's operating permit program are similar to the conditions set forth in the proposal for the alternate operating permit programs for American Samoa and CNMI. American Samoa and CNMI will also implement programs to monitor compliance with the NAAQS and reduce emissions as necessary. Guam is not required to implement new programs to protect ambient air quality standards if granted a title V exemption, because a previous waiver for Guam (see 40 CFR 69.11) imposed similar requirements. The final conditions also include express terms clarifying that the alternate program must require compliance certifications, include a system of regular inspections, and provide that fees collected under the program are not used for other purposes. The provisions clarify that the permits must be renewed periodically. In addition, the final rule explicitly sets forth EPA's opportunity to review permits, which was previously included in the proposed conditions by reference to EPA's general June 28, 1989 permit program guidelines. In order to address EPA's concern that all owner or operators of sources subject to title V permitting requirements eventually obtain an operating permit, the exemptions for each territory provide instances in which the exemption will expire by a certain date. First, the exemption will expire two (2) years after the effective date of this rule if a territory has not submitted an alternate operating permit program to EPA by that time. Second, the exemption for owners or operators of sources subject to title V requirements will expire six (6) years after the effective date of this rule for any source subject to title V permitting requirements that has not obtained a permit under an EPA approved alternate permit program. If the exemption expires, the requirements of part 71 apply. The exemptions for each territory also include conditions when EPA will revoke the exemption in its entirety or on a source specific basis. The exemptions for American Samoa and CNMI have been revised to include these clarifications and additions. Without these ''checks'' to ensure that sources will eventually be permitted through an adequate air operating permit program, EPA does not believe

that it could allow the exemption from the title V requirements that it is granting today.

1. Inspections

Guam's conditional exemption requires that Guam implement a system of regular inspections of permitted sources and a system to identify any unpermitted major sources. 40 CFR Part 70 requires that states adequately inspect and monitor sources (70.10(c)(iii)), and EPA believes that the inspections required under title V are also essential for the success of the alternate operating permit programs. Guam does not currently have a program for routinely inspecting air pollution sources, but GEPA committed to implement a system of regular inspections as part of the alternate operating permit program in its December 18, 1995 letter. EPA understands this commitment to mean that Guam will provide adequate inspector staff and training and develop appropriate internal procedures to inspect all permitted sources. EPA also expects that Guam will develop appropriate guidelines for responding to violations that are discovered. EPA will assist Guam by providing guidance and manuals for inspecting permitted sources.

EPA is modifying the conditions set forth in the proposal for American Samoa and CNMI to explicitly require that these territories also implement a system of regular inspections. EPA believes that inspections will be equally important for these air quality programs, and the proposal for American Samoa and CNMI implicitly required inspections and appropriate responses to violations to ensure compliance with all applicable requirements. After considering Guam's comments and the need for inspections on Guam, EPA has decided to include this requirement as an explicit provision of each waiver.

2. Compliance Certifications

EPA is requiring that Guam's alternate operating permit program require sources to submit compliance certifications and compliance plans to address noncompliance. The program shall also require that sources submit, as part of the compliance plan, a schedule to expeditiously remedy any noncompliance or achieve compliance with promulgated regulations that have a future compliance date. The Governor of Guam and R.W. Beck stated that the compliance benefits of title V will be achieved without implementing the compliance requirements of title V. They cited an environmental audit conducted by the Guam Power Authority (GPA) after an EPA enforcement action and claimed that ''[t]here is no environmental benefit to be gained from a repeat of the same exercise.''

EPA believes that a one-time confidential audit cannot achieve the same compliance benefits as a comprehensive and ongoing permitting program like title V. Title V improves air quality by requiring that sources identify their emissions, all applicable requirements, and their compliance status with each such requirement. Furthermore, permit holders agree to remedy any noncompliance through a compliance schedule, continue to meet applicable Clean Air Act obligations in the future, and inform the public of their compliance status. (40 CFR 70.5(c)(8) and (9), 70.5(d), and 70.6(c)). State implementation of title V programs has already created numerous examples of the program's value in identifying ongoing compliance problems and prompting action to resolve these problems. EPA is clarifying that the alternate local programs must require that sources submit initial compliance certifications and plans with permit applications and regular compliance certifications at least annually thereafter to provide air quality benefits and protect the public's right to know of any Clean Air Act violations.

EPA is modifying the conditions set forth in the proposal for American Samoa and CNMI to explicitly require compliance certifications, plans, and schedules for the same reasons. The proposal required that permits be enforceable and that they provide for monitoring, recordkeeping, and reporting that would assure compliance with applicable requirements. EPA believes that the conditions set forth in the proposal would require that sources report and correct violations to assure compliance with applicable requirements. However, Guam's comment shows that explicit guidance is necessary to clarify this requirement and ensure that compliance certifications, plans, and schedules are submitted and that violations are corrected. EPA will provide examples of approved compliance certifications so that the petitioners may use them as models for the alternate operating permit programs.

3. Resources

EPA is requiring that the petitioners develop appropriate mechanisms to provide adequate funding for the local alternate air permit programs. Most states have created a special fund to ensure that title V operating permit programs are adequately funded and that permit program funding is used solely for the permit program. While the alternate programs will impose lower costs than title V programs, adequate funding will still be necessary to develop and implement the alternate programs. The alternate operating permit programs and the NAAQS programs for American Samoa and CNMI must also ensure that sufficient ongoing funding will be provided and not diverted from the program. These safeguards are necessary to ensure that funds committed to the permit program and used as the basis for EPA approval will be used to support the air program.

4. EPA Review and Objection

EPA is replacing the review requirements that were included in the proposal by reference to June 28, 1989 guidance (see 54 FR 27282) with explicit provisions that allow EPA the opportunity to comment on and object to permits that do not conform to the alternate operating permit program requirements. EPA will object to draft permits that are not consistent with the approved alternate operating permit program and the 40 CFR part 69 exemption conditions, including permits that do not contain the correct applicable requirements and emission limits or are not issued through the correct procedures. If EPA objects to a permit, the permit must be revised to address EPA's concerns prior to issuance or it will not be considered a valid federally enforceable permit that complies with the conditions of the exemption and an alternate operating permit program approved by EPA. In such a situation, the source must obtain a permit that resolves EPA's objections or the source and the permitting authority (Guam, CNMI or American Samoa) will no longer meet the conditions of the exemption with respect to that permit. If EPA objects to a permit, EPA will notify the permitting authority of its objections and send a copy to the permit applicant. The permitting authority will have 180 days to work with EPA to issue a revised permit that resolves EPA's objections. If the territory does not issue a permit that resolves EPA's objections within 180 days, the exemption will be revoked for that source and the source will be subject to the federal operating permit requirements of part 71.

EPA believes that this oversight role will lead to the issuance of permits that both EPA and the permitting authority agree comply with the exemption, the approved alternate operating permit program and all applicable requirements. The petitioners all stated

that they currently lack the technical resources to issue comprehensive operating permits, and EPA oversight will help them implement the alternate operating permit program. In addition, federal review will help prevent any perception of bias when government power plants are permitted by essentially the same organization that operates them. Therefore, EPA oversight will assist the implementation of the alternate permitting programs. Finally, EPA believes that oversight during the permit process will reduce subsequent disputes between EPA, sources, and each territory over permit terms and conditions. Therefore, EPA is including a condition in the exemption that EPA will have a review period in which to object to permits that EPA believes do not comply with the alternate program.

5. Renewals and Reopening for Cause

EPA is requiring each territory to include a provision in the alternate operating permit program for permit renewal within five years of issuance. Regular renewals will be necessary to incorporate any new or revised requirements, add or remove compliance schedules, and keep permits current. The petitioners may choose to issue permits for any fixed duration that does not exceed five years.

EPA is also requiring that each alternate program allows each petitioner to reopen permits for cause. For instance, an application may contain incorrect information or a permit may contain an incorrect applicability determination or other material mistake. In addition, a new or revised applicable requirement may be substantially inconsistent with a permit that would not otherwise be updated for up to five years. Petitioners should reopen permits to incorporate new requirements in such situations if, in their estimation, there is a substantial amount of time remaining in the permit term. Therefore, EPA is requiring that each territory and EPA have authority to reopen permits that are not consistent with the Act. The program must provide for notice to the permittee and the public when a permit is reopened in this manner. Consistent with the requirements for EPA objection discussed above, if EPA determines that cause exists for reopening a permit issued to a source (i.e. the permit is inconsistent with the applicable requirements and the terms of this exemption), and the permitting agency does not issue a new permit that corrects the deficiency within 180 days of receiving EPA's notice, EPA will revoke the exemption and issue a permit under part 71. EPA is basing the 180 day deadline on the longest period allowed under section 40 CFR 70.7, which it finds is a reasonable deadline for issuing corrected permits under the alternate operating permit programs.

6. Revocation, Expiration or Modification of Exemption

This rulemaking establishes the conditions for which the exemption for Guam, American Samoa, or CNMI will expire or will be revoked or modified, and explains the appropriate administrative mechanism. First, the exemption for any territory will expire two years after the effective date of this rule without further rulemaking unless the territory submits an alternate operating permit program by the date specified in the rule. The program should substantively address each requirement of the exemption. If a program is not submitted by the deadlines set forth in this rule, part 71 will become effective for the territory on that date. As set forth in Section E, below, American Samoa and CNMI are required by this rule to conduct modeling and to submit any State Implementation Plan (SIP) revision necessary to address compliance with the NAAQS. For American Samoa, the exemption will also expire if American Samoa fails to submit air quality modeling and supporting data within two years of the effective date of this rule. For CNMI the exemption will expire if CNMI fails to submit a SIP to assure compliance with the NAAQS for SO_2, unless CNMI demonstrates within one year through additional modeling and site specific meteorological data that the NAAQS for SO_2 is protected.

If an alternate program is submitted by the deadline, the exemption will continue while EPA reviews the program to determine if it qualifies for approval. EPA will approve the program and provide notice of the approval in the Federal Register if the program meets the conditions of the exemption and will disapprove the program and revoke the exemption by rulemaking if it does not. In addition, EPA may revoke or modify the conditional exemption through rulemaking if the permitting authority does not adequately implement and enforce the alternate program.

EPA is including additional procedures for expiration or revocation of the exemption in this rulemaking to assure that all sources will eventually obtain a valid federally enforceable operating permit under either an approved alternate operating permit program or part 71. First, if the local agency fails to issue an operating permit under an approved alternate program to a source within six years of the effective date of this rulemaking, the exemption will expire for any source without a permit and that source will become subject to the part 71 federal operating permit requirements. The six year date is based on similar deadlines set forth in Title V of the Clean Air Act for submittal and approval of the operating permit program and issuance of permits to all sources. These expiration and revocation provisions will not apply to any source that has obtained an operating permit through an alternate operating permit program approved by EPA within the six year deadline. This requirement provides a backstop for assuring that all subject sources will have a means for applying for an operating permit no later than six years from today.

These new termination/revocation provisions are necessary to fill gaps that existed in the proposal. With these procedures EPA will ensure that all owners or operators of subject sources that would have been required to obtain a Title V permit will eventually be permitted under an approved program. These provisions will also ensure that all owners and operators of subject sources will apply for an operating permit by a date certain so that no source goes unpermitted.

EPA may determine in the future that the implementation of a title V permitting program or the modification of the exemption is necessary to ensure compliance with applicable Clean Air Act requirements and to protect air quality. If EPA determines that revocation or modification of the exemption is necessary due to changed circumstances or other causes, EPA will conduct a rulemaking to revoke or modify the exemption. In this case the exemption and its conditions will remain effective until EPA has completed its rulemaking.

7. Federal Enforceability

In order for EPA to authorize an exemption for each territory as set forth in this rule, EPA must ensure that permits issued under the alternate programs required by this rule are federally enforceable. This is consistent with the title V permit program and is an important component to assure that each territory attains and/or maintains compliance with the NAAQS. Therefore, EPA is requiring, as a condition of the exemptions authorized in this rule, that each territory submit a revision to its SIP to make permits issued under an approved alternate program federally enforceable. The SIP revision should provide that a person shall not violate any permit condition or term in a permit that has been issued

under an alternate operating permit program approved by EPA.

C. Implementation of Title V for Hazardous Air Pollutant Sources and Solid Waste Incineration Units

This action does not waive any title V permitting requirement that applies to major sources of hazardous air pollutants (HAPs) in American Samoa, CNMI, or Guam and is conditioned to address special concerns presented by the local impact of HAPs. Any source that would be subject to title V because it is a major source under Section 112 of the Clean Air Act or a solid waste incinerator regulated under section 129 of the Clean Air Act must obtain a title V permit under part 71.

Any nonmajor source of hazardous air pollutants that is subject to a standard or other requirement under Section 112 may be subject to the requirement to obtain a title V permit. Currently, the requirement to obtain a title V permit has been deferred for such sources, as noted in each applicable standard [1]. If at any time in the future EPA requires these nonmajor sources of HAPs to obtain a title V permit, it is EPA's intent that these nonmajor sources be permitted under the local alternate permitting program authorized by today's rule. Sources subject to Section 112 standards under 40 CFR part 63 should refer to the applicable subpart of part 63 for the dates required for submission of permit applications.

1. Title V Permits

As noted earlier, title V requires that EPA implement a federal operating permitting program in any area that does not have an approved title V program (Section 502(e) of the Act, 42 U.S.C. 7661(e)). The part 71 program at 40 CFR part 71 (61 FR 34202) became effective on July 31, 1996. EPA's proposal of September 13, 1995 required that the existing major sources of HAPs, and owners and operators of any new source on Guam subject to title V because it is a major source under section 112, or a solid waste incinerator subject to section 129, obtain title V permits under part 71. In the proposal EPA requested comments on whether any existing municipal waste incinerators or major HAP sources on American Samoa and CNMI should be required to obtain title V permits under part 71. No comments were received. EPA has decided that the exemptions for Guam, American Samoa, and CNMI authorized in today's action do not apply to these solid waste incinerators and major HAP sources and that owners or operators of these sources must obtain part 71 permits. This final rule will ensure that section 112 standards that apply to major sources of HAPs are appropriately implemented through the title V operating permit program. Section 112 of the Clean Air Act recognizes that HAP sources can have a significant impact on human health regardless of geographic location, and section 325 of the Act explicitly prohibits waivers from section 112 requirements. Because sections 112 and 129 generally rely on an effective title V permitting program to ensure that the standards are implemented correctly and HAP reductions are achieved, EPA believes that sources subject to section 129 and major sources of HAPs must have title V permits. Several sources on Guam currently subject to Section 112 standards did not meet the deadline for submitting initial applicability notifications to EPA. EPA believes that expeditious compliance with title V will resolve any potential applicability questions or compliance problems for title V sources and that waiving title V for these sources could result in confusion and greater emissions of HAPs. EPA believes that regulating these sources under title V will not impose an undue burden, because, as noted above, EPA has deferred nonmajor HAP sources from the requirement to obtain a title V permit.

EPA will be the permitting authority and will issue title V permits to these sources under part 71, as each of the petitioners has demonstrated that it currently lacks the technical resources to issue a title V permit. EPA published a Federal Register Notice on July 31, 1996 (61 FR 39877, July 31, 1996), listing the state and local jurisdictions where a Federal Operating Permits Program became effective on that day. This notice included Guam, American Samoa and CNMI. Applications for major sources of HAPs and solid waste incinerators under part 71 are due to be submitted to the permitting authority by July 31, 1997, except for those major perchloroethylene dry cleaning facilities, which are due by April 1, 1997.

2. Case-By-Case Maximum Achievable Control Technology (MACT) Determinations

Section 112 MACT requirements for case-by-case MACT determinations apply to major sources in certain situations where EPA has not promulgated an applicable MACT standard. Section 112 (j) requires that where EPA has missed a deadline for promulgating a section 112(d) standard then any major source of HAPs in the applicable source category must submit an application for a case-by-case MACT determination within 18 months of the missed deadline. Section 112(g) sets forth certain case-by-case MACT requirements for newly constructed or reconstructed sources. These requirements apply to all major sources of HAPs in American Samoa, CNMI, and Guam after the effective date of part 71.

The regulations implementing 112(j) at 40 CFR part 63, subpart B, apply as of the effective date of part 71 (July 31, 1996), but the petitioners' source inventories indicate that there are no major sources that are subject to 112(j) at this time. Should any source be subject to this requirement, EPA will use part 71 permit applications as the compliance mechanism for implementing these case-by-case MACT approvals, as the petitioners have demonstrated that they lack the technical resources to conduct such a determination.

EPA recently reopened the comment period and published a notice of availability of a draft rule implementing Section 112(g) (61 FR 13125, March 26, 1996). After the 112(g) regulation becomes effective, any newly constructed or reconstructed major source of HAPs in each territory must comply with a MACT level of control. This will be determined on a case-by-case basis when no applicable standard has been promulgated by EPA. Any new source subject to section 112(g) must apply for case-by-case MACT approval after the effective date of the regulation.

[1] On June 3, 1996, EPA published in the Federal Register (61 FR 27785) an amendment to certain hazardous air pollutant standards for Chromium Electroplating and Chromium Anodizing Tanks (subpart N); Ethylene Oxide Commercial Sterilization and Fumigation Operations (subpart O); Perchloroethylene Dry Cleaning Facilities (subpart M); and Secondary Lead Smelting (subpart X). In that action, EPA amended the requirement in each of these rules that required nonmajor sources (emitting or having the potential to emit less than 10 tons per year of any hazardous air pollutant or less than 25 tons per year of any combination of hazardous air pollutants) to obtain Title V permits. For certain of these nonmajor sources, the rules have been amended to allow the permitting authority the option of deferring the requirement to obtain a title V permit for 5 years. Certain nonmajor sources subject to subpart N of part 63 (Chromium Anodizing Tanks) that are not located at major sources are permanently exempted from the requirement to obtain a title V permit consistent with 40 CFR § 63.340(e)(1) (61 FR 27787, June 3, 1996). Any nonmajor batch cold solvent cleaning machines subject to subpart T of part 63 (Halogenated Solvent Cleaners) that are not located at major sources are permanently exempted from the requirement to obtain a title V permit consistent with 40 CFR § 63.468(j) (59 FR 61801, December 2, 1994). For any other nonmajor solvent cleaning machines subject to subpart T of part 63 (Halogenated Solvent Cleaners) that are not located at major sources, the rules have been amended to allow the permitting authority the option of deferring the requirement to obtain a title V permit for 5 years (59 FR 61801, December 2, 1994).

Other section 112 requirements, such as 112(d) MACT standards, automatically apply to all HAP sources in American Samoa, CNMI, and Guam. This exemption does not waive any Section 112 requirements applicable to any sources; this rule only exempts the nonmajor sources from the requirement to obtain a part 71 permit.

EPA's proposal required that American Samoa and CNMI develop an implementation agreement with EPA regarding hazardous air pollutant sources, but EPA believes that the EPA's implementation of part 71 (which includes section 129(e) solid waste incinerators and major HAP sources) renders this agreement unnecessary as a waiver condition.

D. Effective Date of Title V Approval for Other Programs

In addition to sections 112(g) and 112(j), the implementation of other regulations may depend on the approval date of a title V permitting program. For instance, EPA has considered implementing 40 CFR part 64 compliance assurance monitoring through title V permitting programs, and other future regulations may also be implemented or triggered by the effective date of an approved title V program. In this case, for sources that are not required to obtain a part 71 permit under today's rule, the local alternate operating permit programs, after approval by EPA, will implement all applicable requirements, including any part 64 monitoring rule. This rule grants a conditional exemption to owners and operators only from the requirement to obtain a title V permit and to each territory from the requirement to adopt a title V program. All sources on American Samoa, CNMI, and Guam must comply with all other applicable Clean Air Act provisions. For any requirement other than the case-by-case MACT requirement addressed above that is implemented or triggered by an approved title V program, the implementation or trigger date is July 31, 1996, the date individual sources became subject to part 71.

E. Air Quality Modeling and SIP Submittals

In the proposal, EPA discussed potential problems with air quality on American Samoa and CNMI and required these territories to conduct modeling and make any SIP revision necessary to ensure compliance with the NAAQS. EPA is retaining the requirements for American Samoa and CNMI set forth in the proposal for air quality modeling and SIP submittals.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

B. Regulatory Flexibility Act

This action under section 325 of the Act does not impose new requirements, but allows local agencies flexibility to reduce the impacts of title V on small entities. Because this action does not impose any new requirements, and merely approves requests for additional flexibility to meet existing requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this exemption does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves exemptions requested to reduce the cost of implementing the Clean Air Act. Accordingly, this action will reduce costs to state governments and the private sector.

D. Small Business Regulatory Enforcement Fairness Act

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

Authority: 42 U.S.C. 7401–7671q.

List of Subjects in 40 CFR Part 69

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous air pollutants, Intergovernmental relations, Nitrogen oxides, Operating permits, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: October 28, 1996.

Carol M. Browner,

Administrator.

40 CFR part 69 is amended as follows:

PART 69—[AMENDED]

1. The authority citation for part 69 continues to read as follows:

Authority: Sec. 325, Clean Air Act, as amended (42 U.S.C. 7625–1).

Subpart A—Guam

2. Subpart A is amended by adding § 69.13 to read as follows:

§ 69.13 Title V conditional exemption.

(a) *Conditional exemption.* In response to a petition submitted by the Governor of Guam and pursuant to section 325(a) of the Clean Air Act (Act), the Administrator of the United States EPA (EPA) grants the following conditional exemptions:

(1) Guam is exempted from the requirement to develop, submit for approval, and implement an operating permit program under title V of the Clean Air Act on the condition that Guam meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (e) of this section.

(2) Except for sources listed under paragraph (a)(4) of this section, owners or operators of sources located in Guam subject to the operating permit requirements of title V of the Clean Air Act are exempt from the requirement to apply for and obtain a title V operating permit, on the condition that the owner or operator of each such source must apply for and obtain an operating permit under an EPA approved alternate program that meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (e) of this section. The owner or operator of each such source shall apply for and obtain a permit under the alternate operating permit program by the deadlines set forth in the approved program, but in any event shall obtain a permit no later than March 14, 2003. If the owner or operator of any source has not obtained an operating permit under an alternate operating program approved by EPA for Guam by March 14, 2003, the exemption for such source

shall expire and the owner or operator of such source shall become subject to the permitting requirements of 40 CFR part 71 on that date, consistent with paragraph (d)(4) of this section.

(3) Upon EPA approval of an alternate operating permit program adopted by Guam in accordance with this § 69.13, a person shall not violate any permit condition or term in a permit that has been issued under such alternate permit program.

(4) This exemption does not apply to owners or operators of major sources of hazardous air pollutants (HAPs) as defined under section 112 of the Clean Air Act or to owners or operators of solid waste incinerators subject to the title V requirements of section 129(e) of the Act. Owners or operators of major sources of HAPs or solid waste incinerators shall be subject to the requirements of 40 CFR part 71 and shall apply for and obtain a part 71 permit by the deadlines specified in 40 CFR part 71. Any owner or operator of a major source of HAPs subject to 40 CFR part 63, subpart B, shall submit a timely part 71 permit application as required by 40 CFR part 71 and 40 CFR part 63, subpart B, requesting a case-by-case section 112(g) or 112(j) Maximum Achievable Control Technology (MACT) determination.

(b) *Requirements for the alternate operating program.* Guam shall develop and submit an alternate operating permit program (the program) to EPA for approval. Upon approval by EPA, Guam shall implement the program. The program, including the necessary statutory and regulatory authority, must be submitted by March 15, 1999 for approval. The submittal shall include the following elements:

(1) The program must contain regulations that ensure that:

(i) The permits shall include emission limits and standards, and other terms or conditions necessary to ensure compliance with all applicable federal requirements, as defined under 40 CFR 70.2.

(ii) The limitations, controls, and requirements in the permits shall be permanent, quantifiable, and otherwise enforceable as a practical matter.

(iii) Permits shall contain monitoring, recordkeeping and reporting requirements sufficient to ensure compliance with applicable federal requirements during the reporting period.

(iv) The program shall require that the owner or operator of each source submit permit applications with compliance certifications describing the source's compliance status with all applicable requirements. The program shall also provide that each permit contain a requirement that the owner or operator of a source submit annual compliance certifications. The compliance certification shall contain a compliance plan, and shall contain a schedule for expeditiously achieving compliance if the source is not in compliance with all applicable requirements. The program must provide that approval of a permit with a compliance plan and schedule does not sanction noncompliance.

(2) The program shall provide for the collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program and ensure that these funds are used solely to support the program.

(3) The program shall provide for public notice and a public comment period of at least 30 days for each permit, significant permit modification, and permit renewal, and shall include submittal to EPA of each permit, significant permit modification, and permit renewal.

(4) The program shall provide EPA at least 45 days from receipt of a permit, modification, or renewal for EPA review and objection prior to issuance. The program shall provide that if EPA objects to a permit sent to EPA for review, Guam cannot issue such permit until the permit is revised in a manner that resolves EPA's objections. The program shall provide that Guam will have no more than 180 days to resolve EPA's objections and that if the objections are not resolved within that time period, EPA shall issue the permit under 40 CFR part 71.

(5) The program shall provide that all documents other than confidential business information will be made available to the public.

(6) The program shall provide Guam with the authority to enforce permits, including the authority to assess civil and criminal penalties up to $10,000 per day per violation and to enjoin activities that are in violation of the permit, the program, or the Act without first revoking the permit.

(7) The program shall require that owners or operators of nonmajor sources of hazardous air pollutants that are required to obtain title V permits, and owners or operators of major sources of all other air pollutants as defined at 40 CFR 70.2 that are exempted from 40 CFR part 71 under paragraph (a) of this section, obtain an operating permit under the approved program. The program shall include a schedule for issuing permits to all subject sources within three years of EPA approval of the program.

(8) The program shall include a system of regular inspections of permitted sources, a system to identify any unpermitted major sources, and guidelines for appropriate responses to violations.

(9) The program shall provide for the issuance of permits with a fixed term that shall not exceed five years.

(10) The program shall allow Guam or the EPA to reopen a permit for cause. The program shall provide that if EPA provides Guam with written notice that a permit must be reopened for cause, Guam shall issue a revised permit within 180 days (including public notice and comment) that sufficiently addresses EPA's concerns. The program shall provide that if Guam fails to issue a permit that resolves EPA's concerns within 180 days, then EPA will terminate, modify, or revoke and reissue the permit under part 71 after providing the permittee and the public with notice and opportunity for comment.

(c) *State Implementation Plan (SIP) submittal.* In conjunction with the submittal of the alternative operating permit program, Guam shall, no later than March 15, 1999 submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant to the exemption authorized in this § 69.13.

(d) *Expiration and revocation of the exemption.* This exemption shall expire or may be revoked under the following circumstances:

(1) If Guam fails to submit an alternate operating permit program by March 15, 1999, the exemption shall automatically expire with no further rulemaking and 40 CFR part 71 shall become effective for all subject sources in Guam on that date.

(2) In the event that EPA disapproves Guam's alternate operating permit program because the program does not meet the requirements set forth in paragraph (b) of this section, EPA will revoke the exemption by rulemaking.

(3) If, by March 14, 2003, the owner or operator of any subject source has not obtained a federally enforceable operating permit under an EPA approved program, the exemption shall automatically expire for such source and such source shall be subject to the permitting requirements of 40 CFR part 71. Guam will work with EPA to identify such sources prior to expiration of the exemption under this paragraph (d).

(4) EPA shall revoke the exemption in its entirety through rulemaking if Guam does not adequately administer and

enforce an alternate operating permit program approved by EPA.

(5) EPA shall revoke the exemption by rulemaking with respect to the owner or operator of any source if, during the 45-day review period, EPA objects to issuance of a permit and Guam fails to resolve EPA's objections within 180 days. EPA shall also revoke the exemption by rulemaking for the owner or operator of any source in the event that EPA reopens a permit for cause and Guam does not issue a permit that resolves the concerns as set forth in EPA's notice to reopen within 180 days.

(6) EPA reserves its authority to revoke or modify this exemption in whole or in part.

(e) *Scope of the exemption.* This exemption applies solely to the requirement that an owner or operator obtain an operating permit under title V of the Clean Air Act and the requirement that Guam implement a title V permit program. In addition, this exemption does not apply to owners or operators of sources set forth in paragraph (a)(4) of this section. Owners and operators of air pollutant sources are required to comply with all other applicable requirements of the Clean Air Act. For purposes of complying with any applicable requirement that is triggered or implemented by the approval of a title V permit program, the approval date for owners or operators to which this exemption applies shall be the date that EPA approves the alternate program for each territory or, for owners or operators of sources that are subject to 40 CFR part 71, the approval date shall be the effective date of 40 CFR part 71, which is July 31, 1996.

3. Subpart B is amended by revising the subpart heading and adding § 69.22 to read as follows:

Subpart B—American Samoa

§ 69.22 Title V conditional exemption.

(a) *Conditional exemption.* In response to a petition submitted by the Governor of American Samoa (American Samoa) and pursuant to section 325(a) of the Clean Air Act (Act), the Administrator of the United States EPA (EPA) grants the following conditional exemptions:

(1) American Samoa is exempted from the requirement to develop, submit for approval, and implement an operating permit program under title V of the Clean Air Act on the condition that American Samoa meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (f) of this section.

(2) Except for sources listed under paragraph (a)(4) of this section, owners or operators of sources located in American Samoa subject to the operating permit requirements of title V of the Clean Air Act are exempt from the requirement to apply for and obtain a title V operating permit, on the condition that the owner or operator of each such source must apply for and obtain an operating permit under an EPA approved alternate program that meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (f) of this section. The owner or operator of each such source shall apply for and obtain a permit under the alternate operating permit program by the deadlines set forth in the approved program, but in any event shall obtain a permit no later than March 14, 2003. If the owner or operator of any source has not obtained an operating permit under an alternate operating program approved by EPA for American Samoa by March 14, 2003, the exemption for such source shall expire and the owner or operator of such source shall become subject to the permitting requirements of 40 CFR part 71 on that date, consistent with paragraph (e)(4) of this section.

(3) Upon EPA approval of an alternate operating permit program adopted by American Samoa in accordance with this § 69.22, a person shall not violate any permit condition or term in a permit that has been issued under such alternate permit program.

(4) This exemption does not apply to owners or operators of major sources of hazardous air pollutants (HAPs) as defined under section 112 of the Clean Air Act or to owners or operators of solid waste incinerators subject to the title V requirements of section 129(e) of the Act. Owners or operators of major sources of HAPs or solid waste incinerators shall be subject to the requirements of 40 CFR part 71 and shall apply for and obtain a part 71 permit by the deadlines specified in 40 CFR part 71. Any owner or operator of a major source of HAPs subject to 40 CFR part 63, subpart B, shall submit a timely part 71 permit application as required by 40 CFR part 71 and 40 CFR part 63, subpart B, requesting a case-by-case 112(g) or 112(j) Maximum Achievable Control Technology (MACT) determination.

(b) *Requirements for the alternate operating program.* American Samoa shall develop and submit an alternate operating permit program (the program) to EPA for approval. Upon approval by EPA, American Samoa shall implement the program. The program, including the necessary statutory and regulatory authority, must be submitted by March 15, 1999 for approval. The submittal shall include the following elements:

(1) The program must contain regulations that ensure that:

(i) The permits shall include emission limits and standards, and other terms or conditions necessary to ensure compliance with all applicable federal requirements, as defined under 40 CFR 70.2.

(ii) The limitations, controls, and requirements in the permits shall be permanent, quantifiable, and otherwise enforceable as a practical matter.

(iii) Permits shall contain monitoring, recordkeeping and reporting requirements sufficient to ensure compliance with applicable federal requirements during the reporting period.

(iv) The program shall require that the owner or operator of each source submit permit applications with compliance certifications describing the source's compliance status with all applicable requirements. The program shall also provide that each permit contain a requirement that the owner or operator of a source submit annual compliance certifications. The compliance certification shall contain a compliance plan, and shall contain a schedule for expeditiously achieving compliance if the source is not in compliance with all applicable requirements. The program must provide that approval of a permit with a compliance plan and schedule does not sanction noncompliance.

(2) The program shall provide for the collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program and ensure that these funds are used solely to support the program.

(3) The program shall provide for public notice and a public comment period of at least 30 days for each permit, significant permit modification, and permit renewal, and shall include submittal to EPA of each permit, significant permit modification, and permit renewal.

(4) The program shall provide EPA at least 45 days from receipt of a permit, modification, or renewal for EPA review and objection prior to issuance. The program shall provide that if EPA objects to a permit sent to EPA for review, American Samoa cannot issue such permit until the permit is revised in a manner that resolves EPA's objections. The program will provide that American Samoa will have no more than 180 days to resolve EPA's objections and that if the objections are not resolved within that time period, EPA shall issue the permit under 40 CFR part 71.

(5) The program shall provide that all documents other than confidential business information will be made available to the public.

(6) The program shall provide American Samoa with the authority to enforce permits, including the authority to assess civil and criminal penalties up to $10,000 per day per violation and to enjoin activities that are in violation of the permit, the program, or the Act without first revoking the permit.

(7) The program shall require that owners or operators of nonmajor sources of hazardous air pollutants that are required to obtain title V permits, and owners or operators of major sources of all other air pollutants as defined in 40 CFR 70.2 that are exempted from 40 CFR part 71 under paragraph (a) of this section, obtain an operating permit under the approved program. The program shall include a schedule for issuing permits to all subject sources within three years of EPA approval of the program.

(8) The program shall include a system of regular inspections of permitted sources, a system to identify any unpermitted major sources, and guidelines for appropriate responses to violations.

(9) The program shall provide for the issuance of permits with a fixed term that shall not exceed five years.

(10) The program shall allow American Samoa or the EPA to reopen a permit for cause. The program shall provide that if EPA provides American Samoa with written notice that a permit must be reopened for cause, American Samoa shall issue a revised permit within 180 days (including public notice and comment) that sufficiently addresses EPA's concerns. The program shall provide that if American Samoa fails to issue a permit that resolves EPA's concerns within 180 days, then EPA will terminate, modify, or revoke and reissue the permit under part 71 after providing the permittee and the public with notice and opportunity for comment.

(c) *Ambient air quality program.* American Samoa shall implement the following program to address the National Ambient Air Quality Standards (NAAQS) as a condition of the waiver:

(1) American Samoa shall collect complete meteorological data and complete refined air quality modeling for the Pago Pago Harbor and submit such data and modeling results to EPA by March 15, 1999.

(2) American Samoa shall address any NAAQS exceedances demonstrated through the modeling results with revisions to its SIP that shall be submitted by March 14, 2000. The plan shall ensure compliance with the NAAQS is achieved by March 14, 2002.

(d) *State Implementation Plan (SIP) submittal.* In conjunction with the submittal of the alternative operating permit program, American Samoa shall, no later than March 15, 1999, submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by American Samoa pursuant to the exemption authorized in this § 69.22.

(e) *Expiration and revocation of the exemption.* This exemption shall expire or may be revoked under the following circumstances:

(1) If American Samoa fails to submit the required alternate operating permit program or modeling (and supporting data) by March 15, 1999, the exemption shall automatically expire with no further rulemaking and 40 CFR part 71 shall become effective for all subject sources in American Samoa on that date. The exemption will also expire with no further rulemaking in the event that American Samoa fails to submit a SIP revision by March 14, 2000, consistent with paragraph (c)(2) of this section.

(2) In the event that EPA disapproves American Samoa's alternate operating permit program because the program does not meet the requirements set forth in paragraph (b) of this section, EPA will revoke the exemption by rulemaking.

(3) If, by March 14, 2003, the owner or operator of any subject source has not obtained a federally enforceable operating permit under an EPA approved program, the exemption shall automatically expire for such source and such source shall be subject to the permitting requirements of 40 CFR part 71. American Samoa will work with EPA to identify such sources prior to expiration of the exemption under this paragraph (d).

(4) EPA shall revoke the exemption in its entirety through rulemaking if American Samoa does not adequately administer and enforce an alternate operating permit program approved by EPA.

(5) EPA shall revoke the exemption by rulemaking with respect to the owner or operator of any source if, during the 45-day review period, EPA objects to issuance of a permit and American Samoa fails to resolve EPA's objections within 180 days. EPA shall also revoke the exemption by rulemaking for the owner or operator of any source in the event that EPA reopens a permit for cause and American Samoa does not issue a permit that resolves the concerns as set forth in EPA's notice to reopen within 180 days.

(6) EPA reserves its authority to revoke or modify this exemption in whole or in part.

(f) *Scope of the exemption.* This exemption applies solely to the requirement that an owner or operator obtain an operating permit under title V of the Clean Air Act and the requirement that American Samoa implement a title V permit program. In addition, this exemption does not apply to owners or operators of sources set forth in paragraph (a)(4) of this section. Owners and operators of air pollutant sources are required to comply with all other applicable requirements of the Clean Air Act. For purposes of complying with any applicable requirement that is triggered or implemented by the approval of a title V permit program, the approval date for owners or operators to which this exemption applies shall be the date that EPA approves the alternate program for each territory or, for owners or operators of sources that are subject to 40 CFR part 71, the approval date shall be the effective date of 40 CFR part 71, which is July 31, 1996.

4. Subpart C is amended by revising the subpart heading and adding § 69.32 to read as follows:

Subpart C—Commonwealth of the Northern Mariana Islands

§ 69.32 Title V conditional exemption.

(a) *Conditional exemption.* In response to a petition submitted by the Governor of The Commonwealth of the Northern Mariana Islands (CNMI) and pursuant to section 325(a) of the Clean Air Act (Act), the Administrator of the United States EPA (EPA) grants the following conditional exemptions:

(1) CNMI is exempted from the requirement to develop, submit for approval, and implement an operating permit program under title V of the Clean Air Act on the condition that CNMI meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (f) of this section.

(2) Except for sources listed under paragraph (a)(4) of this section, owners or operators of sources located in CNMI subject to the operating permit requirements of title V of the Clean Air Act are exempt from the requirement to apply for and obtain a title V operating permit, on the condition that the owner or operator of each such source must apply for and obtain an operating permit under an EPA approved alternate program that meets the requirements of

paragraph (b) of this section and subject to the provisions of paragraphs (c) through (f) of this section. The owner or operator of each such source shall apply for and obtain a permit under the alternate operating permit program by the deadlines set forth in the approved program, but in any event shall obtain a permit no later than March 14, 2003. If the owner or operator of any source has not obtained an operating permit under an alternate operating program approved by EPA for CNMI by March 14, 2003, the exemption for such source shall expire and the owner or operator of such source shall become subject to the permitting requirements of 40 CFR part 71 on that date, consistent with paragraph (e)(3) of this section.

(3) Upon EPA approval of an alternate operating permit program adopted by CNMI in accordance with this § 69.32, a person shall not violate any permit condition or term in a permit that has been issued under such alternate permit program.

(4) This exemption does not apply to owners or operators of major sources of hazardous air pollutants (HAPs) as defined under section 112 of the Clean Air Act or to owners or operators of solid waste incinerators subject to the title V requirements of section 129(e) of the Act. Owners or operators of major sources of HAPs or solid waste incinerators shall be subject to the requirements of 40 CFR part 71 and shall apply for and obtain a part 71 permit by the deadlines specified in 40 CFR part 71. Any owner or operator of a major source of HAPs subject to 40 CFR part 63, subpart B, shall submit a timely part 71 permit application as required by 40 CFR part 71 and 40 CFR part 63, subpart B, requesting a case-by-case section 112(g) or 112(j) Maximum Achievable Control Technology (MACT) determination.

(b) *Requirements for the alternate operating program*. CNMI shall develop and submit an alternate operating permit program (the program) to EPA for approval. Upon approval by EPA, CNMI shall implement the program. The program, including the necessary statutory and regulatory authority, must be submitted by March 15, 1999 for approval. The submittal shall include the following elements:

(1) The program must contain regulations that ensure that:

(i) The permits shall include emission limits and standards, and other terms or conditions necessary to ensure compliance with all applicable federal requirements, as defined under 40 CFR 70.2.

(ii) The limitations, controls, and requirements in the permits shall be permanent, quantifiable, and otherwise enforceable as a practical matter.

(iii) Permits shall contain monitoring, recordkeeping and reporting requirements sufficient to ensure compliance with applicable federal requirements during the reporting period.

(iv) The program shall require that the owner or operator of each source submit permit applications with compliance certifications describing the source's compliance status with all applicable requirements. The program shall also provide that each permit contain a requirement that the owner or operator of a source submit annual compliance certifications. The compliance certification shall contain a compliance plan, and shall contain a schedule for expeditiously achieving compliance if the source is not in compliance with all applicable requirements. The program must provide that approval of a permit with a compliance plan and schedule does not sanction noncompliance.

(2) The program shall provide for the collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program and ensure that these funds are used solely to support the program.

(3) The program shall provide for public notice and a public comment period of at least 30 days for each permit, significant permit modification, and permit renewal, and shall include submittal to EPA of each permit, significant permit modification, and permit renewal.

(4) The program shall provide EPA at least 45 days from receipt of a permit, modification, or renewal for EPA review and objection prior to issuance. The program shall provide that if EPA objects to a permit sent to EPA for review, CNMI cannot issue such permit until the permit is revised in a manner that resolves EPA's objections. The program will provide that CNMI will have no more than 180 days to resolve EPA's objections and that if the objections are not resolved within that time period, EPA shall issue the permit under 40 CFR part 71.

(5) The program shall provide that all documents other than confidential business information will be made available to the public.

(6) The program shall provide CNMI with the authority to enforce permits, including the authority to assess civil and criminal penalties up to $10,000 per day per violation and to enjoin activities that are in violation of the permit, the program, or the Act without first revoking the permit.

(7) The program shall require that owners or operators of nonmajor sources of hazardous air pollutants that are required to obtain title V permits, and owners or operators of major sources of all other air pollutants as defined at 40 CFR 70.2 that are exempted from 40 CFR part 71 under paragraph (a) of this section, obtain an operating permit under the approved program. The program shall include a schedule for issuing permits to all subject sources within three years of EPA approval of the program.

(8) The program shall include a system of regular inspections of permitted sources, a system to identify any unpermitted major sources, and guidelines for appropriate responses to violations.

(9) The program shall provide for the issuance of permits with a fixed term that shall not exceed five years.

(10) The program shall allow CNMI or the EPA to reopen a permit for cause. The program shall provide that if EPA provides CNMI with written notice that a permit must be reopened for cause, CNMI shall issue a revised permit within 180 days (including public notice and comment) that sufficiently addresses EPA's concerns. The program shall provide that if CNMI fails to issue a permit that resolves EPA's concerns within 180 days, then EPA will terminate, modify, or revoke and reissue the permit under part 71 after providing the permittee and the public with notice and opportunity for comment.

(c) *Ambient air quality program*. CNMI shall implement the following program to protect attainment of National Ambient Air Quality Standards (NAAQS) as a condition of the waiver:

(1) CNMI shall enforce its January 19, 1987 Air Pollution Control (APC) regulations, including the requirement that all new or modified sources comply with the NAAQS and Prevention of Significant Deterioration (PSD) increments.

(2) CNMI may conduct air emissions modeling, using EPA guidelines, for power plants located on Saipan to assess EPA's preliminary determination of non-compliance with the NAAQS for sulfur dioxide (SO_2). CNMI shall complete and submit any additional modeling to EPA by March 16, 1998 to determine whether existing power plants cause or contribute to violation of the NAAQS and PSD increments in the APC regulations and 40 CFR 52.21.

(3) If CNMI's additional modeling, based on EPA guidelines, predicts exceedances of the NAAQS for SO_2, or if CNMI elects to accept EPA's preliminary determination that the NAAQS for SO_2 have been exceeded,

CNMI shall submit a revised SIP that ensures compliance with the NAAQS for SO_2. CNMI shall submit the proposed revision to the SIP by March 16, 1998 or, if CNMI elects to conduct additional modeling, by March 15, 1999. CNMI shall take appropriate corrective actions through the SIP to demonstrate compliance with the NAAQS for SO_2 by March 14, 2001.

(d) *State Implementation Plan (SIP) submittal.* In conjunction with the submittal of the alternative operating permit program, CNMI shall, no later than March 15, 1999 submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by CNMI pursuant to the exemption authorized in this § 69.32.

(e) *Expiration and revocation of the exemption.* This exemption shall expire or may be revoked under the following circumstances:

(1) If CNMI fails to submit the required alternate operating permit program or any required SIP revision by March 15, 1999, the exemption shall automatically expire with no further rulemaking and 40 CFR part 71 shall become effective for all subject sources in CNMI on that date, consistent with paragraph (c)(3) of this section.

(2) In the event that EPA disapproves CNMI's alternate operating permit program because the program does not meet the requirements set forth in paragraph (b) of this section, EPA will revoke the exemption by rulemaking.

(3) If, by March 14, 2003, the owner or operator of any subject source has not obtained a federally enforceable operating permit under an EPA approved program, the exemption shall automatically expire for such source and such source shall be subject to the permitting requirements of 40 CFR part 71. CNMI will work with EPA to identify such sources prior to expiration of the exemption under this paragraph (e).

(4) EPA shall revoke the exemption in its entirety through rulemaking if CNMI does not adequately administer and enforce an alternate operating permit program approved by EPA.

(5) EPA shall revoke the exemption by rulemaking with respect to the owner or operator of any source if, during the 45-day review period, EPA objects to issuance of a permit and CNMI fails to resolve EPA's objections within 180 days. EPA shall also revoke the exemption by rulemaking for the owner or operator of any source in the event that EPA reopens a permit for cause and CNMI does not issue a permit that resolves the concerns as set forth in EPA's notice to reopen within 180 days.

(6) EPA reserves its authority to revoke or modify this exemption in whole or in part.

(f) *Scope of the exemption.* This exemption applies solely to the requirement that an owner or operator obtain an operating permit under title V of the Clean Air Act and the requirement that CNMI implement a title V permit program. In addition, this exemption does not apply to owners or operators of sources set forth in paragraph (a)(4) of this section. Owners and operators of air pollutant sources are required to comply with all other applicable requirements of the Clean Air Act. For purposes of complying with any applicable requirement that is triggered or implemented by the approval of a title V permit program, the approval date for owners or operators to which this exemption applies shall be the date that EPA approves the alternate program for each territory or, for owners or operators of sources that are subject to 40 CFR part 71, the approval date shall be the effective date of 40 CFR part 71, which is July 31, 1996.

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federal register

Wednesday
November 13, 1996

Part III

Environmental Protection Agency

40 CFR Part 90

Class I and II Nonhandheld New Nonroad Phase 1 Small Spark-Ignition Engines; Revised Carbon Monoxide (CO) Standard; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

[FRL–5650–6]

Revised Carbon Monoxide (CO) Standard for Class I and II Nonhandheld New Nonroad Phase 1 Small Spark-Ignition Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revises the Phase 1 carbon monoxide (CO) emission standard for Class I and II new nonroad spark-ignition (SI) engines at or below 19 kilowatts. Today's action increases the CO standard from 469 grams per kilowatt-hour (g/kW-hr) to 519 g/kW-hr. This action addresses the CO emission difference between oxygenated and nonoxygenated fuels that was not reflected when the Agency previously set the CO standard for these nonhandheld engines in a final rule published July 3, 1995. This correction of the nonhandheld engine CO standard will ensure that the CO standard for manufacturers of Class I and II small SI engines used to power equipment such as lawnmowers is achievable and otherwise appropriate under the Clean Air Act and that it is technically feasible for manufacturers to certify their engine models to the Phase 1 emission standards and make them commercially available for the 1997 model year.

In addition, today's action permits the use of open crankcases in engines used exclusively to power snowthrowers. This change will allow engine manufacturers to certify engines with open crankcases to be used in snowthrowers upon a demonstration that the engine still meets all applicable emission standards.

EFFECTIVE DATE: This rule is effective November 5, 1996.

ADDRESSES: Materials relevant to this rulemaking are contained in EPA Air and Radiation Docket No. A–93–25 and Docket No. A–96–02, at the U.S. Environmental Protection Agency, room M–1500, 401 M St., S.W., Washington, D.C. 20460. The materials in these dockets may be viewed from 8:00 a.m. until 5:30 p.m. weekdays. The docket may also be reached by telephone at (202) 260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: Laurel Horne, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 741–7803. FAX: (313) 741–7816. Electronic mail: horne.laurel@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by this action are those which manufacture engines used in nonhandheld applications, such as lawnmowers, and those which manufacture engines used exclusively to power snowthrowers. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers of small (at or below 19 kW) nonroad engines used in nonhandheld applications such as lawnmowers.
Industry	Manufacturers of small nonroad engines used exclusively to power snowthrowers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria in § 90.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **"FOR FURTHER INFORMATION CONTACT"** section.

II. Obtaining Electronic Copies of Documents

Electronic copies of the preamble and the regulatory text of this final rule are available electronically from the EPA internet site and via dial-up modem on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Both services are free of charge, except for your existing cost of internet connectivity or the cost of the phone call to TTN. Users are able to access and download files on their first call using a personal computer and modem per the following information.

Internet:
World Wide Web: http://www.epa.gov/OMSWWW
Gopher: gopher.epa.gov Follow menus for: Offices/Air/OMS
FTP: ftp.epa.gov Change Directory to pub/gopher/OMS
TTN BBS: 919–541–5742
(1200–14400 bps, no parity, 8 data bits, 1 stop bit)
Voice Helpline: 919–541–5384.
Off-line: Mondays from 8:00 AM to 12:00 noon EST.

A user who has not called TTN previously will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking and Reporting
<6> Non-Road
<2> Non-road Engines

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. To download a file, select a transfer protocol that is supported by the terminal software on your own computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e. ZIP'ed) files, go to the TTN top menu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit the TTN BBS with the <G>oodbye command.

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

III. Legal Authority and Background

Authority for the actions set forth in this rule is granted to EPA by sections 213(a) and 301(a) of the Clean Air Act as amended (42 U.S.C. 7547(a) and 7601(a)).

On July 3, 1996, the Agency published a Notice of Proposed Rulemaking (NPRM) for this rule.[1] That proposed rule contains substantial background information relevant to the matters discussed throughout this final rule. The reader is referred to that document for additional background information and discussion of various issues. Discussion in this notice will focus on the comments received during the public comment period and describe changes made from the proposal to the final rule. The two issues discussed in

[1] 61 FR 34778 (July 3, 1996).

the NPRM and this final rule are revision to the Phase 1 carbon monoxide exhaust emission standard for nonhandheld small engines, and changes to the closed crankcase requirement for engines used exclusively in snowthrowers.

On March 4, 1996, Briggs and Stratton Corporation submitted to EPA a petition requesting reconsideration and revision of the certification fuel requirements and carbon monoxide (CO) emission standard for nonhandheld engines. The petition asks the Agency to amend its July 3, 1995 final rule, Emission Standards for New Nonroad Spark-ignition (SI) Engines At or Below 19 Kilowatts, hereafter referred to as the Phase 1 small SI engine regulations.[2] Specifically, the petition requests that the Agency amend the Phase 1 small SI engine rule to either: (1) Permit the use of appropriate oxygenated gasolines for emissions certification testing as a direct alternative to Indolene[3] under the current CO standard, or (2) revise the CO standard for nonhandheld small engines from 469 grams per kilowatt-hour (g/kW-hr) to 536 g/kW-hr, in order to reflect the emission characteristics of these engines when tested on nonoxygenated gasolines. Nonhandheld engines are intended for use in nonhandheld applications and fall under one of two classes based on engine displacement.[4] Class I engines are less than 225 cubic centimeters (cc) displacement, and Class II engines are greater than or equal to 225 cc displacement.[5]

Specific engine manufacturers and the Engine Manufacturers Association (EMA) have also raised concerns about the closed crankcase certification requirement specified in the Phase 1 small SI engine final rule at § 90.109. The Agency specified in its Phase 1 small SI rule that as a requirement of certification crankcases must be closed in order to eliminate emissions that would otherwise occur when a crankcase is vented to the atmosphere. Subsequent to publication of the Phase 1 small SI engine final rule, however, the Agency was made aware of concerns specific to manufacturers of engines used exclusively in snowthrowers. These manufacturers indicated that it is necessary to maintain an open crankcase in order to prevent the freeze up of the intake which would likely occur if a crankcase breather hose was required. Additionally, these manufacturers provided evidence that the cost to close these crankcases and prevent freeze up would be prohibitively expensive, with the emissions benefit not justifying the cost. Manufacturers also claimed that the CO emission impact on CO nonattainment will also be minor due to the limited numbers of these pieces of equipment and the small impact opening the crankcase has on overall CO emissions from this small number of engines.

EPA addressed these issues in a notice of proposed rulemaking published on July 3, 1996. The public comment period closed on August 2, 1996.

IV. Description of This Rule

This final rule revises the CO emission standard for Class I and II nonhandheld small SI engines from 469 g/kW-hr to 519 g/kW-hr in response to the petition submitted by Briggs and Stratton Corporation (B&SC). The underlying technical analysis and a description of the data on which it is based is presented in the Regulatory Support Document, a copy of which is in the public docket for this rulemaking.

Given that the Agency, had it known that Briggs and Stratton had used an oxygenated test fuel to generate the test data which EPA used to set the Class I and II nonhandheld standard, would have taken fuel effects into account when determining the CO standard, the Agency believes that it is appropriate, now knowing about the fuel differences, to revise the Phase 1 final rule to reflect the fuel effect on CO emissions.

In addition, the Agency is convinced by the arguments presented by the manufacturers of engines used exclusively in snowthrowers that a change to the closed crankcase requirement is appropriate. Therefore, the Administrator will allow open crankcases for engines used exclusively to power snowthrowers based upon a manufacturer's demonstration that all applicable emission standards will still be met by the engine. This demonstration may be based on best engineering judgment. Upon request of the Administrator, the manufacturer must provide an explanation of the procedure or methodology used to determine that the total CO emissions from the breather and the exhaust are below the regulatory requirement for CO. The Agency is convinced that the cost of abating emissions from an open crankcase would be prohibitive, and therefore seeks no further demonstration of prohibitive cost.

V. Public Participation and Comment

The Agency received written submissions during the comment period for the NPRM from four commenters. Copies may be obtained from the docket for this rule (see **ADDRESSES**).

This section responds to significant comments received and provides EPA's rationale for its responses.

A. Revision of the CO Standard

In its petition to the Agency, Briggs & Stratton Corporation requested that EPA amend the small engine Phase 1 final rule to either permit the use of appropriate oxygenated gasoline for certification testing or revise the CO standard for nonhandheld engines from 469 g/kW-hr to 536 g/kW-hr to reflect emission characteristics of these engines when tested on nonoxygenated gasoline. The Agency has decided to address the petitioner's concern by raising the Phase 1 CO standard for Class I and II nonhandheld engines from 469 g/kW-hr to 519 g/kW-hr.

Both the Engine Manufacturers Association (EMA) and Briggs and Stratton Corporation submitted comments on the NPRM indicating full support for modifying the CO standard. EMA supported the proposal to raise the standard to 519 g/kW-hr. However, Briggs & Stratton Corporation expressed concern about several points contained in the July 1996 NPRM.

One concern raised by B&SC is that in the prior rulemaking leading to the Phase 1 standards the Agency never addressed comments submitted August 5, 1994, by the Engine Manufacturers Association (EMA) and the Outdoor Power Equipment Institute (OPEI) which requested that EPA include a ''Phase 2 or later California/Federal certification fuel'' in the Phase 1 final rule. In these comments, EMA and OPEI argued that allowing such a fuel for certification would harmonize the EPA regulations with California's, and thereby eliminate the need for manufacturers to duplicate certification tests for EPA and California.

In its small engine Phase 1 final rule, EPA did address the commenters'

[2] 60 FR 34582, July 3, 1995, codified at 40 CFR part 90. The docket for the Phase 1 small SI engine rulemaking, EPA Air Docket #A–93–25, is incorporated by reference.

[3] See § 90.308(b) and page 34589 of the preamble for the certification fuel specification for the Phase 1 small SI engine rulemaking. Indolene is one possible Federal certification fuel. Indolene is not the only eligible fuel, but it is within the eligible range specified in part 86 (section 86.1313–94(a)) to which the Phase 1 small SI engine rule refers. The Phase 1 small SI engine rulemaking provides for a range and based on experience with the on-highway program, EPA expects that engine manufacturers will use Indolene. California Phase II Reformulated Gasoline and other oxygenated fuels are not within the range specified in the Phase 1 small SI engine rule.

[4] For additional discussion of engine classes and handheld engine qualifications, see 60 FR 34585, July 3, 1995.

[5] Class I engines are predominantly found in lawnmowers. Class II engines primarily include engines used in generator sets, garden tractors, and commercial lawn and garden equipment.

concern about the need for duplicate certification testing by allowing for the use of Indolene fuel. Since the CARB regulation allows the use of either Indolene or Phase 2 fuel, a test performed using Indolene could be used to satisfy both Federal and CARB requirements for small SI engines. In addition, as EMA points out in its comments, the Agency already provides a mechanism under the alternative test procedures provision of the small engine Phase 1 final rule for those manufacturers who certify in California using oxygenated fuel and wish to use those test results for certification with EPA.

B&SC also commented that while it supports EPA's decision to raise the CO standard, it believes the most efficient and technically correct method for addressing the concern raised in their petition would be for EPA to permit the use of certification test fuels allowed by CARB. As EPA explained in the July 1996 NPRM for this rule, the Agency set nonhandheld CO emission standards that only engines tested on oxygenated fuel had been demonstrated to meet. In conjunction with a test fuel like Indolene, the current 469 g/kW-hr nonhandheld CO emission standard is more stringent than the Agency intended because it did not take into account the effect of the oxygenated fuel used in the test data on which EPA based the standard. As described in detail in the July 1996 NPRM for this rule, it is the Agency's position that the most effective and timely way to address this problem is to raise the CO emission standard for nonhandheld engines. The Agency considered addressing the problem by allowing oxygenated fuels for certification, but because of several concerns about this approach, EPA has concluded that revising the CO standard is the preferred way to address the problem. In its July 1996 NPRM, the Agency described three concerns regarding the allowance of oxygenated test fuels for small SI engine certification. One concern is that while the Agency based its nonhandheld Class I and II emission standards on Briggs and Stratton test data, which it now knows was run on oxygenated fuels, the same cannot be said for the data EPA used to set its standards for Classes III, IV and IV. Allowing the use of oxygenated certification fuel for these other standards would be inconsistent with the technical basis used to set the standard, and would undermine the level of stringency expected by the Agency in adopting these standards. Secondly, if the Agency were to allow certification testing on oxygenated fuels but maintain its current standards, it would not be certain of the benefits of HC and NO_X emission reductions described in the Phase 1 final rule when the engines designed to meet the new emission standards are run on nonoxygenated fuels in the field. In addition, the Agency wishes to maintain its longheld position that engines should be certified on fuels representative of fuels they will see in-use and representative of fuels on which the standards are based. The Agency believes that the current test fuel specifications meets this objective better than California Phase II Reformulated Gasoline. For these reasons, the Agency believes the most effective and timely method for addressing the problem raised by B&SC is not to change the certification test fuel specifications, but to raise the nonhandheld CO emission standard.

B&SC also raised a concern about EPA's statement in the July 1996 NPRM that the data was inconclusive regarding the potential for increases in in-use NO_X emissions from not allowing certification testing on oxygenated gasoline. Briggs and Stratton states that a review of the Regulatory Support Document (RSD) does not support the position taken by EPA in the preamble that the data is inconclusive, but instead shows that the EPA data was inconclusive and the pertinent Briggs & Stratton data showed an increase in NO_X emissions. EPA maintains that the data is inconclusive, and believes no change in the HC + NO_X standard is required due to the change in the CO emission standard. EPA's analysis, as presented in the RSD, indicates that the Briggs & Stratton test data, based on the average of 6 engine models, shows a NO_X increase of 0.14 g/kW-hr with the use of an oxygenated fuel over Indolene. EPA's data showed a NO_X decrease of 0.08 g/kW-hr with the use of an oxygenated fuel over a nonoxygenated fuel. EPA views the combined data to be inconclusive regarding the effect of oxygenated versus nonoxygenated fuel on NO_X emissions.

In its petition, Briggs & Stratton proposed a revised CO emission standard of 536 g/kW-hr to take into account not only the offset between test fuels but also production variability. B&SC argued that in order to account for the wider range in test results that would occur when an engine model enters high volume production and the family on a whole is tested in a product line audit, a 67 g/kW-hr change to the standard is necessary. Briggs & Stratton commented that in the July 1996 NPRM EPA had failed to support its position that the Agency had taken production variability into account at an earlier stage of the small engine rulemaking process, and thus should increase the standard by 67 g/kW-hr to 536 g/kW-hr instead of by 50 g/kW-hr to 519 g/kW-hr. The Agency disagrees. EPA had stated in the NPRM that the data it analyzed to determine the CO emission difference between oxygenated and nonoxygenated fuels indicated that fuel differences may account for as much as 50 g/kW-hr. However, as EPA does not expect the production variability to change based on differences in fuel type, the Agency has no reason to increase the CO standard in this rule to account for production variability. As EPA mentions in the July 1996 NPRM and explains in the small engine Phase 1 final rule Response to Comments document,[6] EPA took production variability into account when it increased the CO standard from 402 g/kW-hr to 469 g/kW-hr between the small engine Phase 1 NPRM and final rule. B&SC mischaracterizes EPA's position by stating that the underlying premise for EPA's position is that the degree of variability in mass emissions data will not increase in relation to mass. This was not EPA's underlying premise; EPA examined B&SC's production variability concern from the perspective of specifically addressing the high volume production issue that Briggs & Stratton raised in its petition. B&SC itself makes no claim regarding variability in relation to mass, nor provides data concerning mass emissions and variability. EPA believes it adequately addressed the production variability concern B&SC raised in its petition when the Agency increased the CO standard from 402 g/kW-hr to 469 g/kW-hr between the small engine Phase 1 NPRM and final rule. Accordingly, EPA believes the only rationale for increasing the CO emission standard in this rule is to account for emission differences between oxygenated and nonoxygenated fuels. The Agency is therefore increasing the nonhandheld Class I and II CO standard to 519 g/kW-hr.

B. Open Crankcase for Snowthrowers

In the July 1996 NPRM, EPA proposed allowing the Administrator the option to permit the use of open crankcases in engines used exclusively to power snowthrowers. As described in the NPRM, EPA would consider allowing open crankcases for these engines if adequate demonstrations are made by the manufacturers that the applicable emission standards would be met and that the cost of abating emissions from

[6] See EPA Air Docket #A–93–25, item V–C–01, p. 37.

an open crankcase would be prohibitive. EPA received comment on this issue from the Engine Manufacturers Association (EMA) and two manufacturers of engines used exclusively in snowthrowers, American Honda Motor Co., Inc. (Honda) and Tecumseh Products Company (Tecumseh).

All of the commenters expressed support for the idea of allowing open crankcases on engines used exclusively to power snowthrowers. However, all three commenters oppose EPA requiring a demonstration to show that the cost of abating emissions from an open crankcase would be prohibitive. In addition, commenters expressed concern about the provision requiring manufacturers to demonstrate that the engine would meet applicable emission standards even with the open crankcase. After considering the comments received, EPA has determined that it will permit the use of open crankcases in engines used exclusively to power snowthrowers, based on a manufacturer's demonstration that the applicable standards will be met. This demonstration may be based on best engineering judgment. The Agency will not require a demonstration of prohibitive cost. However, the Agency will require manufacturers to provide to the Agency upon request the methodology or procedure used to determine that the applicable CO emission standard would be met.

EPA is convinced by commenters arguments that requiring individual demonstrations of prohibitive cost would be burdensome for the manufacturers and the Agency, and possibly could create competitive inequities among manufacturers. In addition, some manufacturers previously shared information with the Agency regarding costs that the Agency believes shows the technological fix that would generally be required to close snowthrower crankcases are prohibitive. Consequently, manufacturers will not need to make any demonstration of the cost to close the crankcase on engines used exclusively to power snowthrowers.

The Agency received comment from the same three commenters on the proposed provision that manufacturers demonstrate that the applicable emission standards would be met with open crankcases. EMA states in its comments that no test procedure has been defined nor test method developed to measure the CO contained within the crankcase gasses emitted from the open crankcase; EMA thus views the required demonstration to be difficult if not impossible. In its comments, Tecumseh also indicates that it does not support the requirement to measure crankcase breather emissions because the amount of CO in crankcase emissions is extremely small, and because no test procedure is defined to measure CO emissions in crankcase gases. However, Tecumseh expressed willingness to share with EPA the procedure it used to determine the crankcase CO emissions, which it states are approximately 1% of the exhaust CO emissions, regardless of operating mode. Honda suggests in its concluding comments that the Agency should allow open crankcases for snowthrower engines if the total CO emissions from the breather and the exhaust are below the regulatory requirement for CO. Honda's research on open crankcases indicates that gas flow from the crankcase breather does not exceed 2.5% of the exhaust flow, and crankcase breather CO gas flow accounts for only 0.025% of the total exhaust flow. In its concluding comments, Honda states that since the crankcase breather CO is very small when compared to the exhaust, EPA should accept a manufacturer's engineering judgment when determining the total engine CO.

Based on the comments, EPA believes that in many cases snowthrowers with open crankcases would continue to meet all of the applicable standards, including the CO standard. However, the data before the agency is relatively limited and EPA is not in a position at this time to conclude that no demonstration of compliance is needed for any such engines before a certificate of conformity is issued. The comments do reflect that manufacturers should often be in a position to demonstrate that the standards are met with an open crankcase using best engineering judgment. Only a limited amount of data generation would seem necessary to make such a demonstration. Therefore the final rule requires that manufacturers make such a demonstration, but makes it clear that this may be based on best engineering judgment. Upon request by EPA, the manufacturers of engines used exclusively in snowthrowers must explain to the Agency the procedure or methodology used to determine that the applicable standards would be met.

C. Effective Date

As proposed in the July 1996 NPRM, this rule will be effective upon signature by the Administrator. This rule is not adding regulatory burdens to any regulated entities; rather, it is relieving burden. In addition, EPA needs to act expeditiously in order that manufacturers may certify their engine models to the Phase 1 emission standards and make them available for the 1997 model year. Consequently, EPA believes no delay in the effective date of this rule is necessary.

VI. Environmental Benefit Assessment

Although the change in the nonhandheld CO standard results in a change from the 7% reduction in CO estimated in the final rule to a 2% reduction in the CO inventory, the Agency has concluded that this rule has no effect on the $HC+NO_X$ inventory and minimal effect on the CO inventory in nonattainment areas. The majority of equipment powered by the Class I and II nonhandheld engines subject to this rule is used during the summer months, when CO nonattainment is generally not a concern. Furthermore, the CO emission rate for many nonhandheld engine models will remain unchanged despite the change in the CO standard since CO levels often are controlled in meeting the $HC+NO_X$ emission standards which are not affected by this action.

The provision to permit open crankcases in engines used exclusively to power snowthrowers will require that manufacturers show compliance with applicable standards. The Agency expects, therefore, that the proposed open crankcase option will not affect the emission inventory or the emission reductions to be achieved by the Phase 1 small SI engine final rule.

VII. Economic Effects

The Agency anticipates that this rule will have minimal, if any, effect on the costs or benefits of the Phase 1 small SI engine final rule. Industry costs are unlikely to change because engine manufacturers will not need to make additional modifications to meet the relaxed CO standard. As there will be no additional cost for industry to pass on to the consumer as a result of this rulemaking, EPA is convinced that consumer cost impacts will remain unchanged. The Agency therefore concludes that the economic effects of this rulemaking are negligible.

VIII. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the executive order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the order.

EPA has determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This rule does not contain any new information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., nor does it change the information collection requirements the Office of Management and Budget (OMB) has previously approved. OMB has previously assigned OMB control number 2060–0338 to the requirements associated with the nonroad small SI engine certification information collection request (ICR); this action does not change those requirements in any way.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (signed into law on March 22, 1995) requires that EPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 of the Unfunded Mandates Reform Act requires EPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this rule is expected to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, EPA has not prepared a budgetary impact statement or specifically addressed selection of the least costly, most cost-effective or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601) requires EPA to consider potential impacts of proposed regulations on small business. If a preliminary analysis indicates that a proposed regulation would have a significant adverse economic impact on a substantial number of small business entities, a regulatory flexibility analysis must be prepared.

This rule decreases the stringency of the CO exhaust emission standard for Class I and II nonhandheld engines, and allows manufacturers of snowthrowers to be relieved of the requirement that crankcases be closed, thereby potentially creating beneficial effects on small businesses by easing these two provisions required of small engine manufacturers by the Phase 1 small SI engine regulations. As a result, EPA has determined that this rulemaking will not have a significant adverse effect on a substantial number of small entities. Consequently, EPA has not prepared a regulatory flexibility analysis for this rule.

IX. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 90

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: November 5, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 90 of title 40 of the Code of Federal Regulations is amended as follows:

PART 90–CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

Subpart B—[Amended]

2. Section 90.103 is amended by revising the table in paragraph (a) introductory text to read as follows:

§ 90.103 Exhaust emission standards.

(a) * * *

EXHAUST EMISSION STANDARDS

[Grams per kilowatt-hour]

Engine displacement class	Hydrocarbon plus oxides of nitrogen	Hydrocarbon	Carbon monoxide	Oxides of nitrogen
I	16.1	.....	519	.....
II	13.4	.....	519	.....
III	.....	295	805	5.36
IV	.....	241	805	5.36
V	.....	161	603	5.36

* * * * *

3. Section 90.109 is amended by adding new paragraph (c) to read as follows:

§ 90.109 Requirement of certification—closed crankcase.

* * * * *

(c) Notwithstanding paragraph (a) of this section, the Administrator will allow open crankcases for engines used exclusively to power snowthrowers based upon a manufacturer's demonstration that all applicable emission standards will be met by the engine for the combination of emissions from the crankcase, and exhaust emissions measured using the procedures in subpart E of this part. This demonstration may be made based upon best engineering judgment. Upon request of the Administrator, the manufacturer must provide an explanation of any procedure or methodology used to determine that the total CO emissions from the crankcase and the exhaust are below the applicable standard for CO.

[FR Doc. 96–29026 Filed 11–12–96; 8:45 am]

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federal register

Wednesday
November 13, 1996

Part IV

Environmental Protection Agency

40 CFR Part 80

Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5650–5]

Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends the time period during which certain alternative analytical test methods may be used in the Federal reformulated gasoline (RFG) program. Currently, the time period for the use of these alternative test methods expires on January 1, 1997. This amendment extends the time period for the use of alternative test methods in the reformulated gasoline program to September 1, 1998.

EPA is considering expanding the ability of industry to use various alternative analytical test methods in the federal RFG program. Extension of this deadline will allow refiners and others to continue using the currently approved alternative analytical test methods pending a final decision by EPA on additional alternatives. This extension provides greater flexibility for the regulated industry and reduce costs to all interested parties.

The Federal RFG program reduces motor vehicle emissions of volatile organic compounds (VOC), oxides of nitrogen (NO_X) and certain toxic pollutants. This change in the deadline for the use of certain alternative test methods under § 80.46 preserves the status quo of the RFG program and will have no change in the emission benefits that result from the RFG program.

EFFECTIVE DATE: This amendment is effective January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph R. Sopata, Chemist, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9034.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially regulated by this action are those that use analytical test methods to comply with the Reformulated Gasoline Program. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refiners, gasoline importers, oxygenate blenders, analytical testing laboratories.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware that could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in part 80 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Introduction

A. RFG Standards

Section 211(k) of the Clean Air Act (the Act) requires that EPA establish standards for RFG to be used in specified ozone nonattainment areas (covered areas), as well as standards for non-reformulated, or conventional, gasoline used in the rest of the country, beginning in January 1995. The Act requires that RFG reduce VOC and toxics emissions from motor vehicles, not increase NO_x emissions, and meet certain content standards for oxygen, benzene and heavy metals. EPA promulgated the final RFG regulations on December 15, 1993.[1] See 40 CFR part 80 subparts D, E and F.

B. Test Methods Utilized at § 80.46

Refiners, importers and oxygenate blenders are required, among other things, to test RFG and conventional gasoline for various gasoline parameters or qualities, such as sulfur levels, aromatics, benzene, and so on.[2] During the Federal RFG rulemaking, and in response to comments by the regulated industry, EPA concluded that it would be appropriate to temporarily allow the use of alternative analytical test methods for measuring the parameters of aromatics and oxygenates. See 40 CFR 80.46. EPA adopted this provision because the designated analytical test methods for each of these parameters were costly and relatively new, leaving the industry little time to fully implement the designated analytical test methods. EPA therefore provided flexibility to the regulated industry by allowing the use of alternative analytical test methods for the two above mentioned parameters until January 1, 1997. After that date, use of the designated analytical test methods was required. Table 1 lists the designated analytical test method for each parameter measured under the RFG program.

[1] 59 FR 7812, February 16, 1994.

[2] 40 CFR 80.65(e), 80.10(i).

TABLE 1.—DESIGNATED ANALYTICAL TEST METHOD UNDER THE RFG PROGRAM

RFG Gasoline parameter	Designated analytical test method
Sulfur	ASTM D–2622–92, entitled ''Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry.''
Olefins	ASTM D–1319–93, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption.''
Reid Vapor Pressure	Method 3, as described in 40 CFR part 80, appendix E.
Distillation	ASTM D–86–90, entitled ''Standard Test Method for Distillation of Petroleum Products.'' [1]
Benzene	ASTM D–3606–92, entitled ''Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography.'' [2]
Aromatics	Gas Chromatography as described in 40 CFR 80.46(f).[3]
Oxygen and Oxygenate content analysis.	Gas Chromatography as described in 40 CFR 80.46(g).[4]

[1] Except that the figures for repeatability and reproducibility given in degrees Fahrenheit in Table 9 in the ASTM method are incorrect, and shall not be used.

[2] Except that Instrument parameters must be adjusted to ensure complete resolution of the benzene, ethanol and methanol peaks because ethanol and methanol may cause interference with ASTM standard method D–3606–92 when present.

[3] Prior to January 1, 1997, any refiner or importer may determine aromatics content using ASTM standard test method D–1319–93 entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption'' for the purpose of meeting any testing requirement involving aromatics content. *Note:* The January 1, 1997 deadline is the subject of today's document.

[4] Prior to January 1, 1997, and when oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C_1 and C_4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenated content using ASTM standard method D–4815–93, entitled ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C_1 and C_4 Alcohols in Gasoline by Gas Chromatography. *Note:* The January 1, 1997 deadline is the subject of today's document.

C. Public Comment

EPA proposed the revisions in this rule on July 3, 1996.[3] As stated in the preamble in the NPRM, Mobil Oil Corporation, the American Petroleum Institute (API) and the National Petroleum Refiners Association (NPRA) have requested that EPA extend the deadline for the use of alternative analytical test methods for the measurement of aromatics and oxygenates as specified in § 80.46. Currently, the ability to use alternative analytical test methods under § 80.46 expires on January 1, 1997. In a September 25, 1995 letter to EPA, API and NPRA jointly urged extension of the deadline for the use of alternative analytical test methods at § 80.46 beyond January 1, 1997. In addition to these parties, ASTM, WSPA, Phillips Petroleum Company, Fying J. Inc., and Chevron submitted comments in favor of this extension. There were no adverse public comments following publication of the NPRM.

EPA intends to undertake a rulemaking to consider establishing a performance based analytical test method approach for the measurement of the reformulated gasoline (RFG) parameters at § 80.46. One approach under consideration involves developing quality assurance specifications under which the performance of alternate analytical test methods would be deemed acceptable for compliance. The Agency envisions that a performance based approach could provide additional flexibility to the regulated industry in their choice of analytical test methods to be utilized for compliance under the RFG and conventional gasoline programs for analytical test methods that differ from the designated analytical test method. EPA expects to finalize action on such a rulemaking by September 1, 1998.

In the meantime, EPA is today amending the deadline for the use of the alternative analytical test procedures for aromatics and oxygenates under § 80.46(f)(3) and § 80.46(g)(9) until September 1, 1998. The Agency believes that it is appropriate to allow parties to continue using these alternative analytical test methods until a final decision is made on the performance based analytical test method approach. This would allow parties to make long-term purchasing decisions based on all the testing options that could be made available at the conclusion of the performance-based rulemaking.

II. Environmental Impact

The RFG program, as required by the Act, obtains emission reductions for VOC, NO^X and toxic emissions from motor vehicles. This change in the deadline for the use of certain alternative test methods under § 80.46 preserves the status quo of the RFG program and will result in no change in the emission benefits of the RFG program.

III. Economic Impact and Impact on Small Entities

This final rule provides for flexibility in allowing the regulated industry to use certain alternative analytical test methods at § 80.46 for eighteen additional months. This final rule is not expected to result in any additional compliance cost to regulated parties and may be expected to reduce compliance cost for regulated parties because it continues to provide a choice for the procurement of test methods for aromatics and oxygenates under the RFG program. This analysis applies to regulated parties that are small entities, as well as other regulated parties. Based on this, the Agency has determined that this final rule will not have a significant impact on a substantial number of small entities.

IV. Executive Order 12866

Under Executive Order 12866[4], the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[5]

It has been determined that this final rule is not a ''significant regulatory

[3] (61 FR 34775).

[4] 58 FR 51735, October 4, 1993.

[5] *Id.* at section 3(f)(1)–(4).

action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

V. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), P.L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, for any rule subject to section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this final rule does not include a Federal mandate as defined in UMRA. This final rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

VI. Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2060–0277. The Agency number for the information collection requirements contained in this rule is 1591.03. This final rule is not expected to result in any additional compliance cost to regulated parties and may be expected to reduce compliance cost for regulated parties because it continues to provide a choice for the procurement of test methods for aromatics and oxygenates under the RFG program. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

VII. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 80

Environmental Protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: November 5, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.46 is amended by revising paragraphs (f)(3)(i) and (g)(9)(i) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(f) * * *

(3) *Alternative test method.* (i) Prior to September 1, 1998, any refiner or importer may determine aromatics content using ASTM standard method D–1319–93, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption,'' for purposes of meeting any testing requirement involving aromatics content; provided that

* * * * *

(g) * * *

(9)(i) Prior to September 1, 1998, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C_1 to C_4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D–4815–93, entitled ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C_1 to C_4 Alcohols in Gasoline by Gas Chromatography,'' for purposes of meeting any testing requirement; provided that

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Wednesday
November 13, 1996

Part V

The President

Notice of November 12, 1996—Continuation of Emergency Regarding Weapons of Mass Destruction

Federal Register
Vol. 61, No. 220
Wednesday, November 13, 1996

Presidential Documents

Title 3—

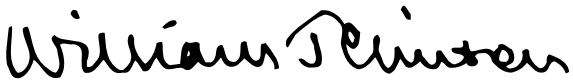
The President

Notice of Novemeber 12, 1996

Continuation of Emergency Regarding Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (''weapons of mass destruction'') and the means of delivering such weapons. Because the proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on November 14, 1994, and extended on November 14, 1995, must continue in effect beyond November 14, 1996. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Executive Order 12938.

This notice shall be published in the Federal Register and transmitted to the Congress.



THE WHITE HOUSE,
November 12, 1996.

[FR Doc. 96–29317
Filed 11–12–96; 11:35 am]
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