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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
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  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** February 18, 1997 at 9:00 am  
**WHERE:** Office of the Federal Register  
 Conference Room

800 North Capitol Street, NW  
 Washington, DC

(3 blocks north of Union Station Metro)

**RESERVATIONS:** 202-523-4538



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**Reader Aids**

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

**Electronic Bulletin Board**

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202-275-1538 or 275-0920.

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# Rules and Regulations

Federal Register

Vol. 62, No. 27

Monday, February 10, 1997

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

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

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Parts 401 and 457

RIN 0563-AB54

#### General Crop Insurance Regulations; Cranberry Endorsement and Common Crop Insurance Regulations; Cranberry Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of cranberries. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current cranberry endorsement under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current cranberry endorsement to the 1997 and prior crop years.

**EFFECTIVE DATE:** March 12, 1997.

**FOR FURTHER INFORMATION CONTACT:** Richard Brayton, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

#### Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments, data, and opinions on information collection requirements previously approved by OMB under OMB control number 0563-0003 through September 30, 1998. No public comments were received.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

#### Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and an acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity.

The insured must also annually certify to the previous years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance

companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

#### Federal Assistance Program

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

#### Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

#### Environmental Evaluation

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

#### National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

#### Background

On Friday, September 13, 1996, FCIC published a proposed rule in the Federal Register at 61 FR 48420-48423 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new



section, 7 CFR 457.132, Cranberry Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring cranberries found at 7 CFR 401.127 (Cranberry Endorsement). This rule also amends the Cranberry Endorsement found at 7 CFR 401.127 to limit the effect of the current provisions to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve § 401.127.

Following publication of that proposed rule, the public was afforded 60 days to submit written comments, data, and opinions. A total of 20 comments were received from the crop insurance industry and FCIC Regional Service Offices (RSO). The comments received, and FCIC's responses, are as follows:

*Comment:* One comment received from an FCIC RSO recommended changing the definition of "Harvest" in section 1 to read, "Removal of the cranberries from the bog." Cranberries can be picked from the vine but remain in the bog, and be susceptible to an insured peril which can cause cranberry fruit damage or loss.

*Response:* To be consistent with other crop policies, FCIC agrees with the comment and has amended the definition accordingly.

*Comment:* Three comments received from the crop insurance industry recommended changing the definition of "Irrigated practice" in section 1 to delete the references to overhead solid set irrigation systems and frost prevention. The commenters stated that overhead solid irrigation systems are not applicable to all areas and that frost prevention is not a policy requirement.

*Response:* FCIC agrees with the comment and has amended the definition accordingly.

*Comment:* One comment received from the crop insurance industry recommended adding the words "and quality" after the word "quantity" in the definition of "Irrigated practice."

*Response:* FCIC agrees that water quality is an important issue. However, there are no established criteria regarding the quality of water necessary to produce a crop. Such criteria would be difficult to develop and administer due to the complexity of the factors included. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry recommended changing the definition of "Non-contiguous land" in section 1 to clarify whether land ownership is a factor in the determination.

*Response:* Land ownership is not a factor to determine non-contiguous land. Non-contiguous land is land on which a producer has or will have an insurable interest in the crop, and whose boundaries do not touch at any point. FCIC believes the provision is clearly stated. Therefore, no change will be made.

*Comment:* Two comments received from the crop insurance industry suggested the provisions contained in section 2(d), which specify that "all optional units must be identified on the acreage report for each crop year," be changed. The commenters stated that as written, the language appears to allow optional units to be established at acreage reporting time, when in fact, optional units depend on acceptable production reports being submitted by the production reporting date, which is often earlier than the acreage reporting date.

*Response:* FCIC has clarified this provision to indicate that only those optional units "established for the crop year" need to be identified on the acreage report.

*Comment:* One comment received from an RSO recommended that section 6(d) be changed to read, "that are grown on vines that have completed four growing seasons after set out, unless otherwise provided by the actuarial table or by written agreement."

*Response:* FCIC agrees with the statement and has amended the provisions accordingly.

*Comment:* One comment received from the crop insurance industry stated that the provision contained in the current cranberry endorsement that restricts insurance on vines that are being renovated and are not likely to produce a full crop for the current year was omitted from section 3(b).

*Response:* The current provisions have been replaced by the provisions contained in section 3(b) that require the insured to report any damage, removal of vines, changes in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based. The insurance provider will inspect the bog to determine the appropriate production guarantee based on the effect of the circumstances that actually exist. This allows insurance for such acres based on the actual expected yield, which will increase the number of insurable acres and provide yield protection for producers. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry questioned why the requirement for a 90

percent stand for insurability was removed. The commenter stated that insurability of bogs with less than 90 percent stand of bearing vines should be subject to inspection and provided by written agreement.

*Response:* As stated above, such acreage will now be insurable at yields commensurate with the production capabilities of the acreage. Therefore, no change will be made.

*Comment:* One comment received from an RSO recommended that section 6(d) "Insured Crop" be changed to read, "that are grown in a bog with at least a 90 percent stand of bearing vines based on the original planting density unless otherwise provided by the actuarial table or by written agreement."

*Response:* FCIC disagrees with the comment. No change will be made for the reasons stated above.

*Comment:* Two comments received, one from an RSO and one from the crop insurance industry, recommended adding a subparagraph to section 8 "Causes of Loss" to read, "failure or breakdown of irrigation equipment or facilities due to direct damage to it from an insurable cause of loss if the cranberry crop is damaged by freezing temperatures within 72 hours of such failure or breakdown and repair or replacement was not possible before damage occurred."

*Response:* FCIC agrees with the comment and has amended the provisions accordingly.

*Comment:* One comment received from an RSO recommended that section 10(c)(1)(i)(D) "Settlement of Claim", be revised by adding "destroyed or put to another use without our consent" as in other crop provisions.

*Response:* FCIC agrees with the comment and has amended the provisions accordingly.

*Comment:* One comment was received from the crop insurance industry stating that section 10(c)(1)(iv) "Settlement of Claim" should not allow the insured to defer settlement and wait for a later, generally lower, appraisal on insured acreage the producer intends to abandon or no longer care for.

*Response:* A later appraisal will only be necessary if the insurance provider agrees that such an appraisal would result in a more accurate determination and if the producer continues to care for the crop. If the producer does not care for the crop, the original appraisal will be used. No change will be made to these provisions.

*Comment:* One comment received from an RSO recommended changing the proposed quality adjustment requirements which state, "due to insurable causes, does not meet, or

would not if properly handled meet, the United States Standards for Fresh Cranberries for Processing” in section 10(c)(3) “Settlement of Claim.” The RSO recommended that the quality adjustment provisions contained in the current cranberry endorsement should be used.

*Response:* FCIC agrees with the comment for those areas where the U.S. Standards for Fresh Cranberries for processing may not be available. The provisions have been amended accordingly.

*Comment:* Three comments received from the crop insurance industry recommended in section 11(d) “Written Agreements,” that the requirement for a written agreement to be renewed each year should be removed. Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow the written agreement to be continuous.

*Response:* Written agreements by design are temporary and intended to address unusual situations. If the condition for which written agreement is needed continue year to year, they should be incorporated into the policy or Special Provisions. Therefore, no change will be made.

In addition to the changes described above, FCIC has made editorial changes for clarification on the following changes to the Cranberry Crop Provisions:

1. Section 1—Added the term “market price” to the definitions for clarification.

2. Section 3—Clarified that the insurance provider will adjust yields in response to removal of vines, damage, other changes in practices, or any other circumstance that will affect the yield.

3. Section 7(a)(1)—Clarified that an application will not be accepted after the November 21 sales closing date. For applications submitted within 10 days of the sales closing date, coverage will not attach until 10 days after the date of application.

4. Section 7(b)(2)(iii)—Added a requirement to clarify that the transferee must be eligible for crop insurance to be consistent with other crop provisions.

5. Section 9(b)—Clarify that damaged production must not be sold or disposed of until the earlier of 15 days from the date of notice of loss or when the insurer gives consent to do so.

6. Section 9(c)—Clarify that the failure to meet the requirements of this section result in the insurance providers inability to inspect the damaged production, for all such production to

be considered undamaged and included as production to count.

List of Subjects in 7 CFR Parts 401 and 457

Cranberry, Cranberry endorsement, Crop insurance.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 effective for the 1998 and succeeding crop years, as follows:

**PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1998 AND SUBSEQUENT CONTRACT YEARS**

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

Authority: 7 U.S.C. 1506(1), 1506(p).

2. The introductory text of § 401.127 is amended to read as follows:

**§ 401.127 Cranberry endorsement.**

The provisions of the Cranberry Crop Insurance Endorsement for the 1990 through the 1997 crop years are as follows:

\* \* \* \* \*

**PART 457—COMMON CROP INSURANCE REGULATIONS: REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS**

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

4. Section 457.132 is added to read as follows:

**§ 457.132 Cranberry crop insurance provisions.**

The Cranberry Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

CRANBERRY CROP PROVISIONS

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

*Barrel*—100 pounds of cranberries.

*Days*—Calendar days.

*Good farming practices*—The cultural practices generally in use in the county for the crop to make normal progress toward

maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

*Harvest*—Removal of the cranberries from the bog.

*Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

*Market price*—The cash price per barrel of cranberries offered by buyers in the area in which you normally market the cranberries.

*Non-contiguous land*—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

*Production guarantee (per acre)*—The number of barrels determined by multiplying the approved actual production history (APH) yield per acre by the coverage level percentage you elect.

*Written agreement*—A written document that alters designated terms of this policy in accordance with section 11.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must

be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must be located on non-contiguous land.

### 3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the cranberries in the county insured under this policy.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(1) Any damage, removal of vines, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The age of the vines; and

(3) Any other information that we request in order to establish your approved yield.

We will adjust the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the removal of vines, damage, change in practices, and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may affect your yields from previous levels, we will adjust your production guarantee as necessary at any time we become aware of the circumstance.

### 4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

### 5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are November 20.

### 6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the cranberries in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown for harvest as cranberries;

(c) That are grown in a bog that, if inspected, is considered acceptable by us; and

(d) That are grown on vines that have completed four growing seasons after the vines were set out, unless otherwise provided by the actuarial table or by written agreement.

### 7. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on November 21 of each crop year, except that for the year of application, if your application is received after November 11, but prior to November 21, insurance will attach on the 10th day after

your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the bog.

(2) The calendar date for the end of the insurance period for each crop year is November 20.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of cranberries on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for, such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

### 8. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the bog;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption;

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period; or

(7) Failure or breakdown of irrigation equipment or facilities due to direct damage to the irrigation equipment or facilities from an insurable cause of loss if the cranberry crop is damaged by freezing temperatures within 72 hours of such failure or breakdown and repair or replacement was not possible before damage occurred.

(b) In addition to the causes of loss excluded in section 12 (Cause of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available; or

(2) Inability to market the cranberries for any reason other than actual physical damage from an insurable cause of loss specified in

this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

### 9. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8):

(a) If you discover damage, or if you intend to claim an indemnity on any insured unit, you must give us notice of probable loss:

(1) At least 15 days before the beginning of any harvesting, or

(2) Immediately if probable loss is discovered after harvesting has begun.

(b) You must not sell or dispose of any damaged production until the earlier of 15 days from the date of notice of loss or when we give you written consent to do so.

(c) If you fail to meet the requirements of this section, and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

### 10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

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

(2) Multiplying the result of section 10(b)(1) by the price election;

(3) Multiplying the total production to be counted, (see section 10(c)) by the price election;

(4) Subtracting the total in section 10(b)(3) from the total in section 10(b)(2); and

(5) Multiplying the result in section 10(b)(4) by your share.

(c) The total production to count (in barrels) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) Damaged solely by uninsured causes;

(C) For which you fail to provide acceptable production records; or

(D) Destroyed or put to another use without our consent;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we will use the appraised amount of production or defer the claim if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general

to the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

(3) Harvested production which, due to insurable causes, is determined not to meet the United States Standards for Fresh Cranberries if available, or would not meet those standards if properly handled, or does not meet the quality requirements of the receiving handler if the United States Standards for Fresh Cranberries, if not available, and such harvested production has a value less than 75 percent of the market price for cranberries meeting the minimum requirements will be adjusted by:

(i) Dividing the value per barrel of such cranberries by the market price per barrel for cranberries meeting the minimum requirements; and

(ii) Multiplying the result by the number of barrels of such cranberries.

#### 11. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 11(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on January 31, 1997.

Kenneth D. Ackerman,  
Manager, Federal Crop Insurance  
Corporation.

[FR Doc. 97-3130 Filed 2-7-97; 8:45 am]

BILLING CODE 3410-FA-P

## Animal and Plant Health Inspection Service

### 9 CFR Part 78

[Docket No. 96-045-2]

#### Brucellosis in Cattle; State and Area Classifications; New Mexico

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of New Mexico from Class A to Class Free. We have determined that New Mexico meets the standards for Class Free status. The interim rule was necessary to relieve certain restrictions on the interstate movement of cattle from New Mexico.

**EFFECTIVE DATE:** The interim rule was effective on November 18, 1996.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, Brucellosis Eradication Staff, VS, APHIS, suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737-1231, (301) 734-7708.

#### SUPPLEMENTARY INFORMATION:

##### Background

In an interim rule effective and published in the Federal Register on November 18, 1996 (61 FR 58625-58626, Docket No. 96-045-1), we amended the brucellosis regulations in 9 CFR part 78 by removing New Mexico from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a).

Comments on the interim rule were required to be received on or before January 17, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

## PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78 and that was published at 61 FR 58625-58626 on November 18, 1996.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 4th day of February 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-3216 Filed 2-7-97; 8:45 am]

BILLING CODE 3410-34-P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 71

RIN 3150-AF58

#### Fissile Material Shipments and Exemptions

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations regarding the shipment of exempt quantities of fissile material and the shipment of fissile material under a general license. This emergency final rule restricts the use of beryllium and other special moderating materials (i.e., graphite and deuterium) in the shipment of fissile materials and consigns quantity limits on fissile exempt shipments. These amendments are necessary to correct a recently discovered defect in the current regulations which could permit, in special circumstances, nuclear criticality to occur in shipments of fissile materials which are permitted to take place without specific Commission approval. The regulatory defect is not indicative of unsafe fissile material shipments in the past. Rather, it was identified by Babcock & Wilcox (B&W) during preparation for shipment of an unprecedented type of fissile material that could result in nuclear criticality under current requirements. This unique material is produced as a waste product from processing of strategic material resulting from operations to commercially downblend weapons-usable fissile material from the former Soviet Union. Although this rule is being issued as an immediately effective final rule, the Commission is requesting public comment and will revise the rule if necessary.

**DATES:** This final rule is effective on February 10, 1997. Comments must be received by March 12, 1997. If public comments require changes in the rule, timely notice will be published in the Federal Register.

**ADDRESSES:** Comments may be submitted either electronically or in written form. Mail written comments to: U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, MD between 7:30 am and 4:15 pm Federal workdays. For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Naiem S. Tanious, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6103, E-mail: INTERNET:NST@NRC.GOV

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 11, 1996, an NRC fuel cycle facility licensee, Babcock & Wilcox, Naval Nuclear Fuel Division (B&W), notified NRC by telephone that it had discovered that the NRC and U.S. Department of Transportation (DOT) regulations (10 CFR 71.53 and 49 CFR 173.453, respectively) on fissile exempt shipments do not provide adequate criticality safety for certain shipments of fissile material<sup>1</sup> (enriched uranium containing beryllium oxide.) Specifically, B&W discovered through calculations, that a shipment, intended to be shipped pursuant to § 71.53(d), containing large amounts of an exempt concentration of enriched uranium in the presence of beryllium, could result in a nuclear criticality.<sup>2</sup> B&W indicated

<sup>1</sup> Fissile material is defined in 10 CFR Part 71 and 49 CFR Part 173 as: Plutonium-238, plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. Packages used for shipment of materials containing these radionuclides must meet specific standards and operating limits designed to preclude nuclear criticality during transport, unless expected by specific regulations (e.g. 10 CFR 71.53 or 49 CFR 173.453).

<sup>2</sup> For transportation purposes, nuclear criticality means a condition in which an uncontrolled, self-sustaining and neutron-multiplying fission chain reaction occurs. Nuclear criticality is generally a concern when sufficient concentrations and masses of fissile material and neutron moderating material exist together in a favorable configuration. The neutron moderating material cannot achieve

that a beryllium oxide-enriched uranium mixture would be produced as a waste product from its processing of strategic material resulting from operations to commercially downblend weapons-usable fissile material from the former Soviet Union. B&W promptly notified the NRC of its concern, provided its calculations to the NRC, and made commitments not to make any such shipments. The NRC staff subsequently reviewed and verified B&W's calculations and determined that expeditious revisions to NRC regulations are needed to correct the deficiency because an inadvertent nuclear criticality in the public domain could involve fatalities, health effects from the resulting radiations, and extensive clean-up costs.

The criticality safety problem brought to NRC's attention with respect to § 71.53 caused the NRC staff to review 10 CFR Part 71 to determine whether any other provisions of this Part might be similarly deficient. The general licenses in §§ 71.18 and 71.22 provide for criticality control by limiting the quantity of fissile material in a single package (i.e., similar to the quantity-based fissile exemptions in 10 CFR 71.53). Section 71.18 also assigns a criticality transport index (pursuant to § 71.4) to each package. These sections were found to have deficiencies comparable to those discovered in § 71.53 in that there are no restrictions placed on special moderating materials (i.e., materials which would increase the number of neutrons available to cause fission as compared with ordinary water), and § 71.22 has the additional deficiency of not limiting the total amount of fissile material in a conveyance. During the NRC staff's review, sections § 71.20 and § 71.24, which also provide general licenses, were found to be adequate in that the moderators of concern were excluded.

Packages for shipments made in accordance with a fissile material exemption in § 71.53 or the general license in § 71.18 or § 71.22, are not required to be certified by NRC. The intent of §§ 71.53, 71.18, and 71.22 is that any materials packaged and shipped in accordance with the limits in these sections (and the other applicable sections of 10 CFR Part 71 and 49 CFR Part 173) are incapable of an inadvertent criticality. The B&W analyses demonstrated that a deficiency exists in these requirements.

criticality by itself in any concentration or configuration. It can enhance the ability of fissile material to achieve criticality by slowing down neutrons or reflecting neutrons.

The NRC has already taken a number of actions to resolve the potential safety problem identified by B&W. First, the NRC obtained a commitment from B&W not to ship Be-U materials without prior NRC authorization and confirmed this commitment in a Confirmatory Action Letter (CAL) dated October 10, 1996. Subsequently, the CAL was superseded by an immediately effective Confirmatory Order Modifying License dated December 16, 1996, which imposed B&W's commitment as a legally binding license condition. The NRC had no reason to doubt B&W's earlier voluntary commitment because B&W had demonstrated its concern for safety by bringing the problem in the first place to the NRC's attention. However, the NRC staff also believed that, given the significance of this issue for public health and safety, the NRC needed to exercise its full authority to assure itself and the public that the one licensee known to be in a position to make potentially unsafe shipments was legally prevented from doing so pending completion of this rulemaking.

On December 5, 1996, NRC also issued NRC Information Notice 96-63 to all NRC licensees authorized to possess special nuclear material. The purpose of this information notice was to alert all such licensees to this problem so that any of them who might be in a position to make potentially unsafe shipments could take appropriate measures.

The NRC also brought this problem to the attention of the U.S. Department of Transportation (DOT) and the U.S. Department of Energy (DOE). DOT is a co-regulator of fissile material shipments and is currently revising its parallel regulations in 49 CFR Part 173 on an expedited basis. DOE makes many shipments of fissile exempt material each year.

**Discussion**

The safety problem uncovered by the B & W calculations, and verified by the NRC, involves quantities, geometries, and concentrations of fissile materials and moderators which could result in criticality when shipped in compliance with sections of the regulations for which criticality analyses are not required. The current regulations (fissile exemptions in § 71.53 and the general licenses in §§ 71.18 and 71.22) are based on the assumption that water is the only moderator which might be present in fissile exempt shipments. These rules are assumed to provide inherent criticality safety without a need for shippers to perform separate analyses. However, some moderators (herein referred to as special moderating materials) can increase the number of

neutrons available to cause fission as compared to ordinary water and result in the potential for criticality in shipments where these moderators are present, even though the shipments are in compliance with 10 CFR 71.53 and 49 CFR 173.453.

Until recently, the presence of special moderating materials in significant quantities in NRC-regulated shipments of fissile exempt materials was not anticipated. However, certain international initiatives, including efforts of reduction in stockpiles of strategic material by processing for commercial use, have resulted in the greater likelihood of inclusion of these materials in NRC regulated shipments. The materials proposed to be shipped by B&W, which prompted this final rule, resulted from such a source. A recent contract was awarded to B&W to process weapons-usable enriched uranium materials from the Republic of Kazakhstan. The waste product of the processing, a uranium-beryllium filtercake, met the fissile exemption provisions in 10 CFR 71.53(d) and 49 CFR 173.453(d). However, B&W used a computer model of the enriched uranium-beryllium oxide waste packages, to demonstrate that if the packages were loaded for shipment into a sea-land container, and at the regulatory fissile exempt concentration limit, adequate confidence in nuclear criticality safety would not have been provided. NRC has verified through independent analyses that the concerns raised by the B&W analysis are valid and apply to other geometries and moderating characteristics as well. To guard against inadvertent criticality, this final rule restricts shipments of fissile material with three special moderating materials: beryllium, graphite, and deuterium.

However, limiting beryllium, graphite, and deuterium to trace quantities would not completely eliminate the possibility of criticality in fissile exempt or generally licensed shipments. There is also a need to limit the quantity of material in a single consignment (the B&W criticality model calculations were performed using 200 cm high infinite slab configuration). The problem of a lack of control on the total amount of fissile exempt material in an exempt shipment, was originally identified during the revision process for the 1996 Edition of the International Atomic Energy Agency's (IAEA's) "Regulations for the Safe Transport of Radioactive Material," Safety Series No. 6, 1996. The problem was addressed in Safety Series No. 6, 1996, by adopting a consignment limit on the amount of fissile exempt material that a shipper

could transport as a private carrier or deliver to a common carrier for shipment. The NRC cannot presently enforce a limit on the total quantity of fissile material in a common carrier shipment because the regulations do not require a transport index for each package or require shipment by exclusive use. The latter would restrict the ability to use common carriers, while requiring a transport index would negate much of the advantage gained by the exemption. Consignment limits are enforceable and represent a practical operating limit that would prevent the potentially unsafe accumulation of fissile exempt materials during shipment.

Therefore, this final rule restricts special moderating materials and includes consignment limits on shipments of fissile materials under the provisions of §§ 71.22 and 71.53. This final rule also restricts special moderating materials under the provisions of § 71.18. Together these changes will eliminate the possibility of inadvertent criticality during shipments made in compliance with 10 CFR 71.18, 71.22, or 71.53. The NRC anticipates that DOT will issue parallel revisions to 49 CFR Part 173. Accordingly, NRC and DOT are coordinating the necessary revisions to 10 CFR Part 71 and 49 CFR Part 173.

#### Compatibility With the IAEA Standards

On September 9, 1996, the Board of Governors of the IAEA approved the 1996 revisions to Safety Series No. 6. Among the changes in these revised IAEA regulations are that consignment limits and limits on the types of moderators were placed on the fissile exemptions in paragraph 672 of Safety Series No. 6, 1996. The changes to 10 CFR Part 71 made by this rulemaking are generally compatible with the changes made to IAEA Safety Series No. 6, 1996. Future revisions to 10 CFR Part 71 and 49 CFR Part 173 are planned by NRC and DOT, respectively, to bring them into general accord with other sections of IAEA Safety Series No. 6, 1996.

One area in which this final rule for 10 CFR Part 71 is not compatible with IAEA Safety Series No. 6, 1996, paragraph 672 is that graphite was added as a special moderating material in the 1995 revisions to 10 CFR Part 71 (60 FR 50248), but does not appear in IAEA Safety Series No. 6, 1996. [Graphite is limited by the current general licenses in 10 CFR 71.20 and 71.24.] The NRC believes that it is appropriate to continue to limit graphite (being a special moderating material) in domestic regulations for shipment of

fissile material. Therefore, the revisions to the fissile exemptions in 10 CFR 71.53 and the general licenses in 10 CFR 71.18 and 71.20 provide for exclusion of other than trace quantities of graphite.

#### Alternatives Considered

To determine the appropriate amendments to 10 CFR 71.18, 71.22, and 71.53, the NRC staff considered the following three alternatives:

1. *The No-Action Alternative.* This alternative is not acceptable to the NRC. Shipments of fissile material (Be-U mixtures) meeting the fissile material exemption requirements could be made in a configuration that does not maintain criticality safety during transport. Therefore, this alternative was not pursued.

2. *Eliminate the fissile material exemption.* This alternative is not acceptable to the NRC. Elimination of fissile material exemption, while solving the criticality safety problem identified by B&W, would create other problems. Many packages, such as those containing low-level radioactive waste materials (e.g., ion-exchange resins), contain only trace concentrations of fissile nuclides, which are incidental to the overall radioactivity of the package contents, and criticality events are not credible for shipments of these packages. The § 71.53 fissile material exemptions are applied for these shipments, and there is a continuing need to provide for this application. Elimination of § 71.53 would place an additional burden and cost on many shippers whose shipments posed no criticality safety concerns. Therefore, this alternative was not pursued.

3. *Revise the fissile material exemptions in § 71.53 and the general licenses in §§ 71.18 and 71.22 to exclude the presence of special moderating materials such as beryllium, deuterium and graphite in other than trace quantities, and place consignment limits on shipments.* Together these changes solve the criticality safety problem identified by B&W and the related problem of the potential accumulation of an unsafe quantity of fissile materials in a shipment. Given the limited number of affected shipments and the small number of licensees involved, some additional costs on shippers may be expected because they can no longer use the fissile material exemptions and general licenses for materials with beryllium, deuterium and graphite in other than trace quantities, and because some shipments may have to be divided to meet the consignment limits. It keeps the exemption and general license provisions available for other shippers.

This alternative was chosen by the NRC staff, and is the basis for the following specific changes in §§ 71.18, 71.22, and 71.53.

Changes in 10 CFR 71.18, 71.22, and 71.53

#### Section 71.18

The title of § 71.18: General license: Fissile material, limited quantity per package, remains the same. Also paragraphs (a), (b), and (c) in § 71.18 remain the same. The old paragraph (d) in § 71.18 is replaced by three new paragraphs: (d), (e), and (f). The new paragraph (d) covers general licenses for packages containing no more than a type A quantity of radioactive material where fissile material is mixed with substances having an average hydrogen density greater than water (defined in § 71.20). The new paragraph (e) restricts the quantity of beryllium, graphite, or hydrogenous material enriched in deuterium in a package to no greater than 0.1% of the fissile material mass. The new paragraph (f) is a modification of the old paragraph (d) that includes a simplified formula for calculation of the minimum transport index.

#### Section 71.22

The title of § 71.22: General License: Fissile material, limited quantity, controlled shipment, remains the same. Also paragraphs (a), (b), and (c) in § 71.22 remain the same. The old paragraph (d) is modified with the addition of a new table and accompanying formula which restrict the mass of uranium-235 and other fissile material in a controlled shipment. The table gives both new limits of 290 g and 180 g for uranium-235 and other fissile materials, when these materials are mixed with substances having hydrogen density greater than water; the table also gives the old § 71.22 limits for shipments of U-235 and other fissile material when mixed with substances having a hydrogen density less than or equal to water. The new paragraph (e) restricts the quantity of beryllium, graphite, or hydrogenous material enriched in deuterium in a package to no greater than 0.1% of the fissile material mass. Paragraph (f) is the same as old paragraph (e).

#### Section 71.53

The title of § 71.53 remains the same. The introductory paragraph restates the old § 71.53 language that packages are exempted from the fissile material standards of § 71.55 and § 71.59; however, the same paragraph restricts these exempted packages to only situations when beryllium, graphite, or

deuterium is not present in quantities exceeding 0.1% of the fissile material mass. A new paragraph (a) is added which contains a formula and an accompanying table to limit individual consignment, but also includes the requirements in old paragraphs (a), (b)(1) and (2), and (d). The remainder of § 71.53 (paragraphs (b), (c), and (d)) is essentially the same as the old § 71.53 (paragraphs (c), (f), and (e)).

#### Good Cause for Immediate Adoption

The Commission is promulgating this emergency final rule because the problem of regulatory safety limits over quantities and concentrations of fissile material and moderators, which has been demonstrated to permit criticality in at least one proposed shipment, is an important safety issue meriting immediate corrective action. An accidental nuclear criticality in the public domain would very likely involve fatalities, health effects from the resulting radiations, and extensive clean-up costs.

Shipments of fissile exempt material are normally made without any associated criticality analysis because in the past it has been assumed that the regulations provide inherent criticality safety. However, B&W's contemplated shipment demonstrates that this assumption is not correct for all possible types of shipments. While the Commission expects that B&W's commitment, as expressed in the NRC's Confirmatory Order, not to undertake shipments without the prior approval of the NRC, and the Information Notice issued to all licensees authorized to possess special nuclear material, will prevent an unsafe shipment from occurring pending revision of its rules, the Commission does not track shipments by licensees made under the provisions of 10 CFR 71.18, 71.22, or 71.53. Moreover, the nature of the materials being imported and shipped domestically has recently changed due to initiatives with the States of the former Soviet Union to reduce weapons-usable material such as high-enriched uranium. The materials B&W had intended to ship were byproducts from processing this type of material. Shipments made under 10 CFR 71.18, 71.22 or 71.53 are made without specific NRC approval and the possibility exists that a licensee could unwittingly make an unsafe shipment in reliance upon the present rules. Thus, the Commission must amend its rules quickly to prevent unsafe shipments from occurring.

For the reasons stated above, the Commission finds good cause, pursuant to Section 553(b)(B) of the Administrative Procedure Act (APA) (5

U.S.C. 553(b)(B)), to dispense with notice and prepromulgation public comment as being impracticable and contrary to the public interest. Further, the Commission finds, pursuant to Section 553(d)(3) of the APA (5 U.S.C. 553(d)(3)), that good cause exists for making these amendments immediately effective because the need to have these regulations in place outweighs the inconvenience, if any, to licensees who may need to alter shipping plans.

Nevertheless, the Commission is providing a 30-day post-promulgation public comment period during which interested persons are invited to submit their comments to the Commission. Within a reasonable time after the end of the comment period, the Commission will publish a statement in the Federal Register containing an evaluation of the significant comments received and any revisions of the rule to be made as a result of the comments.

#### Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321-3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be

displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555-0001, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

#### Finding of No Significant Environmental Impact: Availability

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement (EIS) is not required.

The Commission's "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes," NUREG-0170, dated December 1977, is NRC's generic EIS, covering all types of radioactive material transportation by all modes (road, rail, air, and water). The total limited quantity impacts were included in the overall transportation risk assessment in NUREG-0170 and found to be acceptable. The radiological safety impact estimates in this EIS clearly bound the impacts for limited

quantity shipments of fissile material containing special moderating materials.

This final rule affects only a small subset of the limited quantity shipments, i.e., those that contain both fissile material and special moderating materials. NUREG-0170 does not specify the annual number of limited quantity, fissile material shipments containing special moderating materials, but does estimate that 50,000 NRC-certified fissile material packages (used for larger quantities of, and/or more highly enriched, fissile materials) would be shipped in 1985. The number of shipments affected by this final rule is a small fraction of the NRC certified fissile package shipments because fissile materials containing special moderating materials are less common than moderately enriched fissile materials.

The options available to licensees under this final rule include shipping the material using different administrative controls (i.e., shipping it as a fissile material and not using the quantity-limited exemption/general license) or reducing the special moderating material concentration to specified limits. The NRC staff believes the first option may prove more economical because the increase in cost in making a single shipment under fissile material controls is less than that involved in reducing or removing the special moderating material. Under this option, the same number of shipments are made as before the rule change, but shipments of fissile materials containing special moderating material would be made in NRC certified packages. Under the latter option, the concentration of special moderating material might be reduced through additional processing, perhaps involving dilution or extraction. This option may involve additional transportation, either due to the increase in shipment volume due to dilution, or the transportation of extracted materials. Since the quantities of affected fissile materials are relatively small, staff believes the additional transportation would also be small.

The two options provide the added nuclear criticality safety control the rule seeks, either through the use of NRC-certified packages, and the administrative controls associated with their use, or through the reduction of the concentration of special moderating materials to an acceptably low level. Thus, the ultimate environmental impact of the rule is beneficial in that criticality safety is increased.

#### Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to requirements of

the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing information collection requirements were approved by the Office of Management and Budget, approval number 3150-0008.

#### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

#### Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not involve any provisions that would require backfits as defined in 10 CFR Part 50.109(a)(1).

#### List of Subjects in 10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 71.

### **PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL**

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

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789-790.

2. Section 71.18 is revised to read as follows:

#### **§ 71.18 General license: Fissile material, limited quantity per package.**

(a) A general license is issued to any licensee of the Commission to transport



fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of subparts E and F of this part, if the material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of subpart H of this part.

(c) Except as provided in paragraph (d) of this section, this general license applies only when a package contains no more than a Type A quantity of radioactive material, including only one of the following:

(1) Up to 40 g of uranium-235;

(2) Up to 30 g of uranium-233;

(3) Up to 25 g of the fissile radionuclides of plutonium, except that for encapsulated plutonium-beryllium neutron sources in special form, an A<sub>1</sub> quantity of plutonium may be present; or

(4) A combination of fissile radionuclides in which the sum of the ratios of the amount of each radionuclide to the corresponding maximum amounts in paragraphs (c) (1), (2), and (3) of this section does not exceed unity.

(d) For packages where fissile material is mixed with substances having an average hydrogen density greater than water, this general license applies only when a package contains no more than a Type A quantity of radioactive

material, including only one of the following:

(1) Up to 29 g of uranium-235;

(2) Up to 18 g of uranium-233;

(3) Up to 18 g of fissile radionuclides of plutonium, or

(4) A combination of fissile radionuclides in which the sum of the ratios of the amount of each radionuclide to the corresponding maximum amounts in paragraphs (d) (1), (2), and (3) of this section does not exceed unity.

(e) Except for the beryllium contained within the special form plutonium-beryllium sources authorized in paragraph (c) of this section, this general license applies only when beryllium, graphite, or hydrogenous material enriched in deuterium is not present in quantities exceeding 0.1% of the fissile material mass.

(f)(1) Except as specified in paragraph (f)(2) of this section for encapsulated plutonium-beryllium sources, this general license applies only when, a package is labeled with a transport index not less than the number given by the following equation, where the package contains x grams of uranium-235, y grams of uranium-233, and z grams of the fissile radionuclides of plutonium:

$$\text{Minimum Transport Index} = (0.25x + 0.33y + 0.4z).$$

(2) For a package in which the only fissile material is in the form of encapsulated plutonium-beryllium

neutron sources in special form, the transport index based on criticality considerations may be taken as 0.025 times the number of grams of the fissile radionuclides of plutonium.

(3) Packages which have a transport index greater than 10 are not authorized under the general license provisions of this part.

3. Section 71.22 is revised to read as follows:

**§ 71.22 General license: Fissile material, limited quantity, controlled shipment.**

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of Subparts E and F of this part, if limited material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only when a package contains no more than a Type A quantity of radioactive material and no more than 400 g total of the fissile radionuclides of plutonium encapsulated as plutonium-beryllium neutron sources in special form.

(d) This general license applies only when:

(1) The mass of fissile radionuclides in the shipment is limited such that the

$$\frac{\text{grams of uranium - 235}}{X} + \frac{\text{grams of other fissile material}}{Y} \leq 1$$

where X and Y are the mass defined in the table following paragraph (d)(2) of this section; or

(2) the encapsulated plutonium-beryllium neutron sources are in special form and the total mass of fissile

radionuclides in the shipment does not exceed 2500 g.

**PERMISSIBLE MASS LIMITS FOR SHIPMENTS OF FISSILE MATERIAL**

Fissile material	Fissile material mass (g) mixed with substances having a hydrogen density less than or equal to water	Fissile material mass (g) mixed with substances having a hydrogen density greater than water
Uranium-235(X) .....	500	290
Other fissile material(Y) .....	300	180

(e) Except for the beryllium contained within the special form plutonium-beryllium sources authorized in paragraphs (c) and (d) of this section, this general license applies only when beryllium, graphite or hydrogenous

material enriched in deuterium is not present in quantities exceeding 0.1% of the fissile material mass.

(f) This general license applies only when shipment of these packages is made under procedures specifically

authorized by DOT, in accordance with 49 CFR Part 173 of its regulations, to prevent loading, transport, or storage of these packages with other fissile material shipments.

4. Section 71.53 is revised to read as follows:

**§ 71.53 Fissile material exemptions.**

Fissile materials meeting the requirements of one of the paragraphs in

(a) through (d) of this section are exempt from fissile material classification and from the fissile material package standards of §§ 71.55 and 71.59, but are subject to all other requirements of this part. These exemptions apply only

when beryllium, graphite, or hydrogenous material enriched in deuterium is not present in quantities exceeding 0.1 percent of the fissile material mass.

(a) Fissile material such that

$$\frac{\text{grams of uranium} - 235}{X} + \frac{\text{grams of other fissile material}}{Y} \leq 1$$

for an individual consignment, where X and Y are the mass limits defined in table following paragraph (a)(3) of this section, provided that:

(1) Each package contains no more than 15 g of fissile material. For unpackaged material the mass limit of 15g applies to the conveyance; or

(2) The fissile material consists of a homogeneous hydrogenous solution or mixture where the minimum ratio of hydrogen atoms to fissile radionuclide atoms (H/X) is 5200 and the maximum concentration of fissile radionuclides within a package is 5 g/liter; or

(3) There is no more than 5g of fissile material in any 10 liter volume of material and the material is packaged so as to maintain this limit of fissile radionuclide concentration during normal transport.

THE REQUIREMENTS FOR PACKAGES CONTAINING FISSILE MATERIAL

Fissile material	Fissile material mass (g) mixed with substances having an average hydrogen density less than or equal to water	Fissile material mass (g) mixed with substances having an average hydrogen density greater than water
Uranium-235(X) .....	400	290
1Other fissile material(Y) .....	250	180

(b) Uranium enriched in uranium-235 to a maximum of 1 percent by weight, and with total plutonium and uranium-233 content of up to 1 percent of the mass of uranium-235, provided that the fissile material is distributed homogeneously throughout the package contents and does not form a lattice arrangement within the package.

(c) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2 percent by weight, with a total plutonium and uranium-233 content not exceeding 0.1 percent of the mass of uranium-235, and with a minimum nitrogen to uranium atomic ratio (N/U) of 2.

(d) Plutonium, less than 1 kg, of which not more than 20 percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

Dated at Rockville, Maryland, this 4th day of February, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97-3175 Filed 2-7-97; 8:45 am]

BILLING CODE 7950-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 157**

[Docket No. RM81-19-000]

**Project Cost and Annual Limits**

Issued February 4, 1997.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the authority delegated by 18 CFR 375.307(e)(1), the Director of the Office of Pipeline Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

**EFFECTIVE DATE:** January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Michael J. McGehee, Division of Pipeline Certificates, OPR (202) 208-2257.

**SUPPLEMENTARY INFORMATION:**

Publication of Project Cost Limits Under Blanket Certificates; Order of the Director, OPR

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.307(e)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted as inflation, is delegated to the Director of the Office of Pipeline Regulation. The cost limits for calendar years 1982 through 1997, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

Note that these inflation adjustments are based on the Gross Domestic Product (GDP) Implicit Price Deflator, rather than the Gross National Product (GNP) Implicit Price Deflator, which is not yet available for 1996. The Commerce Department advises that in recent years the annual change has been virtually the same for both indices. Further adjustments will be made, if necessary.

List of Subjects in 18 CFR Part 157

Natural gas.  
Kevin P. Madden,  
Director, Office of Pipeline Regulation.

Accordingly, 18 CFR Part 157 is amended as follows:

**PART 157—[AMENDED]**

1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

**§ 157.208 [Amended]**

2. Table I in § 157.208(d) is revised to read as follows:

**§ 157.208 Construction, acquisition, operation, and miscellaneous rearrangement of facilities.**

\* \* \* \* \*

(d) \* \* \*

TABLE I

Year	Limit	
	Auto. proj. cost limit (col. 1)	Prior notice proj. cost limit (col. 2)
1982 .....	\$4,200,000	\$12,000,000
1983 .....	4,500,000	12,800,000
1984 .....	4,700,000	13,300,000
1985 .....	4,900,000	13,800,000
1986 .....	5,100,000	14,300,000
1987 .....	5,200,000	14,700,000
1988 .....	5,400,000	15,100,000
1989 .....	5,600,000	15,600,000
1990 .....	5,800,000	16,000,000
1991 .....	6,000,000	16,700,000
1992 .....	6,200,000	17,300,000
1993 .....	6,400,000	17,700,000
1994 .....	6,600,000	18,100,000
1995 .....	6,700,000	18,400,000
1996 .....	6,900,000	18,800,000
1997 .....	7,000,000	19,200,000

\* \* \* \* \*

**§ 157.215 [Amended]**

3. Table II in § 157.215(a) is revised to read as follows:

**§ 157.215 Underground storage testing and development.**

(a) \* \* \*

TABLE II

Year	Limit
1982 .....	\$2,700,000
1983 .....	2,900,000
1984 .....	3,000,000
1985 .....	3,100,000
1986 .....	3,200,000
1987 .....	3,300,000
1988 .....	3,400,000
1989 .....	3,500,000
1990 .....	3,600,000
1991 .....	3,800,000
1992 .....	3,900,000
1993 .....	4,000,000
1994 .....	4,100,000
1995 .....	4,200,000
1996 .....	4,300,000
1997 .....	4,400,000

\* \* \* \* \*

[FR Doc. 97-3153 Filed 2-7-97; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Parts 1309, 1310, and 1313**

[DEA Number 154I]

RIN 1117-AA42

**Comprehensive Methamphetamine Control Act of 1996; Possession of List I Chemicals, Definitions, Record Retention, and Temporary Exemption From Chemical Registration for Distributors of Combination Ephedrine Products**

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DEA is amending its regulations to incorporate certain amendments of the Controlled Substances Act (CSA) made by the Comprehensive Methamphetamine Control Act of 1996 (MCA) and to provide temporary exemption from registration for persons who distribute combination ephedrine drug products. The MCA amends the CSA with respect to: possession of listed chemicals following suspension or revocation of registration; the record retention requirements for List I chemical transactions; certain definitions; and establishes the requirement that, effective October 3, 1996, persons that distribute combination ephedrine products shall be subject to the chemical registration requirement. To avoid interruption in the legitimate distribution of combination ephedrine products, DEA is amending its

regulations to provide certain temporary exemptions from the registration requirement pending promulgation of final regulations.

**DATES:** Effective February 10, 1997. Written comments or objections must be submitted on or before April 11, 1997.

**ADDRESSES:** Comments and objections should be submitted in quintuplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Attention: DEA Federal Register Representative/CCR.

**FOR FURTHER INFORMATION CONTACT:** G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307-7297.

**SUPPLEMENTARY INFORMATION:** The Comprehensive Methamphetamine Control Act of 1996 was enacted on October 3, 1996. Among its provisions, the MCA contained revisions of the Controlled Substances Act (CSA) with respect to possession of listed chemicals following revocation or suspension of registration, the record retention requirements for transactions involving List I chemicals and tableting or encapsulating machines, and definitions, of "regulated transaction", "retail distributor", and "combination ephedrine product". To accommodate the amendments made by the MCA, DEA is making the following changes to Title 21, Code of Federal Regulations (CFR):

*21 CFR 1309.43 Suspension or Revocation of Registration*

The MCA amends Section 404 of the CSA (21 U.S.C. 844) to make it unlawful for any person to knowingly or intentionally possess any list I chemical obtained under the authority of a registration or an exemption from registration granted by the Administrator by regulation, if that registration or exemption has been revoked or suspended. The revised language also makes it illegal to possess list I chemicals obtained under the authority of a registration or an exemption granted by regulation by the Administrator, if the registration has expired or if the registrant has ceased to do business as originally intended under that registration.

To reflect the amendments in the law, DEA is revising 21 CFR 1309.43, to include seizure and forfeiture instructions. Persons whose registrations or exemptions have been revoked or suspended shall be required, upon service of the notice of revocation or suspension, to surrender all List I

chemicals in their possession obtained under the authority of a registration or an exemption from registration granted by the Administrator by regulation, to the nearest office of the Administration or authorized agent of the Administration, or place such List I chemicals under seal as described in 21 U.S.C. 824(f). When the suspension or revocation is limited to certain chemicals, the registrant shall surrender those chemicals affected by the revocation or suspension as indicated above.

#### *21 CFR 1309.02, 1310.01 & 1313.02 Definitions*

The definition of "retail distributor" found in § 1309.02(f) has been amended by the MCA. As defined by the MCA, the term refers to persons, such as grocery stores, general merchandise stores, drug stores, etc., that engage in sales of pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products almost exclusively to individuals for personal use in face-to-face transactions. The new definition will apply to all retail distributors of regulated drug products, including single entity ephedrine products.

The MCA also amends the definition of "regulated transaction" to make all ephedrine products and certain drug products containing pseudoephedrine and phenylpropanolamine subject to regulation. However, because the provisions relating to pseudoephedrine and phenylpropanolamine products will not become effective until October 3, 1997, the definition of "regulated transaction", as found in 21 CFR 1310.01(f) and 1313.02(d), is being amended only with respect to ephedrine products at this time. The MCA also defines "combination ephedrine product"; that definition, together with the appropriate guidelines clarifying the specific criteria established by the definition, has been added to §§ 1309.02 and 1310.01.

As a result of the amendment to the definition of "regulated transaction", persons who distribute, import, or export combination ephedrine products are now subject to the chemical registration, recordkeeping, and reporting requirements. As noted later in this document, DEA is establishing certain temporary exemptions from the registration requirement pending promulgation of regulations, subject to notice and comment, relating to the control of combination ephedrine products.

#### *21 CFR 1310.02 Substances Covered and 21 CFR 1310.04 Maintenance of Records*

The MCA amends Section 802(34) of the CSA to correct the spelling of "Isosafrole" and "hydriodic acid" and Section 830(a) to modify the record retention period from the current 4 years to 2 years for all transactions involving a listed chemical or a tableting or encapsulating machine. The corresponding amendments are being made in the regulations. With respect to the change in the record retention period, the new language of the law does not distinguish between records created before and after the change in the retention requirement. Thus, effective October 3, 1996, a regulated person's records must only contain records of those regulated transactions that occurred within the past two years; records of transactions that are more than two years old are no longer required.

#### *Temporary Exemptions From Registration Pending Promulgation, With Notice and Comment, of Regulations*

As noted earlier, combination ephedrine products became subject to the CSA's chemical registration, recordkeeping, and reporting provisions effective October 3, 1996. Under this new requirement, any person who distributes, imports, or exports combination ephedrine products must first obtain a DEA registration. Because implementation of this provision will require amendment to DEA's regulations, DEA is establishing temporary exemptions from the registration requirement for persons handling combination ephedrine products, to allow for continuation of legitimate commerce in the products. In addition, the existing exemptions from chemical registration for persons registered with DEA to handle controlled substances, which is contained in 21 CFR 1309.25 and for distributors of prescription drug products, which is contained in 21 CFR 1309.28, are continued for combination ephedrine products.

The first new exemption applies to retail distributors of combination ephedrine products. A single transaction limit of 24 grams has been established by the MCA for combination ephedrine products in retail distributions. Consistent with previous proposals regarding the regulation of retail distributions of drug products that contain List I chemicals, DEA is temporarily exempting retail distributors from the registration

requirement. This interim rule is subject to public comment. Under this exemption, retail distributors will not be required to obtain a registration if they engage exclusively in distributions of combination ephedrine products below the 24 gram limit in a single transaction for legitimate medical use either directly to walk-in customers or in face-to-face transactions by direct sales. This exemption is set out in the new section 21 CFR 1309.29. Retail distributors that operate under this exemption are reminded that they will be subject to civil penalties for violations of the 24 gram single transaction limit, as set out in Section 401(f)(2) of the MCA.

The second exemption applies to those persons (other than retail distributors, as described above, or persons subject to the existing exemptions regarding CSA registrants and prescription drug products) who are required to obtain a registration. Any such person who submits an application for registration for activities involving combination ephedrine products on or before May 12, 1997 will be exempt from the registration requirement for their lawful activities with combination ephedrine products until the Administration has taken final action with respect to that application. This exemption is set out in 21 CFR 1310.09.

DEA recognizes that, unlike the second exemption, which provides a general benefit to all affected persons, the first exemption is limited in its benefit. Therefore, while the regulatory changes in this interim rule take effect upon publication, the notice is open for public comment or objection until May 12, 1997. Further, the exemptions are temporary and may be subject to change, based on the comments or objections received.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that this interim rulemaking will not have a significant economic impact upon a substantial number of entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This interim rulemaking is an administrative action to make the regulations consistent with the law and to avoid interruption of legitimate commerce by granting temporary exemptions from registration pending promulgation, through notice and comment, of the regulations necessary to implement the provisions of the MCA pertaining to combination ephedrine products. Further, since this is a temporary action which provides affected persons with a means to comply with the law pending promulgation of regulations implementing the MCA, this action is

not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866. Consideration of the significance and impact of the new requirements of the MCA will be addressed as part of a future proposed rulemaking by DEA proposing regulations to implement the MCA.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### List of Subjects

##### 21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, List I and List II chemicals, Security measures.

##### 21 CFR 1310

Drug traffic control, List I and List II chemicals, Reporting and recordkeeping requirements.

##### 21 CFR Part 1313

Drug traffic control, Exports, Imports, list I and List II chemicals, Transshipment and in-transit shipments.

For the reasons set out above, 21 CFR Parts 1309, 1310, and 1313 are to be amended as follows:

#### **PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS AND EXPORTERS OF LIST I CHEMICALS**

1. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

2. Section 1309.29 is added to read as follows:

##### **§ 1309.29 Exemption of retail distributors of combination ephedrine drug products.**

The requirement of registration is waived for any retail distributor whose activities with respect to List I chemicals are restricted to the distribution of below-threshold quantities of a combination ephedrine drug product in a single transaction to an individual for legitimate medical use. The threshold for a distribution of a combination ephedrine drug product in a single transaction to an individual for legitimate medical use is 24 grams of ephedrine base.

2. Section 1309.43 is amended by revising paragraph (d) and adding a new paragraph (e) to read as follows:

##### **§ 1309.43 Suspension or revocation of registration.**

\* \* \* \* \*

(d) Upon service of the order of the Administrator suspending or revoking registration, the registrant shall immediately deliver his or her Certificate of Registration to the nearest office of the Administration. Also, upon service of the order of the Administrator revoking or suspending registration, the registrant shall, as instructed by the Administrator:

(1) Deliver all List I chemicals in his or her possession that were obtained under the authority of a registration or an exemption from registration granted by the Administrator by regulation, to the nearest office of the Administration or to authorized agents of the Administration; or

(2) Place all such List I chemicals in his or her possession under seal as described in section 304(f) of the Act (21 U.S.C. 824(f)).

(e) In the event that revocation or suspension is limited to a particular chemical or chemicals, the registrant shall be given a new Certificate of Registration for all substances not affected by such revocation or suspension; no fee shall be required for the new Certificate of Registration. The registrant shall deliver the old Certificate of Registration to the nearest office of the Administration. Also, upon service of the order of the Administrator revoking or suspending registration with respect to a particular chemical or chemicals, the registrant shall, as instructed by the Administrator:

(1) Deliver to the nearest office of the Administration or to authorized agents of the Administration all of the particular chemical or chemicals in his or her possession that were obtained under the authority of a registration or an exemption from registration granted by the Administrator by regulation, which are affected by the revocation or suspension; or

(2) Place all of such chemicals under seal as described in section 304(f) of the Act (21 U.S.C. 824(f)).

3. Section 1309.44 is amended by revising paragraph (b) to read as follows:

##### **§ 1309.44 Suspension of registration pending final order.**

\* \* \* \* \*

(b) Upon service of the order of immediate suspension, the registrant shall promptly return his Certificate of Registration to the nearest office of the Administration. Also, upon service of the order of immediate suspension, the registrant shall, as instructed by the Administrator:

(1) Deliver to the nearest office of the Administration or to authorized agents of the Administration all of the particular chemical or chemicals in his or her possession that were obtained under the authority of a registration or an exemption from registration granted by the Administrator by regulation, which are affected by the revocation or suspension; or

(2) Place all of such chemicals under seal as described in section 304(f) of the Act (21 U.S.C. 824(f)).

\* \* \* \* \*

4. Section 1309.62 is to be amended by revising the existing text and redesignating it as paragraph (a) and adding a new paragraph (b) to read as follows:

##### **§ 1309.62 Termination of registration.**

(a) The registration of any person shall terminate if and when such person dies, ceases legal existence, or discontinues business or professional practice. Any registrant who ceases legal existence or discontinues business or professional practice shall promptly notify the Special Agent in Charge of the Administration in the area in which the person is located of such fact and seek authority and instructions to dispose of any List I chemicals obtained under the authority of that registration.

(b) The Special Agent in Charge shall authorize and instruct the person to dispose of the List I chemical in one of the following manners:

(1) By transfer to person registered under the Act and authorized to possess the substances;

(2) By delivery to an agent of the Administration or to the nearest office of the Administration;

(3) By such other means as the Special Agent in Charge may determine to assure that the substance does not become available to unauthorized persons.

#### **PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES**

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.01 is amended by revising paragraphs (f)(1)(iv)(A) and (B) redesignating paragraphs (g) through (l) as paragraphs (h) through (m), redesignating paragraph (m) as paragraph (o), and adding new paragraphs (g) and (n) to read as follows:

##### **§ 1310.01 Definitions.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(iv) \* \* \*

(A) (1) the drug contains ephedrine or its salts, optical isomers, or salts of optical isomers; or

(2) The Administrator has determined pursuant to the criteria in 1310.10 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(B) The quantity of ephedrine or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical.

\* \* \* \* \*

(g) The term combination ephedrine product means a drug product containing ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically significant quantities of another active medicinal ingredient. The term "therapeutically significant quantities" shall apply if the product formulation (i.e., the qualitative and quantitative composition of active ingredients within the product) is listed in American Pharmaceutical Association (APHA) Handbook of NonPrescription Drugs; Drug Facts and Comparisons (published by Wolters Kluwer Company); or USP DI (published by authority of the United States Pharmacopeial Convention, Inc.); or the product is listed in § 1310.15 as an exempt drug product. For drug products having formulations not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in § 1310.14 whether the active medicinal ingredients are present in quantities considered therapeutically significant for purposes of this paragraph.

\* \* \* \* \*

(n) The term retail distributor means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to drug products containing pseudoephedrine, phenylpropanolamine, or ephedrine are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. For the purposes of this paragraph, sale for personal use means the distribution of below-threshold quantities in a single transaction to an individual for legitimate medical use. Also for the purposes of this paragraph, a grocery store is an entity within Standard Industrial Classification (SIC) code 5411, a general merchandise store is an entity within SIC codes 5300 through

5399 and 5499, and a drug store is an entity within SIC code 5912.

\* \* \* \* \*

3. Section 1310.02 is amended by revising paragraphs (a)(16) and (a)(21) to read as follows:

**§ 1310.02 Substances covered.**

\* \* \* \* \*

(a) \* \* \*

(16) Isosafrole ..... 8704

\* \* \* \* \*

(21) Hydriodic Acid ..... 6695

\* \* \* \* \*

4. Section 1310.04 is amended by revising paragraph (a) to read as follows:

**§ 1310.04 Maintenance of records.**

(a) Every record required to be kept subject to § 1310.03 for a List I chemical, a tableting machine, or an encapsulating machine shall be kept by the regulated person for two years after the date of the transaction.

\* \* \* \* \*

5. Section 1310.09 is revised to read as follows:

**§ 1310.09 Temporary exemption from registration.**

Each person required by section 302 of the Act (21 U.S.C. 822) to obtain a registration to distribute, import, or export a combination ephedrine product is temporarily exempted from the registration requirement, provided that the person submits a proper application for registration on or before May 12, 1997. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in parts 1309, 1310, and 1313 of this chapter remain in full force and effect.

**PART 1313—IMPORTATION AND EXPORTATION OF PRECURSORS AND ESSENTIAL CHEMICALS**

1. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

2. Section 1313.02 is amended by revising paragraphs (d)(1)(iv)(A) and (B), to read as follows:

**§ 1313.02 Definitions.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iv) \* \* \*

(A)(1) the drug contains ephedrine or its salts, optical isomers, or salts of optical isomers; or

(2) The Administrator has determined pursuant to the criteria in 1310.10 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(B) The quantity of ephedrine or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical.

\* \* \* \* \*

Dated: January 28, 1997.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 97-3086 Filed 2-7-97; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Saint Lawrence Seaway Development Corporation**

**33 CFR Parts 404 and 407**

RIN 2135-AA08

**Seaway Regulations and Rules: Great Lakes Pilotage Rates**

**AGENCY:** Saint Lawrence Seaway Development Corporation, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Saint Lawrence Seaway Development Corporation (SLSDC) amends the Seaway Regulations and Rules by increasing Great Lakes Pilotage Rates by: 8% in District 1 (9% in Area 1; 6% in Area 2); 19% in District 2 (0% in Area 4; 31% in Area 5); 6% in District 3 (7% in Area 6; 6% in Area 7; 4% in Area 8); and 11% for mutual rates.

The pilotage rate adjustments contained in this final rule are different from the rates proposed by the SLSDC in the Notice of Proposed Rulemaking published in the Federal Register (61 FR 50258) on September 25, 1996, (the NPRM), because adjustments have been made based on comments received in response to the NPRM. These adjustments are discussed in the section of this rule entitled "Discussion of Comments and Changes."

The increase in Great Lakes pilotage rates is necessary because, after review, the SLSDC has determined that, in accordance with 33 CFR 407.1(b), pilot compensation is not meeting pilot compensation targets established in 33 CFR Part 407, Appendix A, Step 2.

**EFFECTIVE DATE:** This rule becomes effective on March 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Scott A. Poyer, Chief Economist, Saint

Lawrence Seaway Development Corporation, Office of Great Lakes Pilotage, United States Department of Transportation, 400 7th Street SW., Suite 5424, Washington, DC 20590, 1-800-785-2779, or Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Suite 5424, Washington, D.C. 20590, (202) 366-6823.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On September 25, 1996, the SLSDC published a NPRM in the Federal Register (61 FR 50258) that proposed new pilotage rates in accordance with the Great Lakes Pilotage Ratemaking Methodology (33 CFR Part 407). The NPRM detailed the calculations involved in determining new pilotage rates and proposed increases in Great Lakes pilotage rates based on the results of these calculations. The NPRM announced a public hearing, which was held on October 22, 1996, in Romulus, MI. The original comment period for the NPRM was scheduled to end on November 12, 1996; however, four commenters requested an extension. In order to allow the public more time to prepare their responses to the proposals contained in the NPRM, the SLSDC published a notice in the Federal Register on November 15, 1996, (61 FR 58496), which extended the NPRM's comment period to November 27, 1996.

##### Background and Purpose

On December 11, 1995, the Secretary of Transportation transferred responsibility for administration of the Great Lakes Pilotage Act from the Commandant of the U.S. Coast Guard to the Administrator of the SLSDC. This transfer was effected by a final rule published by the U.S. Department of Transportation (DOT) in the Federal Register on December 11, 1995 (60 FR 63444). Among the responsibilities transferred by this final rule was the responsibility for setting Great Lakes pilotage rates. On May 9, 1996, the DOT published a final rule in the Federal Register (61 FR 21081), which was originated and initially drafted when Great Lakes pilotage functions were administered by the U.S. Coast Guard. The final rule made the Department's final changes to the methodology used to set Great Lakes pilotage rates.

The purpose of this rulemaking is to establish pilotage rates under the new Great Lakes Pilotage ratemaking methodology for the first time. This rulemaking also finishes the first full rate review since 1987 and implements the first U.S. rate adjustment since 1992.

##### Discussion of Comments and Changes

In response to the NPRM a total of 42 written and 13 oral comments were received. Many commenters did not limit themselves to the subject of proposals contained in the NPRM. In fact, nearly all the comments addressed one or more issues that were beyond the scope of this rulemaking. These comments can be divided into two major categories—commenters who wanted a comprehensive study of the entire Great Lakes Pilotage system and commenters who wanted to reopen or redesign the Great Lakes Pilotage Ratemaking Methodology. Twenty-nine commenters representing every facet of the Great Lakes maritime community requested a study or comprehensive review of the pilotage system with the aim of making the Great Lakes pilotage system more efficient. Seventeen commenters requested either specific changes to the Great Lakes Pilotage Ratemaking Methodology or requested a wholesale redesign of the entire methodology.

The SLSDC believes that the Great Lakes needs to maintain a safe, reliable, and efficient pilotage system and a sensible and reliable ratemaking methodology in order to stay competitive in world markets. This final rule can only address comments directly related to the NPRM and its implementation of the ratemaking methodology. However, it is clear that there is a considerable amount of public interest in a comprehensive review of the Great Lakes pilotage system as a whole. In order to give all stakeholders an equal opportunity to comment on this subject, on January 29, 1997, the SLSDC published a notice in the Federal Register (62 FR 4223) that announced a public meeting on the issue. The remainder of the comments discussed in this final rule deal with subjects proposed in the NPRM.

Thirty-four commenters representing agriculture, labor, shipping and port interests objected to the rate increases proposed in the NPRM and nine commenters representing pilotage interests supported the rate increases. Commenters opposed to the rate increases believed the increases would be detrimental to agriculture, labor, ports or shipping on the Great Lakes. Almost all of these commenters requested a comprehensive review of the Great Lakes pilotage system (as discussed above), before new rates were set. Some of the commenters opposed to the NPRM also requested that the proposed increases either be rejected, delayed, or phased in over as much as a five-year period. The commenters in favor of the

rate increases believed the proposed increases were necessary, reasonable and only fair to pilots who had not received a rate increase in many years. The SLSDC has reviewed existing pilotage rates as required by 33 CFR § 407.1(b), and determined that pilot compensation is not meeting pilot compensation targets established in 33 CFR Part 407, Appendix A, Step 2. Therefore, pilotage rates have been adjusted as required by Step 7 of Appendix A to 33 CFR.

Four commenters believe the SLSDC's traffic projections were too low, and that vessel traffic and pilotage hours would increase more than the SLSDC predicted in the NPRM. Commenters requested that projections be reviewed using data updated through at least November 30, 1996. In response to these comments, the SLSDC has reviewed its traffic projections using pilot hour data updated through November 30, 1996. Based on this data, the SLSDC has revised its projection of pilot hours in each District.

In District 1, actual pilot hours through November 30, 1996 were 13.98% above 1995 levels, with December levels increasing. Therefore, the SLSDC has changed its projection to a 16% increase for District 1.

In District 2, actual pilot hours through November 30, 1996 were 11.04% above 1995 levels, with December levels increasing. Therefore, the SLSDC has changed its projection to a 16% increase for District 2.

In District 3, actual pilot hours through November 30, 1996 were 20.41% above 1995 levels, with December levels decreasing slightly. Therefore, the SLSDC has changed its projection to a 20% increase for District 3.

The change in traffic projections has not affected pilotage rates in Districts 1 or 2 as much as District 3 because the change in traffic was not as great. District 3, which in the first three months of the navigation season was approximately 43% below 1995 levels, witnessed a significant surge in vessel traffic. By November 30, 1996, District 3 was approximately 20% ahead of 1995 traffic levels. Under the ratemaking methodology this increase in traffic translated into an increase in the target number of pilots because more pilots are necessary to handle the increased workload. The increase in traffic also decreased pilotage rates because operating costs are spread out over more entities. Virtually all of the change in pilotage rates in District 3 is a result of the change in traffic projections that were requested by commenters from District 3 and elsewhere who correctly

alerted the SLSDC that vessel traffic was increasing in District 3. Some of these comments are discussed further below.

Three commenters requested the Director allow 18 pilots in District 3, including three pilots in the St. Mary's River, so that there will be enough pilots to handle the workload and none of the current 18 pilots will be temporarily laid-off or terminated. As detailed above, the SLSDC has revised its traffic projections upward in District 3. Based on this revised projection, pilotage rates have been recalculated based on 23 pilots in District 3 with four of those pilots in the St. Mary's River.

One commenter from the District 3 pilot association questioned whether the pilot hours calculated in the NPRM were correct for District 3 because the SLSDC's data showed pilot hours were down approximately 43% at the beginning of the year, while the commenter was working many hours in excess of 1995. As explained above, the SLSDC has reexamined its projections using data updated through November 1996, which shows that total pilot hours for District 3 had increased. However, further analysis of the data showed that the increase in the pilot hour workload was not spread evenly among all pilots, especially in District 3. Some disparity in workload between pilots should be expected in any district since no two pilots work exactly the same jobs at the same time, and some pilots have administrative responsibilities. Since some pilots work almost exclusively in designated waters where the target is 1000 hours per pilot per season, while other pilots work almost exclusively in undesignated waters where the target is 1800 hours per season, it would be expected that the difference between the pilot with the most hours and the pilot with the least hours would be approximately 800 hours. As shown in Tables A, B and C below, for pilots who worked the entire year in Districts 1 and 2, the disparity between the pilot with the most hours and the pilot with the least hours was close to 800 hours (approximately 500 hours in District 1 and approximately 1000 hours in district 2). As can be seen in the tables, in both districts the pilot workload is divided fairly evenly. However, for pilots who worked the entire year in District 3, the disparity was twice as high (approximately 2,000 hours). Many pilots were significantly over targeted hours, while other pilots were below.

TABLE A.—DISTRICT 1 PILOT HOURS

Pilot	Pilot hours (Jan–Nov)
Hickey .....	843
Maclean, J .....	989
Menkes .....	845
Metzger .....	1,072
Tetzlaff .....	860
Maclean, M .....	1,362
Welch .....	1,357
Dorr .....	1,309
Withington .....	1,265
Difference (Hi/Lo) .....	519

TABLE B.—DISTRICT 2 PILOT HOURS

Pilot	Pilot hours (Jan–Nov)
Greene .....	778
Kanaby .....	1,007
Schnell .....	920
Waldrop .....	1,144
Knetchel .....	1,598
Meyer .....	1,101
Ell .....	1,298
Singler .....	1,348
Coppola .....	1,924
Loflin .....	1,269
Coulston .....	1,428
Difference (Hi/Lo) .....	1,146

TABLE C.—DISTRICT 3 PILOT HOURS

Pilot	Pilot hours (Jan–Nov)
Opack .....	1,778
Balanda .....	2,106
Brown .....	1,824
Madjiwita .....	1,884
Sciullo .....	835
Brennan .....	2,156
Halverson .....	963
Ojard .....	1,988
Derf .....	784
Aho .....	1,882
Skorich .....	1,552
Kolenda .....	2,491
Harris .....	1,504
Hayes .....	2,921
Willecke .....	911
Radtko .....	1,226
Difference (Hi/Lo) .....	2,137

Two commenters believe that pilotage rates should allow for more than the 13 pilots proposed in the NPRM for District 2. As detailed above, the SLSDC has revised its traffic projections upward in District 2. Based on this revised projection, pilotage rates have been recalculated based on 14 pilots in District 2.

The revised traffic projections result in a revision of the target number of

pilots for District 1. Pilotage rates have been recalculated based on 11 pilots in District 1.

Two commenters, the president and controller of the District 3 pilots association, believe the way the NPRM proposed to allocate expenses to each area resulted in a 1% overstatement of expenses in favor of District 3, and an inequitable allocation of revenues to Area 7 (the St. Mary's River). The ratemaking methodology does not specify how expenses and revenues will be divided among the areas, only that a separate ratemaking calculation be made for each area (see 33 CFR § 407.10(b)).

The NPRM proposed that revenues and expenses be divided among the individual areas based on the number of pilots calculated for each area and that the area totals be added together for the District totals. However, the

commenters are correct that in a District with three areas (i.e., District 3), if all fractions over .5 are rounded up, as is the general rule, then it is possible to have total area expenses add up to 101% of the actual expenses for the district. The SLSDC agrees that this situation could upwardly bias pilotage rates in District 3, so the SLSDC has remedied the situation by changing the order of the calculations so that the district totals are done first and then this total is divided among the areas so that the area totals must equal 100% of the District total. The commenters also believe that district totals should not be apportioned to areas within a district based on the number of pilots calculated for that area, but instead should be apportioned to each area based on the actual revenue earned in that area in the previous year. The commenters believe this would lead to a more accurate projection for each area. For Districts 2 and 3, the SLSDC agrees with the commenters and has divided the district by area accordingly. In these districts all revenues and expenses from all areas are pooled together and then divided. So it is more accurate to divide district totals based on the actual division of revenue for each area. However, in District 1 two pools exist, one for Area 1 and one for Area 2. Revenues are accredited separately in each pool and expenses are assigned on a per capita basis. Following this system, in District 1 revenues have been apportioned to each area on the same basis as in Districts 2 and 3, but expenses and other calculations are divided based on the number of pilots in each area. The SLSDC believes this method gives a truer projection of how revenues and expenses are actually divided in each area.



One commenter agrees with the above commenters that district revenues should not be apportioned based on the number of pilots. However, the commenter's suggested solution is to divide total district expenses into fixed and variable portions, adjust the variable portion by projected pilot numbers, and then adjust both the fixed and variable portions for inflation. As discussed in the previous comment above, the SLSDC believes that dividing revenues based on actual revenues earned is a more accurate method, and the SLSDC intends to retain this method for dividing revenues.

Two commenters believe expenses that the independent auditor had recommended be disallowed because these expenses were reimbursed by other entities should not have been disallowed in ratemaking calculations because the expenses in question have already been deducted from association revenues reported as net revenues to the Director. After reviewing association reported revenues, the SLSDC agrees and \$113,273 has been added back to the expense base of District 2 and \$112,812 has been added back to the expense base of District 3.

One commenter believed that \$53,971 should be added to the expense base for District 1 to account for unaudited travel expenses that are not reported in the pilot association's income statement. The SLSDC reviewed the District travel figures with the independent auditing firm that conducted an audit of all three pilot associations. The auditing firm, which had already added \$21,624 to the expense base of District 1 for pilot travel and per diem, did not believe additional funds were warranted. As a result, the SLSDC is not changing the independent auditing firm's recommended travel allowance for District 1.

One commenter requested that the District 1 pilots be granted an immediate surcharge for the purpose of purchasing Electronic Chart Display Information Systems (ECDIS) units for all pilots in District 1. The SLSDC believes it is sound policy to evaluate the application of ECDIS technology to Great Lakes pilotage operations before wholesale adoption. Therefore, this requested change is not adopted.

One commenter supports the Director's proposed allowance of funds for the test and evaluation of ECDIS equipment in each pilot association. However, the commenter suggests that the equipment should be leased before the decision is made to purchase. The SLSDC agrees that leasing would be a viable option for test and evaluation of the equipment, and this option will be allowed.

Two commenters believe the expenses for test and evaluation of ECDIS should be amortized as a capital expenditure, rather than as an operational expense. Such a change would have virtually no impact on pilotage rates proposed in the NPRM because the expense is so small relative to the total rate (approximately six tenths of one percent). Therefore the SLSDC does not believe such a change would be worthwhile for this NPRM. If there are large-scale purchases of ECDIS equipment in future years, these expenses would be better candidates for capitalization.

One commenter questioned the use of Internal Revenue Service guidelines for the recognition of expenses and argued that \$49,500 in disallowed pilot boat lease expenses and \$5,400 in disallowed property lease expenses should be reinstated into the District 2 expense base. The commenter believes that all disallowed expenses should qualify because they are reasonable and necessary for the provision of pilotage service. The SLSDC reviewed these expenses and has decided to accept the opinion of the independent audit firm hired for the purposes of this ratemaking. The independent audit firm believed the disallowed expenses were excessive based on the accepted auditing practice of comparison to expenditures of similar businesses in the same locality, and the SLSDC has left those expenses out of the rate base for District 2.

Two commenters believe that the NPRM did not account for increases in operating expenses (e.g., social security, medicare, etc.) that come with increases in the number of pilots and/or increases in pilotage operations. These commenters are incorrect, the NPRM did take these factors into account and an explanation of how operating expenses were adjusted for these factors was contained in the NPRM (see 61 FR 50261 Step 1.D.).

Three commenters disagreed that master compensation was 1.5 times all salary and benefits as proposed in the NPRM. Commenters provided detailed information, including W-2 tax information, showing that a more accurate approximation of master wages is 1.5 times mate salary, plus mate benefits. One commenter also provided a separate calculation that indicated master compensation should be approximately \$106,000. After reviewing the available figures, the SLSDC believes that master salary is closest in comparison to 1.5 times mate salary, plus mate benefits. Using this method, the calculations in this final rule are based on a figure of \$92,290 for mate compensation and \$131,213 for

master compensation (representing \$116,767 for salary and \$14,446 for benefits).

One commenter believed mate compensation included funds for workmen's compensation, insurance and social security, and these expenses should be disallowed from pilotage district operating costs. The SLSDC disagrees because the figure used by the SLSDC for mate benefits does not include the ascribed items.

One commenter believed that profits from related entities of each pilot association should be counted towards pilot compensation. In effect this is how such profits are counted after deduction for expenses and return on investment.

Five commenters complimented the SLSDC and the Office of Great Lakes Pilotage on the NPRM, believing the SLSDC did a fair and equitable job of applying the ratemaking methodology. One commenter, however, believes the SLSDC applied the ratemaking methodology inconsistently and did not follow the published methodology. The commenter argues that the number of pilots were calculated without regard to federal regulations. The commenter believes the regulations require the Director to include mandatory rest hours when calculating the number of pilots. The SLSDC does not believe the NPRM was inconsistent or contradicted the ratemaking methodology. The federal regulations were followed as per Step 2.A. of Appendix A to part 407 of Title 33, Code of Federal Regulations, which states that the number of pilots will be calculated based on projected bridge hours.

One commenter believes the ratemaking methodology does not require pilotage rates to be set on an area by area basis. The commenter suggests that rates be set by district and divided evenly among areas within each district. The SLSDC believes the method proposed by the commenter is contradictory to the requirements of the ratemaking methodology (see 33 CFR § 407.10(b) and Part 407, Appendix A, Step 7). The suggested change is not adopted.

One commenter believes that the proposed increase in rates would have a substantial impact on a significant number of small entities. However, the commenter only mentions twelve small entities that might be affected, with no details on how much these entities could be effected. Lacking any evidence to the contrary, the SLSDC disagrees that the proposed increases would have a substantial impact on a significant number of small entities.

One commenter believes the Director should set pilotage rates separate from

the calculations detailed in the Great Lakes pilotage ratemaking methodology in order to arrive at a more fair and equitable rate. The SLSDC disagrees that the rate calculations are unfair or unreasonable and both this final rule and the Great Lakes Pilotage Ratemaking Methodology have been established by public rulemaking, with ample opportunity for public input. The

ratemaking methodology was the subject of a separate rulemaking which took several years to develop and involved extensive public comment. The final changes to the Great Lakes Pilotage Ratemaking Methodology were published as a final rule in the Federal Register on May 9, 1996, (61 FR 21081). The time for commenting on the methodology is long expired. This

rulemaking serves to implement the methodology, not reopen the methodology for comment and change.

Rate Calculations

Based on the changes discussed above, the step-by-step calculations for each pilotage area are summarized in the following tables:

TABLE D

	Total District 1	Area 1, St. Lawrence River	Area 2, Lake Ontario
Step 1: Projection of operating expenses .....	\$354,561	\$226,919	\$127,642
Step 2: Projection of target pilot compensation .....	\$1,287,651	\$918,491	\$369,160
Step 3: Projection of revenue .....	\$1,532,401	\$1,057,356	\$475,045
Step 4: Calculation of investment base .....	\$232,890	\$149,050	\$83,840
Step 5: Determination of target rate of return on investment .....	7.72%	7.72%	7.72%
Step 6: Adjustment determination .....	\$1,660,191	\$1,156,917	\$503,274
Step 7: Adjustment of pilotage rates .....	1.08	1.09	1.06

TABLE E

	Total District 2	Area 4 Lake Erie	Area 5, South East Shoal to Port Huron, MI
Step 1: Projection of operating expenses .....	\$1,148,410	\$447,880	\$700,530
Step 2: Projection of target pilot compensation .....	\$1,642,367	\$461,450	\$1,180,917
Step 3: Projection of revenue .....	\$2,371,548	\$924,904	\$1,446,644
Step 4: Calculation of investment base .....	\$265,488	\$103,540	\$161,948
Step 5: Determination of target rate of return on investment .....	7.72%	7.72%	7.72%
Step 6: Adjustment determination .....	\$2,821,272	\$921,223	\$1,900,049
Step 7: Adjustment of pilotage rates .....	1.19	1.00	1.31

TABLE F

	Total District 3	Area 6, Lakes Huron and Michigan	Area 7, St. Mary's River	Area 8, Lake Superior
Step 1: Projection of operating expenses .....	\$1,159,099	\$602,731	\$266,593	\$289,775
Step 2: Projection of target pilot compensation .....	\$2,278,362	\$1,199,770	\$524,852	\$553,740
Step 3: Projection of revenue .....	\$3,262,301	\$1,696,396	\$750,329	\$815,576
Step 4: Calculation of investment base .....	\$119,823	\$62,308	\$27,559	\$29,956
Step 5: Determination of target rate of return on investment .....	7.72%	7.72%	7.72%	7.72%
Step 6: Adjustment determination .....	\$3,446,711	\$1,807,311	\$793,572	\$845,828
Step 7: Adjustment of pilotage rates .....	1.06	1.07	1.06	1.04

As summarized in the tables A, B and C above, the SLSDC amends the pilotage rates found in 33 CFR §§ 404.405-410 by increasing pilotage rates: 9% in Area 1; 6% in Area 2; 0% in Area 4; 31% in Area 5; 7% in Area 6; 6% in Area 7; and 4% in Area 8. For the pilotage rates in 33 CFR §§ 404.420, 404.425 and 404.428, which are paid in all pilotage areas, the SLSDC amends those sections by increasing these rates 11%, which is the aggregate increase for the pilotage rate increase in all areas.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United

States and therefore, Executive Order 12866 does not apply. The Great Lakes Pilotage Act (46 U.S.C. § 9305) provides that the Secretary may make agreements with the appropriate agency of Canada to prescribe joint or identical pilotage rates and charges. The Secretary of Transportation and the Minister of Transport of Canada have signed a Memorandum of Agreement concerning Great Lakes Pilotage dated January 18, 1977, section 7 of which provides that the Secretary and the Minister will provide for the establishment of identical rates, charges and any other conditions or terms. The terms of this rulemaking have been discussed with

the cognizant agency of Canada, the Great Lakes Pilotage Authority, which has voiced no objections.

This proposed regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is considered to be substantive but nonsignificant under those procedures. All previous pilotage rate rulemakings have been considered nonsignificant except for the interim pilotage rate adjustment of June 5, 1992, (57 FR 23955). This interim adjustment was necessary because a new rate methodology was being designed and was significant because the interim rate

adjustment was put in before the methodology was completed. The rate methodology has now been completed and 33 CFR § 407.1(b) requires that pilotage rates be reviewed annually.

The economic impact of this rulemaking is expected to be minimal so that a full economic evaluation is not warranted. Fees for Great Lakes registered pilotage service are paid almost exclusively by foreign vessels. Therefore, the effect of the proposed increase in Great Lakes pilotage rates will be borne almost exclusively by foreign vessels operators, not U.S. entities.

**Regulatory Flexibility Act Determination**

The SLSDC certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. In addition, this rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment. The number of small entities that the SLSDC believes will be directly affected by this rule are three U.S. pilot associations. The pilot associations will be positively affected by this rulemaking, and as discussed above under "Regulatory Evaluation," the SLSDC expects the impact of this proposed rule to be minimal for other small entities. Since the vast majority of pilotage fees are paid by foreign vessels, any resulting costs will be borne almost exclusively by foreign vessel operators. The alternative of not increasing pilotage rates would have a negative impact on the three small entity U.S. pilot associations.

**Environmental Impact**

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of the human environment.

**Collection of Information**

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

**Federalism**

The Corporation has analyzed this proposal under the principles and criteria in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 33 CFR Parts 404 and 407**

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For reasons set out in the preamble, the SLSDC amends Part 404 and 407 of Title 33 of the Code of Federal Regulations as follows:

**PART 404—[AMENDED]**

1. The authority citation for part 404 continues to read as follows:

Authority: 46 U.S.C. 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.52. 33 CFR 404.105 also is issued under the authority of 44 U.S.C. 3507.

2. Section 404.400 (a) and (c) are revised to read as follows:

**§ 404.400 Calculation of pilotage units and determination of weighting factor.**

\* \* \* \* \*

(a) Pilotage unit computation:  
 Pilot Unit=(Length×Breadth×Depth)/  
 283.17 (measured in meters)  
 Pilot Unit=(Length×Breadth×Depth)/  
 10,000 (measured in feet)

\* \* \* \* \*

(c) The charge for pilotage service is obtained by multiplying the weighting factor, obtained from paragraph (b) of this section by the appropriate basic rate specified in §§ 404.405, 404.407, 404.410, 404.420 and 404.425.

3. Section 404.405 is revised to read as follows:

**§ 404.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.**

Except as provided in § 404.420, the following basic rates are payable for all services and assignments performed by U.S. registered pilots in the St. Lawrence River and Lake Ontario.

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage .....	\$8 per Kilometer or \$13 per Mile. <sup>1</sup>
Each Lock Transited Harbor Morage .....	\$171. <sup>1</sup> \$562. <sup>1</sup>

<sup>1</sup> The minimum basic rate for assignment of a pilot in the St. Lawrence River is \$374 and the maximum basic rate for a through trip is \$1,643.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six Hour Period .....	\$294
Docking/Undocking .....	\$280

4. Section 404.407 is added to read as follows:

**§ 404.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.**

Except as provided in § 404.420, the following basic rates are payable for all services and assignments performed by U.S. registered pilots on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six Hour Period .....	\$322	\$322
Docking/Undocking .....	248	248
Any Point on the Niagara River below the Black Rock Lock .....	N/A	633

(b) Area 5 (Designated Waters):

Any point on/in	Southeast Shoal	Toledo or any port on Lake Erie west of Southeast Shoal	Detroit river	Detroit pilot boat	St. Clair river
Toledo or any port on Lake Erie west of South-east Shoal .....	\$988	\$583	\$1,282	\$988	N/A
Port Huron Change Point .....	11,720	11,993	1,293	1,005	\$715
St. Clair River .....	11,720	N/A	1,293	1,293	583
Detroit or Windsor or the Detroit River .....	988	1,282	583	N/A	1,293
Detroit pilot boat .....	715	988	N/A	N/A	1,293

<sup>1</sup> When pilots are not changed at the Detroit Pilot Boat.

5. Section 404.410 is revised to read as follows:

**§ 404.410 Basic rates and charges on Lakes Huron, Michigan and Superior and the St. Mary's River.**  
 Except as provided in § 404.420, the following basic rates are payable for all

services and assignments performed by U.S. registered pilots on Lakes Huron, Michigan, and Superior and the St. Mary's River.

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six Hour Period .....	\$269
Docking/Undocking .....	256

(b) Area 7 (Designated Waters):

Area	Detour	Gros Cap	Any Harbor
Gros Cap .....	\$1,317	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario .....	1,317	\$496	N/A
Any point in Sault Ste. Marie, Ontario except the Algoma Steel Corporation Wharf .....	1,105	496	N/A
Sault Ste. Marie, Michigan .....	1,105	496	N/A
Harbor Morage .....	N/A	N/A	\$496

(c) Area 8 (Undesignated Waters):

Service	Lakes Superior
Six Hour Period .....	\$261
Docking/Undocking .....	249

6. Section 404.420 is revised to read as follows:

**§ 404.420 Cancellation, delay or interruption in rendition of services.**

(a) Except as provided in this section, whenever the passage of a ship is interrupted and the services of a U.S. pilot are retained during the period of the interruption or when a U.S. pilot is detained on board a ship after the end of an assignment for the convenience of the ship, the ship shall pay an additional charge calculated on a basic rate of \$51 for each hour or part of an hour during which each interruption or detention lasts with a maximum basic rate of \$807 for each continuous 24-hour period during which the interruption or detention continues. There is no charge for an interruption or detention caused by ice, weather or traffic, except during the period beginning the 1st of December and ending on the 8th of the following April. No charge may be made for an interruption or detention if the total interruption or detention ends during the 6-hour period for which a charge has been made under §§ 404.405 through 404.410.

(b) When the departure or morage of a ship for which a U.S. pilot has been ordered is delayed for the convenience of the ship for more than one hour after the U.S. pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, the ship shall pay an

additional charge calculated on a basic rate of \$51 for each hour or part of an hour including the first hour of the delay, with a maximum basic rate of \$807 for each continuous 24-hour period of the delay.

(c) When a U.S. pilot reports for duty as ordered and the order is cancelled, the ship shall pay:

- (1) A cancellation charge calculated on a basic rate of \$305;
- (2) A charge for reasonable travel expenses if the cancellation occurs after the pilot has commenced travel; and
- (3) If the cancellation is more than one hour after the pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, a charge calculated on a basic rate of \$51 for each hour or part of an hour including the first hour, with a maximum basic rate of \$807 for each 24-hour period.

**§ 404.425 [Amended]**

7. Section 404.425 is amended by revising the term "§§ 404.405, 404.410, and 404.420" to read "§§ 404.405, 404.407, 404.410 and 404.420".

8. Section 404.428 is revised to read as follows:

**§ 404.428 Basic rates and charges for carrying a U.S. pilot beyond normal change point or for boarding at other than the normal boarding point.**

If a U.S. pilot is carried beyond the normal change point or is unable to board at the normal boarding point, the ship shall pay at the rate of \$312 per day or part thereof, plus reasonable travel expenses to or from the pilot's base. These charges are not applicable if the ship utilizes the services of the pilot beyond the normal change point and the ship is billed for these services. The change points to which this section applies are designated in § 404.450.

**PART 407—[AMENDED]**

9. The authority citation for Part 407 continues to read as follows:

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.52.

10. Appendix A to Part 407, Step 1.C. and Step 5(2) are revised to read as follows:

Appendix A to Part 407—Ratemaking Analyses and Methodology

\* \* \* \* \*

**Step 1.C.—Adjustment for Inflation or Deflation**

(1) In making projections of future expenses, expenses that are subject to inflationary or deflationary pressures are adjusted. Costs not subject to inflation or deflation are not adjusted. Annual cost inflation or deflation rates will be projected to the succeeding navigation season, reflecting the gradual increase or decrease in costs throughout the year. The inflation adjustment will be based on the preceding year's change in the Consumer Price Index for the North Central Region of the United States.

\* \* \* \* \*

**Step 5: Determination of Target Rate of Return on Investment**

\* \* \* \* \*

(2) The allowed Return on Investment (ROI) is based on the preceding year's average annual rate of return for new issues of high grade corporate securities.

\* \* \* \* \*

Issued at Washington, D.C. on February 4, 1997.

Saint Lawrence Seaway Development Corporation

Gail C. McDonald,

*Administrator.*

[FR Doc. 97-3176 Filed 2-7-97; 8:45 am]

BILLING CODE 4910-61-P

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**FEDERAL COMMUNICATIONS COMMISSION**
**47 CFR Part 25**

[IB Docket No. 95-117; FCC 96-425]

**Satellite Application and Licensing Procedures**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has adopted rules and policies to streamline application and licensing requirements for satellite space and earth stations under the Commission's rules regarding satellite communications. Among other things, the Commission waives the construction permit requirement for satellite space stations and modifies the license term for temporary fixed earth stations and the implementation period for Very Small Aperture Terminal ("VSAT") earth stations. The Report and Order amends minor modifications for earth station and inclined orbit operations of space stations, and application and licensing forms.

**EFFECTIVE DATE:** The adopted rule changes will become effective upon

approval by the Office of Management and Budget of the modified information collection requirements, but no sooner than April 11, 1997. When approval is received, the Federal Communications Commission will publish a document announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:**

Tracey Weisler, International Bureau, Satellite Policy Branch, (202) 418-0744; Frank Peace, International Bureau, Satellite Engineering Branch, (202) 418-0730; Kathleen Campbell, International Bureau, Satellite Policy Branch (202) 418-0753. For additional information concerning the information collection contained in this NPRM contact Dorothy Conway at (202) 418-0217, or via the Internet at dconway@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order in IB Docket No. 95-117; FCC 96-425, adopted October 29, 1996 and released December 16, 1996. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W. Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

This Report and Order contains modifications to approved collections and will be submitted to the Office of Management and Budget for review under Section 3507(d) of the Paperwork Reduction Act (44 U.S.C. 3507(d)). For copies of the submissions contact Dorothy Conway at (202) 418-0217 or access our fax on demand system at 202-418-0177 from the handset on your fax machine and using the document retrieval number 6000000. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, Room 234, Paperwork Reduction Project, Washington, D.C. 20554. For further information contact Judy Boley, (202) 418-0210.

**Title:** Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures.

**Form No.:** FCC Form 312.

**Type of Review:** Revision of existing collections.

**Respondents:** Businesses or other for profit, including small businesses.

**Number of Respondents:** 1,275.

**Estimated Time Per Response:** The Commission estimates all respondents will hire an attorney or legal assistant to complete the form. The time to retain these services is 2 hours per respondent.

**Total Annual Burden:** 2,550 hours.

**Estimated Costs Per Respondent:** This includes the charges for hiring an attorney, legal assistant, or engineer at \$150 an hour to complete the submissions. The estimated average time to complete the Form 312 is 10 hours per response. The estimated average time to complete space station submissions is 20 hours per response. The estimated average time to complete the ASIA submission is 24 hours per response. Earth station submissions: \$1935. (\$1500 for Form 312; \$375 remainder of application; \$60 for outside hire.) Space station submissions: \$4560 (\$1500 for Form 312; \$3000 for remainder of submission; \$60 for outside hire). ASIA submissions: \$3,660 (\$3,600 for submission; \$60 for outside hire). Fee amounts vary by type of service and application. Total fee estimates for industry: \$4,956,255.00. Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission in evaluating applications requesting authority to operate pursuant to Part 25 of the Commission's rules. The information will be used to determine the legal, technical, and financial ability of the applicants and will assist the Commission in determining whether grant of such authorizations are in the public interest.

**Summary of Report and Order**

1. In light of the evolving satellite technology, the Commission commenced a review of its operations in order to eliminate outdated regulations and unnecessary burdens that impede the introduction of satellite services to the public and the efficient processing of satellite applications and licenses. As a result of this review, the Commission created the International Bureau. Soon after its creation, the new International Bureau held a roundtable discussion in February 1995 with representatives of industry and members of the public to solicit suggestions on ways to improve satellite application and licensing policies and procedures. Many of the recommendations made during that roundtable discussion were incorporated in Notice of Proposed Rulemaking to streamline satellite licensing procedures. Notice of Proposed Rulemaking, 60 FR 46252, September 9, 1995.

2. The Report and Order amends or eliminates existing requirements, and codifies in Part 25 of the Commission's rules, various technical and procedural policies and guidelines that have not yet been specifically codified. Among other things, the Commission waives the construction permit requirement for

satellite space stations; increases the license term, from one year to ten years, for temporary fixed earth stations operating in the C-band; eliminates the four year implementation period for VSATs allowing VSAT licensees to construct their network over the course of their ten year license term; eliminates the annual reporting requirement for VSATs; simplifies the earth and space station application process by revising and consolidating FCC Forms 430, 493, 702, and 704; eliminates redundant reporting requirements for earth and space stations; allows earth station operators to make minor technical modifications to their stations without prior authorization from the Commission; and allows satellites to operate in inclined orbits without prior authorization from the Commission.

3. Given the large outlay of capital and long-term planning necessary to establish satellite systems, it is necessary to ensure that potential applicants and service providers are not hampered by unnecessary and sometimes redundant regulations. This action by the Commission recognizes the need of the satellite industry to operate in an environment defined by growth, innovation, efficiency, and competition.

#### Ordering Clauses

4. Accordingly, it is ordered that Part 25 of the Commission's rules, 47 CFR Part 25, the Commission's forms, and the Commission's policies are amended as specified in this Report and Order.

5. It is further ordered that the amendments to Part 25 of the Commission's rules, 47 CFR Part 25, the Commission's forms and the Commission's policies as specified in this Report and Order will become effective upon approval by the Office of Management and Budget of the revised information collection requirements adopted herein, but no sooner than April 11, 1997. This action is taken pursuant to Sections 4 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303(r), and Section 201(c) of the Communications Satellite Act of 1962, 47 U.S.C. 721(c).

#### Final Regulatory Flexibility Analysis

6. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in IB Docket 95-117. Written comments on the proposals in the Notice, including the Initial Regulatory Flexibility Analysis, were requested. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this

Report and Order conforms to the RFA, as amended by the contract With America Advancement Act of 1996 (CWAAA), Public Law 104-121, 110 Stat. 847 (1996).<sup>1</sup>

7. The Regulatory Flexibility Act (RFA), first enacted in 1980, recognizes that the size of a business or organization has a bearing on its ability to comply with federal regulations and forces the government to ensure that their regulations do not unduly inhibit the ability of small businesses to compete.<sup>2</sup>

#### I. Need for and Objectives of the Rules

8. With this Report and Order the Commission eliminates a number of application and licensing requirements for satellite and earth stations under Part 25 of our rules. The last substantial review of our satellite regulations occurred in the late 1980's. Much has changed in the industry since then, necessitating a modification of Part 25 of our rules.

9. In this proceeding, the Commission adopts rule changes and deletions that promote efficiency and innovation in the licensing and use of the electromagnetic spectrum. These modified rules reflect the changing nature of the satellite industry and remove unnecessary regulatory burdens from large and small service providers.

10. The Commission's objective is to identify and eliminate outdated and cumbersome regulations, to reduce unnecessary paperwork, and to increase efficiency in this market which is expected to grow, worldwide, from \$13.8 to \$37 billion in revenue by the year 2000.<sup>3</sup> This objective is consistent with the Commission's continuing effort to review and revise, as necessary, its rules. In addition, we expect these rule changes to aid in the development of competitive and innovative telecommunications systems.

#### II. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

11. No comments were received in direct response to the Initial Regulatory Analysis. However, a cross section of satellite industry members, including two self-identified small entities, CTA Incorporated (CTA) and Orion Network Systems, Inc. (Orion), filed comments to the NPRM and, in general, strongly supported the proposed changes.

<sup>1</sup> Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. 601 *et seq.*

<sup>2</sup> See "A Guide to the Regulatory Flexibility Act" (U.S. Small Business Administration) May 1996.

<sup>3</sup> Source: A.T. Kearny, Industry Reports.

#### III. Description and Estimate of the Number of Small Entities To Which Rule Will Apply

12. The Commission has not developed a definition of small entities relevant to satellite services licensees. Therefore the applicable definition of small entity in the satellite services industry is the definition under the Small Business Administration (SBA) rules applicable to Communications Services "Not Elsewhere Classified."<sup>4</sup> This definition provides that a small entity is expressed as one with \$11 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of \$11 million or less and qualify as small entities.<sup>5</sup> The Census Bureau category is very broad and commercial satellite services constitute only a subset of its total.

13. Describing and estimating the number of small entities these rules will impact is made difficult by a number of factors. First of all, information from the Satellite Industry Association and financial analysts who specialize in this market indicate there are few firms that could be traditionally thought of as small businesses. They point to the fact that this is a capital intensive industry that requires "significant partner funding and/or contract commitments prior to approaching commercial financing sources."<sup>6</sup> In addition, estimates of employment in the commercial satellite service industry, another measure of small business status, can vary widely.<sup>7</sup>

14. There are, however, a number of firms who identify themselves as small entities including: Columbia Communications Corp., CTA, Mobile Communications Holdings, Inc. (MCHI), Orion, TelQuest Ventures, L.L.C., and possibly others. Several of these companies have submitted comments to the Commission's Section 257 proceeding to identify and eliminate market entry barriers for small

<sup>4</sup> 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

<sup>5</sup> U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992, SIC Code 4899 (issued May 1995).

<sup>6</sup> See "Financing the Final Frontier: Funding Commercial Space Activities" Bear Stearns, Global Space & Satellite Finance Report.

<sup>7</sup> American Mobile Satellite Corp. is reported to have 45 employees by the Satellite Industry Association; 317 employees by Satellite Industry Analyst "BZW".

business<sup>8</sup> and as previously noted, two of these firms filed comments in this proceeding.

15. While no reliable estimate exists of the number of small businesses to which these rule changes will apply, to the extent that a business could be identified as a small entity, we believe that these proposed rules will have a positive effect on their ability to compete in this business sector by eliminating unnecessary regulatory burdens and constraints.

#### *IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

16. The proposed rules will eliminate the need for the filing of approximately thirty-six space station construction permits; fifteen 319(d) waiver requests; five Mobile Satellite Station (MSS) earth station construction permits; six STAs and two modification applications for operation of space stations in inclined orbit, 400 license renewals for temporary fixed earth stations, 25 applications for extension of time to complete construction of a Very Small Aperture Terminal (VSAT) network, and 300 applications for minor modification annually.

17. In addition, the proposed rules would consolidate the satellite application information currently collected from Forms 702, 704, 493 and 430 into a single form. This streamlines the Commission's satellite application and licensing procedures, making the entire process more user-friendly and allowing for faster provision of service to end users. In addition to the new, consolidated, Form 312, this item lays the groundwork for the eventual development of an electronic filing system that will streamline and automate processing further.

18. The Commission also plans to make technical databases, software, and other data available on the Internet as well as through the International Bureau reference room. These actions should significantly reduce the cost of compliance, specifically in the areas of staff time, recordkeeping, regulatory and legal fees.

#### *V. Significant Alternatives and Steps Taken By Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives*

19. The Commission considered all alternatives submitted by commenters. We accepted those that lead to simplification, clarification and streamlining of the rules. We rejected

those inconsistent with streamlining objectives. For instance we rejected Loral Qualcomm's suggestion that we defer action on waiver of construction permit requirements.<sup>9</sup> The elimination of the construction permit waiver was strongly supported by CTA, who urged the Commission "to move forward expeditiously with the elimination of the construction permit requirement."<sup>10</sup> We agreed with CTA and others that this action will reduce delay and increase flexibility for all entities.

20. Other actions proposed in this proceeding seek to reduce industry costs and minimize negative economic impacts and will benefit the efforts of any small businesses who may currently be operating in this industry or those who seek to enter. Indeed, since the Report and Order significantly reduce administrative, regulatory and paperwork burdens these rule changes will have a positive effect on small entities and supports our objective to eliminate outdated and cumbersome regulations, reduce unnecessary paperwork, and increase efficiency in the satellite services market.

21. We proposed a number of rule changes that could prove beneficial to any identifiable small entity or entrepreneurs providing satellite services. These actions not only reduce administrative burdens but also they provide businesses with increased flexibility in their operations and are consistent with our public interest mandate under the Communications Act.

22. For instance, as previously noted, we will eliminate the construction permit requirement. This, in turn, will diminish the administrative burdens on applicants and the potential delays associated with the processing of construction permit applications and requests for Section 319(d) waivers. We rejected suggestions to delay implementation of this policy and suggestions to require notice that construction had begun. The construction waiver will allow companies to move forward with business plans at their own risk.

23. We will increase the license renewal term for C-band transportables. This allows applicants to engage in long-term business planning and reduces the administrative and regulatory burdens associated with processing license renewals and could provide significant benefits to small entities.

24. We will eliminate the requirements that a VSAT applicant

complete construction of its network within forty eight months of the date we grant, and instead, permit VSAT licensees to complete construction over the course of their ten-year license term. As with the extended license renewal term for C-band, the extended construction term will serve small entities and entrepreneurs because it allows greater flexibility in financial and construction planning.

25. We will allow licensees making minor modifications to simply notify us by letter within thirty days after the modifications are completed—eliminating the need to gain prior authorization from the Commission.

26. We will eliminate unnecessary and redundant requirements for space station applications including "estimated annual revenue requirements." Deleting this requirement eliminates controversy surrounding confidentiality of sensitive business information and will reduce the number of petitions for confidentiality filed with the Commission and the associated labor hours and legal fees.

27. We will eliminate the bandwidth limitation for digital VSAT carriers and will not impose bandwidth limitations on other carriers. A change supported by another self-identified small entity—Orion.<sup>11</sup>

28. We will adopt ASIA (Adjacent Satellite Interference Analysis), a widely used computer database as the standard program for analyzing interference with regard to earth station applications. This database will be made available via the Internet and the International Bureau reference room.

29. Orion expressed concern in their comments that the ASIA database has not proven to be the industry standard and that reporting requirements "could impinge upon the proprietary interests of various satellite operators."<sup>12</sup> In response we noted that in 1985, the Reduced Orbital Spacings Advisory Committee, comprised of both government and industry representatives, pronounced ASIA as the generally accepted procedure for calculating adjacent satellite interference.<sup>13</sup> In order to protect proprietary information we plan to present the database information on an aggregate basis. This will allow the Commission to increase public accessibility of information while maintaining transparent regulatory functions.

<sup>11</sup> Comments of Orion at p. 4.

<sup>12</sup> Comments of Orion at p. 5.

<sup>13</sup> See *Supra* at N66.

<sup>8</sup> GN Docket 96-113.

<sup>9</sup> Comments of Loral Qualcomm at p. 3.

<sup>10</sup> CTA reply comments at p. 2.

30. We believe that the rules, as modified by this Report and Order, reflect the minimum requirements necessary to carry out our duties under the Communications Act and other Federal statutes including the Regulatory Flexibility Act. We will, however, in the future continue to consider alternatives with the objective of eliminating unnecessary regulations and minimizing economic impact on small businesses.

*VI. Commission's Outreach Efforts to Learn of and Respond to the Views of Small Entities Pursuant to 5 U.S.C. 609*

31. This rulemaking reflects a new, collaborative, approach to reinventing the classic regulatory structure. Prior to issuing the Notice in this proceeding and this Report and Order, Commission staff worked closely with interested industry members to analyze in detail each administrative and technical aspect of the FCC's Part 25 rules governing satellite application and licensing procedures.

32. Beginning in 1994 the International Bureau has held a series of roundtable discussions with industry and the public and issued public notices soliciting ideas for streamlining licensing. All entities and interested parties were invited to participate and a number of initiatives, including this proceeding resulted. Indeed, through our "Open Skies" policy, the FCC seeks to encourage new players by allowing any business, regardless of size, who has a plan and the ability to implement the plan, a fair chance to succeed in the satellite service market.

*VII. Report to Congress*

33. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 25

Communications common carriers, Reporting and recordkeeping requirements, Satellites.

Federal Communications Commission.

William F. Caton,  
*Acting Secretary.*

Rule Changes

Part 25 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations) is amended as follows:

**PART 25—SATELLITE COMMUNICATIONS**

1. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101-104, 76 Stat. 419-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

2. Section 25.113 is amended by revising the section heading and paragraphs (a), (b), and (f) and adding new paragraph (g) to read as follows:

**§ 25.113 Construction permits, station licenses, launch authority.**

(a) Except as provided in paragraph (b) of this section or in § 25.131, construction permits must be obtained for all fixed, temporary fixed or mobile earth stations governed by this part. Simultaneous application for a construction permit and station license may be made for all earth station facilities governed by this part.

(b) Construction permits are not required for fixed, temporary fixed or mobile satellite earth stations that operate with INTELSAT or INMARSAT space stations or for fixed, temporary fixed or mobile earth stations that operate with U.S.-licensed space stations. Construction of such stations may commence prior to grant of a license at the applicant's own risk. Applicants must comply with the provisions of 47 CFR 1.1312 relating to environmental processing prior to commencing construction.

\* \* \* \* \*

(f) Construction permits are not required for U.S.-licensed space stations. Construction of such stations may commence, at the applicant's own risk, prior to grant of a license. Prior to commencing construction, however, applicants must notify the Commission in writing that they plan to begin construction at their own risk.

(g) A launch authorization and station license (i.e., operating authority) must be applied for and granted before a space station may be launched and operated in orbit. Request for launch authorization may be included in an application for space station license. However, an application for authority to launch and operate an on-ground spare satellite will be considered to be a newly filed application for cut-off purposes, except where the space station to be launched is determined to be an emergency replacement for a previously authorized space station that has been lost as a result of a launch failure or a catastrophic in-orbit failure.

3. Section 25.114 is revised as to read as follows:

**§ 25.114 Applications for space station authorizations.**

(a) A comprehensive proposal shall be submitted for each proposed space station on FCC Form 312, Main Form, together along with attached exhibits as described in paragraph (c) of this section. If an applicant is proposing more than one space station, information common to all space stations may be submitted in a consolidated system proposal.

(b) Each application for a new or modified space station authorization must constitute a concrete proposal for Commission evaluation, although the applicant may propose alternatives that increase flexibility in accommodating the satellite in orbit. Each application must also contain the formal waiver required by Section 304 of the Communications Act, 47 U.S.C. 304. The technical information for a proposed satellite system need not be filed on any prescribed form but should be complete in all pertinent details. The format of the applications should conform to the specifications of § 1.49 of this chapter.

(c) The following information in narrative form shall be contained in each application:

- (1) Name, address, and telephone number of the applicant;
- (2) Name, address, and telephone number of the person(s), including counsel, to whom inquiries or correspondence should be directed;
- (3) Type of authorization requested (e.g., launch authority, station license, modification of authorization);

(4) General description of overall system facilities, operations and services;

(5) Radio frequencies and polarization plan (including beacon, telemetry, and telecommand functions), center frequency and polarization of transponders (both receiving and transmitting frequencies), emission designators and allocated bandwidth of emission, final amplifier output power (identify any net losses between output of final amplifier and input of antenna and specify the maximum EIRP for each antenna beam), identification of which antenna beams are connected or switchable to each transponder and TT&C function, receiving system noise temperature, the relationship between satellite receive antenna gain pattern and gain-to-temperature ratio and saturation flux density for each antenna beam (may be indicated on antenna gain plot), the gain of each transponder channel (between output of receiving antenna and input of transmitting antenna) including any adjustable gain step capabilities, and predicted receiver



and transmitter channel filter response characteristics;

(6)(i) For satellites in geostationary-satellite orbit, orbital location, or locations if alternatives are proposed, requested for the satellite, the factors that support such an orbital assignment, the range of orbital locations from which adequate service can be provided and the basis for determining that range of orbital locations, and a detailed explanation of all factors that would limit the orbital arc over which the satellite could adequately serve its expected users;

(ii) For satellites in non-geostationary-satellite orbits, the number of space stations and applicable information relating to the number of orbital planes, the inclination of the orbital plane(s), the orbital period, the apogee, the perigee, the argument(s) of perigee, active service arc(s), and right ascension of the ascending node(s); and

(iii) For 1.6/2.4 GHz Mobile-Satellite Service space stations, the feeder link frequencies requested for the satellite, together with the demonstration required by § 25.203 (j) and (k);

(7) Predicted space station antenna gain contour(s) for each transmit and each receive antenna beam and nominal orbital location requested. These contour(s) should be plotted on an area map at 2 dB intervals down to 10 dB below the peak value of the parameter and at 5 dB intervals between 10 dB and 20 dB below the peak values, with the peak value and sense of polarization clearly specified on each plotted contour;

(8) A description of the types of services to be provided, and the areas to be served, including a description of the transmission characteristics and performance objectives for each type of proposed service, details of the link noise budget, typical or baseline earth station parameters, modulation parameters, and overall link performance analysis (including an analysis of the effects of each contributing noise and interference source);

(9) For satellites in geostationary-satellite orbit, accuracy with which the orbital inclination, the antenna axis attitude, and longitudinal drift will be maintained;

(10) Calculation of power flux density levels within each coverage area and of the energy dispersal, if any, needed for compliance with § 25.208;

(11) Arrangement for tracking, telemetry, and control;

(12) Physical characteristics of the space station including weight and dimensions of spacecraft, detailed mass (on ground and in-orbit) and power

(beginning and end of life) budgets, and estimated operational lifetime and reliability of the space station and the basis for that estimate;

(13) Detailed information demonstrating the financial qualifications of the applicant to construct and launch the proposed satellites. Applications shall provide the financial information required by § 25.140 (b) through (e), § 25.142(a)(4), or § 25.143(b)(3), as appropriate;

(14) A clear and detailed statement of whether the space station is to be operated on a common carrier basis, or whether non-common carrier transactions are proposed. If non-common carrier transactions are proposed, describe the nature of the transactions and specify the number of transponders to be offered on a non-common carrier basis;

(15) Dates by which construction will be commenced and completed, launch date, and estimated date of placement into service;

(16) Public interest considerations in support of grant;

(17) Applications for authorizations for domestic fixed-satellite space stations shall also include the information specified in § 25.140;

(18) Applications for authorizations in the Radiodetermination Satellite Service shall also include the information specified in § 25.141;

(19) Applications for authorizations in the Mobile-Satellite Service in the 1545–1559/1646.5–1660.5 MHz frequency bands shall also provide all information necessary to comply with the policies and procedures set forth in Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service, 2 FCC Rcd 485 (1987) (Available at address in § 0.445 of this chapter.);

(20) Applications to license multiple space station systems in the non-voice, non-geostationary mobile-satellite service under blanket operating authority shall also provide all information specified in § 25.142; and

(21) Applications for authorizations in the 1.6/2.4 GHz Mobile-Satellite Service shall also provide all information specified in § 25.143.

(d) Applicants requesting authority to launch and operate a system comprised of technically identical, non-geostationary satellite orbit space stations may file a single “blanket” application containing the information specified in paragraph (c) of this section for each representative space station.

4. Section 25.115 is revised to read as follows:

**§ 25.115 Application for earth station authorizations.**

(a) Transmitting earth stations. Except as provided under § 25.113(b), Commission authorization must be obtained for authority to construct and/or operate a transmitting earth station. Applications shall be filed on FCC Form 312, Main Form and Schedule B, and include the information specified in § 25.130.

(b) Receive-only earth stations. Applications to license or register receive only earth stations shall be filed on FCC Form 312, Main Form and Schedule B, and conform to the provisions of § 25.131.

(c) Large Networks of Small Antennas operating in the 12/14 GHz bands with U.S. satellites for domestic services. Applications to license small antenna network systems operating in the 12/14 GHz frequency band under blanket operating authority shall be filed on FCC Form 312, Main Form and Schedule B, for each large (5 meters or larger) hub station, and Schedule B for each representative type of small antenna (less than 5 meters) operating within the network.

(d) User transceivers in the NVNG and 1.6/2.4 GHz Mobile-Satellite Service need not be individually licensed. Service vendors may file blanket applications for transceivers units using FCC Form 312, Main Form and Schedule B, and specifying the number of units to be covered by the blanket license. Each application for a blanket license under this section shall include the information described in § 25.135.

5. Section 25.117 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 25.117 Modification of station license.**

(a) Except as provided for in § 25.118 (Modifications not requiring prior authorization), no modification of a radio station governed by this part which affects the parameters or terms and conditions of the station authorization shall be made except upon application to and grant of such application by the Commission. No license modification will be required if the licensee seeks to access another U.S.-licensed fixed satellite provided:

\* \* \* \* \*

6. Sections 25.118 through 25.120 are redesignated as §§ 25.119 through 25.121 and a new § 25.118 is added to read as follows:

**§ 25.118 Modifications not requiring prior authorization.**

(a) Equipment in an authorized earth station may be replaced without prior authorization or prior notification if the

new equipment is electrically identical to the existing equipment. Licensees must notify the Commission using FCC Form 312, Main Form, within 30 days after the new equipment is installed.

(b) A licensee providing service on a private carrier basis may change its operations to common carrier status without obtaining prior Commission authorization. The licensee must notify the Commission using Form 312 within 30 days after the completed change to common carrier status.

(c) Licensees may make changes to their authorized earth stations without obtaining prior Commission authorization if frequency coordination procedures, as necessary, are complied with in accordance with § 25.251, and the modification does not involve:

- (1) An increase in EIRP or EIRP density (both main lobe and side lobe);
- (2) An increase in transmitted power;
- (3) A change in coordinates of more than 1 second for stations operating in C-Band or 10.95 to 11.7 GHz;
- (4) A change in coordinates of 10 seconds or greater for stations operating in Ku-band; or

(5) An addition to an antenna facility, including hub earth stations and remote terminals, that is already licensed, except for VSAT remote terminals.

(d) Licensees must notify the Commission using FCC Form 312 within 30 days after the modification is completed.

7. In newly redesignated § 25.119, paragraphs (c), (d) and (f) are revised to read as follows:

**§ 25.119 Assignment or transfer of control of station authorization.**

\* \* \* \* \*

(c) Assignment of license. FCC Form 312, Main Form and Schedule A, shall be submitted to assign voluntarily (as by, for example, contract or other agreement) or involuntarily (as by, for example, death, bankruptcy, or legal disability) the station authorization. In the case of involuntary assignment, the application should be filed within 10 days of the event causing the assignment. FCC Form 312, Main Form, and Schedule A shall also be used for non-substantial (*pro forma*) assignments.

(d) Transfer of control of corporation holding license. FCC Form 312, Main Form and Schedule A, shall be submitted in order to transfer voluntarily or involuntarily (*de jure* or *de facto*) control of a corporation holding any licenses. In the case of involuntary transfer of control, the applications should be filed within 10 days of the event causing the transfer of control. FCC Form 312, Main Form and

Schedule A shall also be used for non-substantial (*pro forma*) transfers of control.

\* \* \* \* \*

(f) Assignments and transfers of control shall be completed within 60 days from the date of authorization. Within 30 days of consummation, the Commission shall be notified by letter of the date of consummation and the file numbers of the applications involved in the transaction.

8. In newly redesignated § 25.120, the last sentence of paragraph (a) is revised to read as follows:

**§ 25.120 Application for special temporary authorization.**

(a) \* \* \* A copy of the request for special temporary authority also shall be forwarded to the Commission's Columbia Operations Center in Columbia, Maryland.

\* \* \* \* \*

9. In newly redesignated § 25.121, paragraph (a) is revised to read as follows:

**§ 25.121 License term and renewals.**

(a) License term. Licenses for facilities governed by this part will be issued for a period of 10 years.

\* \* \* \* \*

10. Section 25.130 is amended by revising paragraph (a) to read as follows:

**§ 25.130 Filing requirements for transmitting earth stations.**

(a) Application for a new or modified transmitting earth station facility shall be submitted on FCC Form 312, Main Form and Schedule B, accompanied by any required exhibits.

\* \* \* \* \*

11. Section 25.131 is amended by revising paragraphs (a), (d), and (j) to read as follows:

**§ 25.131 Filing requirements for receive-only earth stations.**

(a) Except as provided in paragraphs (b) and (j) of this section, applications for a license for a receive-only earth station shall be submitted on FCC Form 312, Main Form and Schedule B, accompanied by any required exhibits.

\* \* \* \* \*

(d) Applications for registration shall be filed on FCC Form 312, Main Form and Schedule B, accompanied by the coordination exhibit required by § 25.203, and any other required exhibits. Any application that is deficient or incomplete in any respect shall be immediately returned to the applicant without processing.

\* \* \* \* \*

(j) Receive-only earth stations operating with INTELSAT space

stations, or U.S.-licensed and non-U.S. space stations for reception of services from other countries; shall file an FCC Form 312, Main Form and Schedule B, requesting a license for such station. Receive-only earth stations used to receive INTELNET I services from INTELSAT space stations need not file for licenses. See Derogation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, Declaratory Ruling, RM No. 4845, FCC 86-214 (released May 19, 1986).

12. Section 25.134 is amended by revising the first sentences of paragraphs (a) and (b) and adding paragraph (d) to read as follows:

**§ 25.134 Licensing Provisions of Very Small Aperture Terminal (VSAT) Networks.**

(a) All applications for digital VSAT networks with a maximum outbound downlink EIRP density of +6.0 dBW/4 kHz per carrier and earth station antennas with maximum input power density of -14 dBW/4 kHz and maximum hub EIRP of 78.3 dBW will be processed routinely. \* \* \*

(b) Each applicant for digital and/or analog VSAT network authorization proposing to use transmitted satellite carrier EIRP densities in excess of +6.0 dBW/4 kHz and +13.0 dBW/4 kHz, respectively, and/or maximum antenna input power densities of -14.0 dBW/4 kHz and maximum hub EIRPs of 78.3 dBW and -8.0 dBW/4 kHz per carrier, respectively, shall conduct an engineering analysis using the Sharp, Adjacent Satellite Interference Analysis (ASIA) program. \* \* \*

\* \* \* \* \*

(d) An application for VSAT authorization shall be filed on FCC Form 312, Main Form and Schedule B. A VSAT licensee applying to renew its license must include on FCC Form 405, the number of constructed VSAT units in its network.

13. Section 25.140 is revised to read as follows:

**§ 25.140 Qualifications of fixed-satellite space station licensees.**

(a) New fixed-satellites shall comply with the requirements established in Report and Order, CC Docket No. 81-704 (available at address in § 0.445 of this chapter.) Applications must also meet the requirements in paragraphs (b) through (d) of this section. The Commission may require additional or different information in the case of any individual application. Applications will be unacceptable for filing and will be returned to the applicant if they do not meet the requirements referred to in this paragraph.

(b) Each applicant for a space station authorization in the fixed-satellite service must demonstrate, on the basis of the documentation contained in its application, that it is legally, financially, technically, and otherwise qualified to proceed expeditiously with the construction, launch and/or operation of each proposed space station facility immediately upon grant of the requested authorization. Each applicant must provide the following information:

(1) The information specified in § 25.114;

(2) An interference analysis to demonstrate the compatibility of its proposed system 2 degrees from any authorized space station. An applicant should provide details of its proposed r.f. carriers which it believes should be taken into account in this analysis. At a minimum, the applicant must include, for each type of r.f. carrier, the link noise budget, modulation parameters, and overall link performance analysis. (See, e.g., appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service (available at address in § 0.445 of this chapter));

(3) The estimated costs of proposed construction and/or launch, and any other initial expenses for the space station(s); and

(4) Estimated operating expenses for one year after launch of the proposed space station(s).

(c) Each application for authority to construct and/or launch and operate a space station shall demonstrate the applicant's current financial ability to meet the costs specified in paragraphs (b)(3) and (b)(4) of this section by submitting the following financial information verified by affidavit:

(1) A balance sheet current for the latest fiscal year and documentation of any financial commitments reflected in the balance sheet (such as, for example, loan agreements and service contracts) together with an exhibit demonstrating that the applicant has current assets and operating income sufficient to meet the costs specified in paragraphs (b)(3) and (b)(4) of this section. If the applicant is owned by more than one corporate parent, it must submit evidence of a commitment to the proposed satellite program by management of the corporate parent upon whom it is relying for financial resources;

(2) If the submissions of paragraph (c)(1) of this section do not reflect sufficient financial resources to meet the costs specified in paragraphs (b)(3) and (b)(4) of this section, the applicant shall submit additional information as listed below:

(i) The terms of any fully negotiated loan or other form of credit arrangement intended to be used to finance the proposed construction, acquisition, or operation of the requested facilities including such information as the identity of the creditor (or creditors), the amount committed, letters of commitment, detailed terms of the transaction, including the details of any contingencies, and a statement that the applicant complies with paragraph (d) of this section;

(ii) The terms of any fully negotiated sale or placement of any equity or other form of ownership interest, including the sale, or long-term lease for the lifetime of the satellite, of proposed satellite transponder capacity in the level of detail as specified in paragraph (c)(2)(i) of this section;

(iii) The terms of any grant or other external funding commitment intended to be used to finance the proposed construction, acquisition, or operation of the requested facilities, including such information as the identity of the grantor(s), the amount committed, letters of commitment, and detailed terms of the transaction, including the details of any contingencies; or

(iv) Any financing arrangements contingent on further performance by either party, such as marketing of satellite capacity or raising additional financing, will not be considered in evaluating an applicant's financial qualifications; and

(3) Whatever other information or details the Commission may require with regard to a specific application or applicant.

(d) Any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed facility must include a provision for a minimum of ten (10) days prior written notification to the licensee or permittee, and to the Commission, before any such equipment may be repossessed under any default provision of the agreement.

(e) An applicant found to be qualified pursuant to this section may be initially assigned up to two orbital locations in each pair of frequency bands proposed. Authorizations to construct ground spares are at the applicant's risk that launch authorization will not be granted by the Commission.

(f) Each applicant found to be qualified pursuant to this section may be assigned no more than one additional orbital location beyond its current authorizations in each frequency band in which it is authorized to operate, provided that its in-orbit satellites are essentially filled and that it has no more than two unused orbital locations for

previously authorized but unlaunched satellites in that band.

(g) In the event that one or more applications satisfying the requirements of this section are ready for grant, any orbital location occupied by a satellite that is determined to be a part of a system that is not essentially filled may be cancelled and collocation of in-orbit satellites may be required. The Commission may take this action if, in so doing, it would allow the grant of pending applications that satisfy the requirements of this section. If a cancellation is made, the licensee will be afforded a period of 30 days to notify the Commission which of its assigned locations should be cancelled.

14. Section 25.141 is amended by revising paragraph (c) to read as follows:

**§ 25.141 Licensing provisions for the radiodetermination satellite service.**

\* \* \* \* \*

(c) User transceivers. Individual user transceivers will not be licensed. Service vendors may file blanket applications for transceiver units using FCC Form 312, Main Form and Schedule B, and specifying the number of units to be covered by the blanket license. Each application must demonstrate that transceiver operations will not cause interference to other users of the spectrum.

\* \* \* \* \*

15. Section 25.142 is amended by revising the introductory text of paragraph (c) to read as follows:

**§ 25.142 Licensing provisions for the non-voice, non-geostationary mobile-satellite service.**

\* \* \* \* \*

(c) *Reporting requirements.* All operators of non-voice, non-geostationary mobile-satellite service systems shall, on June 30 of each year, file a report with the International Bureau and the Commission's Columbia Operations Center in Columbia, Maryland, containing the following information current as of May 31st of that year:

\* \* \* \* \*

16. Section 25.143 is amended by revising paragraph (e)(1) to read as follows:

**§ 25.143 Licensing provisions for the 1.6/2.4 GHz Mobile-Satellite Service.**

\* \* \* \* \*

(e) *Reporting requirements.* (1) All operators of 1.6/2.4 GHz mobile-satellite systems shall, on June 30 of each year, file with the International Bureau and the Commission's Columbia Operations Center, Columbia, Maryland, a report

containing the following information current as of May 31st of that year:

\* \* \* \* \*

17. Section 25.155 is amended by revising paragraph (b) to read as follows:

**§ 25.155 Mutually exclusive applications.**

\* \* \* \* \*

(b) A space station application will be entitled to comparative consideration with one or more conflicting applications only if:

- (1) The application is mutually exclusive with another application; and
- (2) The application is received by the Commission in a condition acceptable for filing by the "cut-off" date specified in a public notice.

18. Section 25.210 is amended by revising the introductory text of paragraph (j) and revising paragraph (j)(3), to read as follows:

**§ 25.210 Technical requirements for space stations in the Fixed-Satellite Service.**

\* \* \* \* \*

(j) All operators of space stations shall, on June 30 of each year, file a report with the International Bureau and the Commission's Columbia Operations Center in Columbia, Maryland, containing the following information current as of May 31st of that year:

\* \* \* \* \*

(3) A detailed description of the utilization made of each transponder on each of the in-orbit satellites. This description should identify the total capacity or the percentage of time each transponder is actually used for transmission, and the amount of unused system capacity in the transponder. This information is not required for those transponders that are sold on a non-common carrier basis. In that case, operators should indicate the number of transponders sold on each in-satellite orbit.

\* \* \* \* \*

19. Section 25.211 is amended by revising the section heading and adding paragraph (d), to read as follows:

**§ 25.211 Video Transmissions in the Fixed-Satellite Service.**

\* \* \* \* \*

(d) In the 6 GHz band, an earth station with an equivalent diameter of 9 meters or smaller may be routinely licensed for transmission of full transponder services if the maximum power into the antenna does not exceed 450 watts (26.5 dBW). In the 14 GHz band, an earth station with an equivalent diameter of 5 meters or smaller may be routinely licensed for transmission of full transponder services if the maximum power into the antenna does not exceed 500 watts (27 dBW).

20. Section 25.212 is amended by adding paragraphs (c) and (d), to read as follows:

**§ 25.212 Narrowband transmissions in the Fixed-Satellite Service.**

\* \* \* \* \*

(c) In the 14 GHz band, an earth station with an equivalent diameter of 1.2 meters or greater may be routinely licensed for transmission of narrowband analog services with bandwidths up to 200 kHz if the maximum input power density into the antenna does not exceed -8 dBW/4 kHz and the maximum transmitted satellite carrier EIRP density does not exceed 13 dBW/4 kHz, and for transmission of narrowband and/or wideband digital services, if the maximum input power density into the antenna does not exceed -14 dBW/4 kHz and the maximum transmitted satellite carrier EIRP density does not exceed +6.0 dBW/kHz.

(d) In the 6 GHz band, an earth station with an equivalent diameter of 4.5 meters or greater may be routinely licensed for transmission of SCPC services if the maximum power densities into the antenna do not exceed +0.5 dBW/4 kHz for analog SCPC carriers with bandwidths up to 200 kHz, and do not exceed -2.7 dBW/4 kHz for narrow and/or wideband digital SCPC carriers.

21. Section 25.251 is revised to read as follows:

**§ 25.251 Special requirements for coordination.**

(a) The administrative aspects of the coordination process are set forth in §§ 21.100(d) and 21.706 (c) and (d) of this chapter in the case of coordination of terrestrial stations with earth stations, and in § 25.203 in the case of coordination of earth stations with terrestrial stations.

(b) The technical aspects of coordination are based on Appendix 28 of the International Telecommunications Union Radio Regulations and certain recommendations of the ITU Radiocommunication Sector ("ITU-R") (available at the International Bureau Reference Center, Room 102, 2000 M Street, NW., Washington, DC 20554.).

**§§ 25.252 through 25.256 [Removed]**

22. Sections 25.252 through 25.256 are removed.

23. Section 25.272 is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 25.272 General inter-system coordination procedures.**

\* \* \* \* \*

(b) Each space station licensee shall maintain on file with the Commission and with its Columbia Operations Center in Columbia, Maryland a current listing of the names, titles, addresses and telephone numbers of the points of contact for resolution of interference problems.

\* \* \* \* \*

24. Section 25.274 is amended by revising the first sentence of paragraph (f) to read as follows:

**§ 25.274 Procedures to be followed in the event of harmful interference.**

\* \* \* \* \*

(f) At any point, the system control center operator may contact the Commission's Columbia Operations Center in Columbia, Maryland to assist in resolving the matter.

\* \* \* \* \*

25. Section 25.277 is amended by revising the introductory text of paragraph (c) to read as follows:

**§ 25.277 Temporary fixed earth station operations.**

\* \* \* \* \*

(c) The licensee of an earth station which is authorized to conduct temporary fixed operations in bands shared co-equally with terrestrial fixed stations shall provide the following information to the Director of the Columbia Operations Center at 9200 Farmhouse Lane, Columbia, Maryland 21046 and to the licensees of all terrestrial facilities lying within the coordination contour of the proposed temporary fixed earth station site before beginning transmissions:

\* \* \* \* \*

26. A new Section 25.280 is added to subpart D to read as follows:

**§ 25.280 Inclined orbit operations.**

(a) Satellite operators may commence operation in inclined orbit mode without obtaining prior Commission authorization provided that the Commission is notified by letter within 30 days after operators commence. The notification shall include:

- (1) The operator's name;
- (2) The date of commencement of inclined orbit operation;
- (3) The initial inclination;
- (4) The rate of change in inclination per year; and
- (5) The expected end-of-life of the satellite accounting for inclined orbit operation.

(b) Licensees operating in inclined-orbit are required to:

- (1) Periodically correct the satellite altitude to achieve a stationary spacecraft antenna pattern on the surface of the Earth and centered on the satellite's designated service area;

(2) Control all interference to adjacent satellites, as a result of operating in an inclined orbit, to levels not to exceed that which would be caused by the satellite network operating without an inclined orbit;

(3) Not claim protection in excess of the protection that would be received by the satellite network operating without an inclined orbit; and

(4) Continue to maintain the space station at the authorized longitude orbital location in the geostationary satellite arc with the appropriate east-west station-keeping tolerance.

**§ 25.308 [Redesignated as § 25.281]**

27. Section 25.308 is redesignated as § 25.281 and transferred to subpart D.

**Subpart E—[Removed and Reserved]**

28. Subpart E is removed and reserved.

[FR Doc. 97-2081 Filed 2-7-97; 8:45 am]

BILLING CODE 6712-01-P

# Proposed Rules

Federal Register

Vol. 62, No. 27

Monday, February 10, 1997

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 956

[FV96-956-3 PR]

#### Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Establishment of Container Marking Requirements and Special Purpose Shipment Exemptions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would establish container marking requirements for all shipments of Walla Walla Sweet Onions, and establish exemptions from assessment and container marking requirements for certain special purpose shipments of Walla Walla Sweet Onions. This rule would contribute to the efficient marketing of Walla Walla Sweet Onions and assist in program compliance. This rule was recommended by the Walla Walla Sweet Onion Committee (Committee), the agency responsible for the local administration of the marketing order for sweet onions grown in the Walla Walla Valley.

**DATES:** Comments must be received by March 12, 1997.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, South Building, P.O. Box 96456, Washington, DC 20090-6456, Fax: (202) 720-5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry, Northwest Marketing

Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2043; or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 690-3919. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Agreement and Order No. 956 (7 CFR Part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon, hereinafter referred to as the "order." This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. If adopted, the proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to

review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The Committee meets regularly throughout each season to consider recommendations for implementation, modification, suspension, or termination of the regulatory requirements for Walla Walla Sweet Onions. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations in conjunction with information submitted by the Committee and from other industry and government sources.

The Committee met twice to recommend adding container marking requirements and exemption for special purpose shipments to the marketing order's Subpart—Rules and Regulations provisions which are authorized in the order. Section 956.62 provides authority for the Committee, with the approval of the Secretary, to establish a method for fixing the markings of containers used in the packaging or handling of Walla Walla Sweet Onions. Further, based upon recommendations submitted by the Committee, section 956.63 provides authority for the Secretary to issue regulations in regard to assessment and container marking requirements to facilitate the handling of Walla Walla Sweet Onions for specified purposes.

The Committee met October 8, 1996, and recommended that all Walla Walla Sweet Onions produced in the production area and shipped to the fresh market be packed in containers marked with the "Genuine Walla Walla Sweet Onion" logo. The Committee also recommended exemption from assessments for sweet onions shipped to outlets specified in proposed § 956.163.

At its next regularly scheduled meeting November 12, 1996, the Committee reconfirmed the recommendations to establish container marking requirements and exempt specified shipments from assessments. At that meeting, the Committee also recommended exempting shipments specified in § 956.163 from container marking requirements. This proposed rule combines the recommendations from the two Committee meetings into one rulemaking action.

The first proposal would establish in § 956.162 container marking

requirements under the order. When the Walla Walla Sweet Onion industry began the process of formulating Marketing Order 956, a primary objective was to help promote product identity at wholesale, retail, and consumer levels, while at the same time deterring the marketing of non-sweet onions, or onions grown outside the production area, as Walla Walla Sweet Onions. The Committee is authorized to use a trademarked logo developed by the Walla Walla Sweet Onion Commission and the Walla Walla Area Chamber of Commerce. The logo was developed and patented by the Walla Walla Sweet Onion Commission in December 1991, and currently is widely recognized by the onion industry. Provisions regarding container markings are specified in proposed § 956.162.

The logo has been used by the Committee on promotional material and correspondence since the Committee obtained the license to use it on April 19, 1996. During both the subcommittee and the regular Committee meetings held to develop the recommendation for this proposed rule, all participants agreed that containers of Walla Walla Sweet Onions should be marked with the Committee's registered logo. Discussion during the meetings indicated that product identity, just as it was during the formulation of the order, is still a primary concern for both promotional and compliance purposes, and that steps should be taken to add specific container marking regulations.

Committee members, as well as industry participants at the meeting, agreed that the use of a widely recognized logo would have a positive effect on the economic returns for the entire industry. One of the major problems for this industry has been the marketing of non-Walla Walla Sweet Onions, grown either in the traditional production area or outside of it, as Walla Walla Sweet Onions. Committee members believe that, after purchasing onions represented to them as being Walla Walla Sweet Onions, buyers would rarely return to purchase more due to the lack of confidence such a sale had fostered. This had, and still has, the effect of curtailing demand and reducing returns to producers.

Some of the handler members on the Committee recommended that the proposed regulation allow handlers a period of time to utilize current packaging inventory before being required to use containers with the Committee's logo. These individuals expressed concern that some handlers may have significant container inventory with pre-printed graphics and other markings. Comments by handlers

at the meeting indicated that the expense and burden of disposing of their container inventory, or, alternatively, adding decals, stickers, or stamps to the existing containers would be significant. The Committee agreed that, although handlers should make every effort to begin using the logo on containers as soon as possible, a grace period of two crop years would allow adequate time for handlers to exhaust current container inventories. Proposed § 956.162(b) provides such a grace period for handlers, subject to Committee verification of handler container inventories.

The Committee recommended that the logo be clearly displayed as either a decal or an imprint on all containers, and that there should be no specific requirements for the size and color of the markings. As it is a common industry practice to ship onions in field pack bulk bins containing more than 500 pounds net weight from the field to road-side stands and farmers' markets where they are bagged for resale, the Committee recommended that the container marking requirement should not apply to shipments to these two small outlets. This exemption is specified in proposed § 956.163.

The container marking requirement would contribute to the efficient marketing of Walla Walla Sweet Onions by ensuring better product identification, building buyer confidence, increasing returns to the industry, and enhancing Committee compliance efforts. During the shipping season, the Committee manager frequently visits handling operations to ensure that these operations are complying with marketing order requirements. Requiring that the registered logo be displayed on the container should decrease the amount of time the manager spends tracing and tracking these onions to ensure that they are not onions from outside the production area being sold as Walla Walla Sweet Onions.

The Committee's second recommendation would add § 956.163 providing exemptions for shipments made to certain non-fresh use outlets. Committee members stated that most Walla Walla Sweet Onions are shipped into the fresh market. However, a small percentage of the onions are utilized for other purposes, including relief and charitable organizations, livestock feed, planting and plants, salad onions, processing, disposal of culls, and seed. For the exemption to apply to shipments made to relief or charitable organizations, the Committee included a provision in its recommendation that

such shipments must be donated and not sold.

Proposed § 956.163 clearly indicates which shipments are exempted from assessments and container marking requirements. This is intended to lessen the chance of confusion on the part of the regulated industry and alleviate potential administrative and compliance problems for the Committee, thereby facilitating the marketing of Walla Walla Sweet Onions.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities.

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

There are approximately 35 handlers of Walla Walla Sweet Onions subject to regulation under the marketing order and approximately 60 producers in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000.

The region in which Walla Walla Sweet Onions are produced is a relatively small production area, encompassing only a portion of Oregon's Umatilla County and Washington's Walla Walla County. Produced on an estimated 850 acres, the industry's total 1996 Walla Walla Sweet Onion pack-out approximated 20,106,200 pounds. Based on assessments collected on 50-pound cartons or sacks, Committee records for the 1996 season show that 18 handlers shipped 500 or fewer units, eight handlers shipped between 500 and 5,000 units, four handlers shipped between 5,000 and 50,000 units, and five handlers shipped between 50,000 and 100,000 units.

Information provided by the Department's Fresh Fruit and Vegetable Market News officials in Yakima, Washington, indicates that 1996 F.O.B. prices on jumbo Walla Walla Sweet Onions, packed in 50-pound cartons, ranged from a high of \$16.00 early in the season to a low at the end of the season of \$10.00. On the other end of the scale, medium Walla Walla Sweet Onions,

packed in 50-pound mesh sacks, ranged from early season, high returns of \$14.00 per sack down to a low at the season's conclusion of \$6.00 per sack. Handlers have stated that packing costs average between \$4.00 and \$5.00 per 50-pound carton, and around \$3.00 per 50-pound sack. Committee records indicate that individual farms currently have acreage dedicated to the production of Walla Walla Sweet Onions ranging from 1 to 160 acres.

About 25 of the 35 regulated handlers of Walla Walla Sweet Onions are also producers and generally pack their own onions in the field while harvesting them. These onions are usually marketed direct to consumers through road-side stands and farmers' markets or through mail order sales. Only about 10 of these handlers own and operate commercially sized packing facilities and market the majority of their onions through large wholesale and retail outlets. Based on current information the majority of Walla Walla Sweet Onion handlers and producers may be classified as small entities.

The only alternative to this proposal discussed at the meetings was to not recommend the additions at all. The Committee determined that such an alternative would not be acceptable to the industry because of the significant benefits expected as a result of the proposed regulations. Without container marking requirements, the Committee believes the current marketing and compliance problems, basic reasons behind the promulgation of the marketing order, would not be alleviated. As for the foregoing special purpose shipment exemptions, the Committee concluded that the absence of a list of shipments exempt from assessments and container marking requirements would perpetuate confusion and compliance problems, as well as increase the economic, reporting and recordkeeping burden on handlers.

This proposed rule would provide that containers of Walla Walla Sweet Onions for shipment to fresh markets be marked with the Committee's registered logo, and that specified shipments of Walla Walla Sweet Onions be exempt from such container marking requirements and from assessments. This action would not impose any additional reporting or recordkeeping requirements on either small or large handlers of Walla Walla Sweet Onions. Additionally, the benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

As with all Federal marketing order programs, reports and forms are

periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

The Committee's meetings were widely publicized throughout the production area. All interested persons were invited to attend the meetings. The Committee actively seeks participation in its deliberations at all of its meetings. Both the October 8 and November 12, 1996, meetings were open to the public and representatives of both large and small entities expressed their views on these and related issues. The majority of the Committee, composed of six producers, three handlers, and a public member, represent small entities. Additionally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 956 be amended as follows:

#### **PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON**

1. The authority citation for 7 CFR Part 956 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In part 956, new §§ 956.162 and 956.163 are added to read as follows:

#### **§ 956.162 Container markings.**

Effective (*Insert date one date after day of publication of the final rule in the Federal Register*), no handler shall ship any container of Walla Walla Sweet Onions except in accordance with the following terms and provisions:

(a) Each container of Walla Walla Sweet Onions shall be conspicuously marked with the "Genuine Walla Walla Sweet Onion" logo. The marking may be in the form of a decal or a stamped imprint of any color and size: *Provided*, That the decal or stamped imprint must be placed in plain sight and easy to read.

(b) Walla Walla Sweet Onions may be handled not subject to the marking

requirements of this section when handlers ship such onions pursuant to § 956.163, or ship such onions in field packed bulk bins containing more than 500 pounds net weight for sale to roadside stands and farmers' market operators for repacking and direct consumer sale: *Provided*, That subject to Committee verification of handler container inventories, handlers may use their existing inventories of unmarked containers until (*Insert date two years after publication after the effective date of the final rule*).

#### **§ 956.163 Handling for specified purposes.**

(a) Assessment and container marking requirements specified in this part shall not be applicable to shipments of onions for any of the following purposes:

- (1) Shipments of Walla Walla Sweet Onions for relief or to charitable institutions: *Provided*, That such shipments must be donated and not sold in order for this exemption to apply;
- (2) Shipments of Walla Walla Sweet Onions for livestock feed;
- (3) Shipments of Walla Walla Sweet Onions for planting and for plants;
- (4) Shipments of Walla Walla Sweet Onions as salad onions;
- (5) Shipments of Walla Walla Sweet Onions for all processing uses including, pickling, peeling, dehydration, juicing, or other processing;
- (6) Shipments of Walla Walla Sweet Onions for disposal;
- (7) Shipments of Walla Walla Sweet Onions for seed.

Dated: February 4, 1997.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 97-3137 Filed 2-7-97; 8:45 am]

BILLING CODE 3410-02-P

#### **Grain Inspection, Packers and Stockyards Administration**

#### **9 CFR Part 201**

RIN 0580-AA51

#### **Regulations Issued under the Packers and Stockyards Act: Poultry Grower Contracts, Scales, Weighing**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Agency is considering the need for issuing substantive regulations to address concerns in the poultry industry with respect to contract payment provisions tied to the performance of other growers, with respect to feed deliveries to contract



growers, and with respect to practices and procedures related to weighing of live birds delivered to processors. This notice requests comments on the need for regulations and the content of such regulations.

**DATES:** Comments are due on or before May 12, 1997.

**ADDRESSES:** Comments may be mailed to the Acting Deputy Administrator, GIPSA, Packers and Stockyards Programs, Stop 3641, 1400 Independence Avenue, SW., Washington, DC 20250-3641.

**FOR FURTHER INFORMATION CONTACT:** Tommy Morris, Director, Packer and Poultry Division, (202) 720-7363.

**SUPPLEMENTARY INFORMATION:** Currently, the predominant method utilized to pay growers for flocks grown under a poultry growing arrangement is based on a system which compares a grower's results to that of other growers during a specified time period. Many poultry growers have repeatedly expressed concern to the Agency that comparison of their production costs against production costs of other growers in determining their payment is unfair. Others in the industry have suggested that a comparison of the growout results of a group of growers that have grown birds during the same time period and weather conditions is the most equitable way to determine grower performance and payment. Some growers are opposed to a system that bases their payment on how well or how poorly their neighbor performs, asserting that a bias is being created because the initial quality of production inputs are exclusively under the control of the live poultry dealer. Under this system of determining grower payment, consecutive flocks grown by the same grower having similar production costs could receive substantially different payment amounts because of the results of other growers in the settlement group. Growers have expressed exasperation over this form of settlement because they have no way of estimating in advance how much to expect in payment.

Concern has also been expressed about the disproportionate effect a small flock may have under a flock comparison payment system. Growers have suggested, to ensure fairness in their flock's compensation, that all results should be weighted. They feel that by weighting results in any flock compensation program, smaller growers, who might have an advantage in smaller flock numbers, would not have an undue influence on results.

The Agency is considering the need for a regulation that would prohibit

poultry grower settlements that base payment on a comparison of other growers' results and is seeking public comment on whether such a regulation is needed and, if so, the content of such a regulation. Comments are also being sought addressing the concept of weighting the results of relatively small flock settlements. Those opposing such a regulation are encouraged to provide information explaining their position. In particular, the Agency is interested in comments as to why this settlement method is, or is not, a fair, equitable way of determining grower payment.

The weight of feed delivered to a poultry grower during the course of a growout cycle is an integral part in determining ultimate payment to the grower under most growing contracts. While many of the scales used to weigh feed deliveries to contract growers are regularly tested for accuracy and are equipped with printing devices, there are currently no regulations under the Packers and Stockyards Act requiring feed scale testing or the mechanical printing of feed tickets. Likewise, there are no Packers and Stockyards regulations related to the information required to be shown on feed scale tickets, nor are there requirements pertaining to other feed delivery or weighing documentation.

A number of poultry growers have expressed concern over the lack of regulatory requirements relative to the weighing of feed delivered during the course of a growout cycle. Growers assert that feed is at times weighed on scales that are not certified as accurate, that weighing is seldom performed by certified weighmasters, and that scale tickets sometimes contain weights that are hand printed rather than printed by a scale integrated printing device.

The Agency is considering the need for regulations requiring periodic testing of feed scales, mechanical printing of feed tickets, and more complete feed weighing and delivery documentation. Comments are being sought from the public regarding the need for feed weighing regulations and, if needed, the content of such regulations to help assure the accuracy of feed weights. Comments suggesting that feed weighing regulations are not needed should include information regarding safeguards currently in place that help assure the accuracy of feed deliveries and feed returns at the end of the growout cycle.

Essentially all poultry growing arrangements include live poultry weight as a key element in determining grower payment. Live poultry weight is determined by weighing the birds while loaded in coops on flat bed trailers

(gross weight) and subtracting the weight of the trailer and empty coops (tare weight) to determine the net or grower pay weight. In order to determine an accurate weight of poultry for grower payment, both the gross weight and tare weight must be accurate. The weight of the trailer, coops, and often the tractor is included in the process of determining both the gross and tare weights that result in the live poultry weight. It is critical in ascertaining an accurate live weight that the weight of the vehicle remain unchanged between the gross and tare weighings.

The weight of live poultry begins to decrease when feed is removed from birds at the grower's farm and continues to decline during loading, transporting, and while being held at the plant prior to processing. Loads of poultry are held for various lengths of time prior to processing and at times are not processed in the order in which they arrived at the plant. Because of these variables, the Agency believes that prompt transporting of birds after loading and immediate weighing of the loads on arrival at the processing plant or holding area provides the most accurate weight for grower payment.

The Agency is considering the need for promulgating regulations relative to the weighing of live poultry for grower payment. Comments are being sought concerning the need for such regulations and, if needed, the content of such regulations. In particular, the Agency is interested in knowing how such regulations could help assure the accuracy of the live poultry weighing process.

Many poultry growers are concerned that they are in an unequal bargaining position vis-a-vis integrated poultry companies and believe rulemaking is necessary to provide growers with a level of assurance that their settlements will be equitable. Regulations involving live poultry weighing and feed weighing and delivery documentation may provide poultry growers with increased assurance that deliveries are weighed accurately. The Agency believes that such rules would place little increased burden on live poultry dealers. The Agency also believes that there would be little increased burden on live poultry dealers resulting from new regulations prohibiting grower flock comparison for settlement purposes. However, the Agency is seeking comments from all segments of the industry regarding anticipated benefits and/or burdens, and the cost, especially to smaller operations involving less than \$500,000 in poultry annually, that may

result from the rulemaking under consideration.

Dated: February 4, 1997.

James R. Baker,

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 97-3217 Filed 2-7-97; 8:45 am]

BILLING CODE 3410-EN-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 96-AGL-38]

#### Modification of Class E Airspace; Mineral Point, WI, Iowa County Airport

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Class E airspace at Mineral Point, WI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 04 has been developed for Iowa County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before March 15, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 96-AGL-38, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:**

John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

**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-AGL-38." 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 light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484.

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 modify Class E airspace at Mineral Point, WI; this proposal would provide

adequate Class E airspace for operators executing the GPS Runway 04 SIAP at Iowa County Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for 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. Therefore this, proposed 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 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

**PART 71—[AMENDED]**

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

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

\* \* \* \* \*

AGL WI E5 Mineral Point, WI [Revised]

Iowa County Airport, WI

(Lat. 42°53'12" N, long. 90°13'52" W)

Mineral Point NDB

(Lat. 42°53'17" N, long. 90°13'35" W)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of the Iowa County Airport and within 2.6 miles each side of the 029° bearing from the Mineral Point NDB extending from the 7.2-mile radius to 7.4 miles northeast of the airport.

\* \* \* \* \*

Issued in Des Plaines, Illinois on January 17, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97-3235 Filed 2-7-97; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

[Airspace Docket No. 97-AGL-4]

**Modification of Class E Airspace; Phillips, WI, Price County Airport**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Class E airspace at Phillips, WI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 1 and GPS SIAP to Runway 19 have been developed for Price County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before March 15, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 97-AGL-4, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:**

John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

**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. 97-AGL-4." 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 light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of

Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484.

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 modify Class E airspace at Phillips, WI; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 1 SIAP and GPS Runway 19 SIAP at Price County Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for 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. Therefore this, proposed 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 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

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

**PART 71—[AMENDED]**

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

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

\* \* \* \* \*

AGL WI E5 Phillips, WI [Revised]

Price County Airport, WI

(Lat. 45°42'32"N, long. 90°24'09"W)

Phillips NDB

(Lat. 45°42'12"N, long. 90°24'42"W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Price County Airport, and within 1.9 miles each side of the 227° bearing from the Phillips NDB extending from the 6.6-mile radius to 7 miles southwest of the airport, and within 1.9 miles each side of the 060° bearing from the Phillips NDB extending from the 6.6-mile radius to 7 miles northeast of the airport.

\* \* \* \* \*

Issued in Des Plaines, Illinois on January 17, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–3233 Filed 2–7–97; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 71**

[Airspace Docket No. 97–AGL–5]

**Modification of Class E Airspace; Detroit, MI, Romeo Airport**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Class E airspace at Detroit, MI. A Global Positioning System (GPS) standard instrument approach

procedure (SIAP) to Runway 36 has been developed for Romeo Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before March 15, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–5, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**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. 97–AGL–5.” 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 light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. 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 modify Class E airspace at Detroit, MI; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 36 SIAP at Romeo Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for 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. Therefore this, proposed 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 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

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

#### **PART 71—[AMENDED]**

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

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

\* \* \* \* \*

##### AGL MI E5 Detroit, MI [Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 43°00'00"N, long. 82°25'00"W; on the Canadian boundary to lat. 43°04'00"N, long. 82°30'00"W; to lat. 42°56'00"N, long. 83°00'00"W; to lat. 42°45'00"N, long. 83°50'00"W; to lat. 42°30'00"N, long. 83°50'00"W; to lat. 42°10'00"N, long. 84°00'00"W; to lat. 42°00'00"N, long. 83°30'00"W; thence east along the 42nd parallel to the Canadian boundary, thence along the Canadian boundary to point of beginning.

\* \* \* \* \*

Issued in Des Plaines, Illinois on January 17, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–3232 Filed 2–7–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 153

[Docket No. RM97–1–000]

#### Applications for Authorization To Construct, Operate, or Modify Facilities Used for the Export or Import of Natural Gas

February 3, 1997.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is issuing a Notice of Proposed Rulemaking (NOPR) to amend the regulations codifying the Commission's responsibilities under the Natural Gas Act and Executive Order 10485, as amended. The Commission proposes to update its regulations governing the filing of applications for the siting, construction, and operation of facilities for the import or export of natural gas under section 3 of the Natural Gas Act and the issuance and modification of Presidential Permits for the construction and operation of border facilities. The proposal is necessary to conform the Commission's regulations to the Commission's current responsibilities, as delegated by the Secretary of Energy.

**DATES:** Comments are due no later than April 11, 1997.

**ADDRESSES:** An original and 14 copies of written comments must be filed. All filings must refer to Docket No. RM97–1–000 and be addressed to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

#### FOR FURTHER INFORMATION CONTACT:

Albert J. Francese, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0736.

Richard W. Foley, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2245.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, also provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS in ASCII and Word Perfect 5.1 format. CIPS user assistance is available at 202–208–2474.

CIPS also is available on the Internet through the Fed World system. Telnet software is required. To access CIPS via the Internet, point your browser to the URL address: <http://www.fedworld.gov> and select the "Go to the FedWorld Telnet Site" button. When your Telnet software connects you, log-on to the FedWorld system, scroll down and select FedWorld by typing: 1 and at the command line type:/go FERC. FedWorld also may be accessed by Telnet at the address [fedworld.gov](http://fedworld.gov).

Finally, the complete text on diskette in Word Perfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference Room at 888 First Street, NE, Washington, DC, 20426.

#### I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend part 153 of its regulations governing the siting, construction, and operation of facilities for the import and export of natural gas between the United States and a foreign country. Part 153 has not been significantly revised since the Commission's predecessor, the Federal Power Commission (FPC), recodified its regulations in 1947.<sup>1</sup>

The Commission intends to conform its filing requirements in part 153 to the Commission's current responsibilities as changed by intervening legislation and Department of Energy (DOE) delegation orders. The DOE delegation orders divide jurisdiction and authority over natural gas import and export issues between the Commission and DOE. Thus, the proposed revisions to part 153 implement the Commission's currently delegated responsibilities under section

<sup>1</sup> Order No. 141, 12 FR 8596 (December 19, 1947). The part 153 regulations originally became effective on July 11, 1938, in FPC Order Nos. 52 (section 3 authorizations) and 66 (Presidential Permits).

3 of the Natural Gas Act (NGA) <sup>2</sup> and Executive Order 10485, as amended, regarding the construction and operation of facilities for the import and export of natural gas.<sup>3</sup>

The proposed regulatory revisions generally make the part 153 regulations current and more readable. To that end, the proposed rule redefines and clarifies the Commission's role with respect to granting the authorizations necessary to construct and operate facilities for the import and export of natural gas between a foreign country and the United States. The proposed regulations codify existing practice which requires the applicant proposing to construct

LNG facilities to file exhibits concerning the environmental and safety features of those facilities. The proposed regulations also delete references to the Commission's previous authority to approve the import and export of natural gas.

The changes to the Commission's regulations are proposed to be effective 60 days after publication of the final rule in the Federal Register.

II. Information Collection Statement

The following collection of information contained in this proposed rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the

Paperwork Reduction Act of 1995.<sup>4</sup> FERC identifies the information provided under part 153 as FERC-539.

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimates for complying with this proposed rule are as follows:

*Public Reporting Burden:* Estimated Annual Burden:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC-539 .....	12	12	200	2,400

Total Annual Hours for Collection (Reporting + Recordkeeping, (if appropriate)) = 2,400.

Based on the Commission's experience with processing applications for siting and facilities' construction over the last three fiscal years (FY94-FY96), it is estimated that about 12 filings per year will be made over the next three years at a burden of 200 hours per filing, for a total annual burden of 2,400 hours under the proposed regulations.<sup>5</sup> The current annual reporting burden for FERC-539 under the current regulations is 38,400 hours. The simplified filing requirements under the proposed regulations and a projected reduced number of filings per year would result in a reduction of 36,000 hours per year from the current OMB burden inventory for FERC-539 data collection.

Applications for import/export facilities vary in size and regulatory complexity depending on the project proposed. Accessibility of documents through commonly available electronic search services, government bulletin boards, and the public record greatly affects research time needed to understand the import/export regulatory structure and application filing requirements. The total burden for a typical new pipeline application under NGA section 3 is estimated at a maximum of 200 hours based on an applicant with general knowledge of the

Federal regulatory scheme for natural gas projects. Applications to amend existing authorizations and Presidential Permits would have a significantly lesser burden since less background work would be needed.

*Information Collection Costs:* The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Annualized Capital/Startup Costs—0  
Annualized Costs (Operations & Maintenance)—\$120,000 (\$50 per hour)

Total Annualized Costs—\$120,000

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.<sup>6</sup> Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collection to OMB.<sup>7</sup>

*Title:* FERC-539, Gas Pipeline Certificate: Import/Export.

*Action:* Proposed Data Collection.

*OMB Control No.:* 1902-0062. The applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

*Respondents:* Business or other for-profit, including small businesses.

*Frequency of Responses:* On occasion.

*Necessity of the Information:* The proposed rule revises the requirements contained in 18 CFR part 153. Because the Commission no longer grants authorizations for the import or export of natural gas, the major filing requirements imposed by FERC-539 are no longer applicable and revisions of the regulations are needed to reflect these changes. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act and Executive Order 10485, as amended, and coincide with the current competitive regulatory environment which the Commission fostered under Order No. 636.

*Internal Review:* The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Pipeline Regulation will use the data included in applications to determine whether proposed facilities are in the public interest as well as for general industry oversight. This determination involves, among other things, an examination of adequacy of design, cost, reliability, redundancy, safety, and environmental acceptability of the proposed facilities. These requirements conform to the Commission's plan for efficient information collection,

<sup>2</sup> 15 U.S.C. 717b.

<sup>3</sup> Executive Order 10485, 3 CFR, 1949-1953 Comp., p. 970, as amended by Executive Order 12038, 3 CFR 1978 Comp., p. 136.

<sup>4</sup> 44 U.S.C. 3507(d).

<sup>5</sup> The 200 hour burden applies to an application by a pipeline to construct non-LNG facilities. The

200 hour burden does not include the environmental burden on non-pipeline applicants proposing to construct LNG facilities. These applicants would prepare proposed environmental exhibits E, E-1, and F, which the Commission identifies as under reporting requirement FERC-577.

<sup>6</sup> 5 CFR 1320.11.

<sup>7</sup> On December 29, 1996, OMB approved a 90-day extension of current FERC-539 data collection (from May 31, 1997 until August 31, 1997) to allow the Commission to obtain public comment on its proposed rule to modify the current reporting requirements.

communication, and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, [Attention: Michael Miller, Division of Information Services, Phone: (202)208-1415, fax: (202)273-0873, email: mmiller@ferc.fed.us].

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202)395-3087, fax: (202)395-7285]

### III. Discussion

#### A. Background and Statutory Authority

Section 3 of the NGA requires prior authorization before exporting or importing natural gas from or to the United States. Agency implementation of section 3 has evolved in three stages. Initially, the FPC was vested with exclusive jurisdiction under section 3 to decide all natural gas import and export issues, including the authorization to import and export natural gas and to construct and operate necessary facilities.<sup>8</sup> The FPC also had the authority, pursuant to Executive Order 10485, as amended, to issue or modify a Presidential Permit for the construction and operation of border facilities at the international boundary between the United States and Canada or Mexico.

The Department of Energy Organization Act (DOE Act), enacted in 1977, transferred all the FPC's authority over natural gas imports and exports to the Secretary of Energy "unless the Secretary assigns such a function to the [Federal Energy Regulatory] Commission."<sup>9</sup> Between October 1, 1977 and February, 1984, DOE and the Commission shared responsibility over natural gas import and export issues pursuant to DOE delegation orders (which have since been rescinded). The Secretary of Energy administered his authority over natural gas import and export issues pursuant to FPC rules in place on September 30, 1977, until DOE

issued its own final regulations.<sup>10</sup> During this transition period, however, "the lines of jurisdiction and authority between the two agencies [were] not entirely clear."<sup>11</sup>

The Secretary issued new delegation orders 0204-111 and 0204-112, discussed below, in February 1984, to minimize problems of coordination on certain import/export issues.<sup>12</sup> These delegation orders allocated regulatory functions concerning the import and export of natural gas to the Commission and DOE/Economic Regulatory Administration (ERA).<sup>13</sup> DOE and the Commission continue to share responsibility for determining natural gas import/export issues under these currently applicable delegation orders.

Under DOE Delegation Order 0204-111, effective February 22, 1984, the Secretary of Energy delegated to the Administrator of ERA authority under section 3 of the NGA to regulate the import (including the place of entry) and the export (including the place of exit) of natural gas.<sup>14</sup> On the same date, the Secretary of Energy issued Delegation Order 0204-112 which delegated to the Commission exclusive authority over specific import/export matters.

The responsibilities delegated to the Commission include the authority to approve or disapprove proposals for the construction, operation, and siting of facilities, and when the construction of new domestic facilities is involved, the place of entry for imports or place of exit for exports. The Commission's delegated authority is subject to DOE's right of disapproval if the Administrator finds disapproval to be appropriate "in the circumstances of a particular case." Thus, under the most recent and presently applicable delegation orders, the facility and siting aspects of natural gas import and export are delegated and

assigned to the Commission for determination of the public interest.

Section 3 of the NGA provides that the Commission "shall issue an order upon application, unless \* \* \* it finds that the proposed exportation or importation will not be consistent with the public interest." The Commission determines the public interest in particular proceedings upon consideration of all relevant factors. For example, the Commission will authorize the construction and operation of import/export facilities under NGA section 3 upon its conclusion that the proposal is necessary to access new foreign gas supplies and to deliver imported gas to an industrial user.<sup>15</sup> The Commission will also grant authorization under NGA section 3 if the Commission concludes that the new construction will enhance system reliability, flexibility, the dependability of international energy trade, and will not adversely affect the service or rates of existing customers.<sup>16</sup>

A person applying to the Commission for authority under section 3 must also apply to the Commission, pursuant to DOE Delegation Order No. 0204-112, for the issuance of a Presidential Permit or an amendment to an existing Presidential Permit if the proposed facilities are to be located at the borders of the United States and Canada or Mexico. A Presidential Permit authorizes the applicant to construct, operate, maintain, or connect natural gas pipeline facilities at the international borders.

The Commission has the jurisdiction, pursuant to Executive Order 10485, as amended, to condition a Presidential Permit "as the public interest may in its judgment require."<sup>17</sup> In addition, Executive Order 10485, as amended, requires the Commission to obtain the concurrence of the Secretary of State and the Secretary of Defense who will consider foreign policy and national security aspects of the application.

An applicant proposing to alter a term of an existing Presidential Permit that does not also necessitate new construction, e.g., a revision to the authorized operating or design capacity of an existing import/export facility,

<sup>15</sup> See National Steel Corporation, 45 FERC ¶ 61,100 (1988).

<sup>16</sup> Great Lakes Transmission Limited Partnership, 76 FERC ¶ 61,148 (1996).

<sup>17</sup> These conditions are stated as "articles" in the body of a Presidential Permit. The articles describe the facilities, design capacity, nature of the service and include various uniform provisions concerning transferability of the Presidential Permit or facilities, inspection and access to the facilities, liability for damages, filing of information, removal of facilities, possession by the United States, and control by a foreign government.

<sup>8</sup> See *Distrigas Corporation v. FPC*, 495 F.2d 1057 (D.C. Cir. 1974).

<sup>9</sup> See sections 301(b), 402(a) and 402(f) of the Department of Energy Organization Act, 42 U.S.C. 7151(b), 7172(a) and 7172(f).

<sup>10</sup> DOE's final rules establishing procedures for processing applications for the import and export of natural gas and revised *ex parte* rules became effective on September 6, 1984. 49 FR 35302 (September 6, 1984).

<sup>11</sup> DOE, New Policy Guidelines and Delegation Orders on the Regulation of Imported Natural Gas, at 23, 49 FR 6684 (February 22, 1984).

<sup>12</sup> Both delegation orders were published at 49 FR 6684 (February 22, 1984).

<sup>13</sup> Effective on February 7, 1989, the Assistant Secretary for Fossil Energy (DOE/FE) assumed the delegated responsibilities of the Administrator of ERA. See DOE Delegation Order No. 0204-127. 54 FR 11436 (March 20, 1989).

<sup>14</sup> The Energy Policy Act of 1992, which added paragraphs (b) and (c) to section 3 of the NGA, requires the DOE to grant applications for the import or export of natural gas "without modification or delay" if the United States has a free trade agreement in effect with the foreign country into which the imported or exported natural gas flows.

must file to amend its Presidential Permit.<sup>18</sup> That applicant, however, does not also require section 3 authorization. On the other hand, the applicant granted authorization under NGA section 3 does not require a Presidential Permit for the construction of natural gas import/export facilities located at tidewater or on the border of the United States and international waters.<sup>19</sup>

#### B. Objectives of the Proposed Rule.

Part 153 currently imposes specific filing requirements on applicants for authorization under section 3 and Executive Order 10485, as amended, to site, construct, and operate facilities for the import or export of natural gas.<sup>20</sup> The proposed part 153 incorporates basic housekeeping changes to eliminate obsolete and redundant language and sections. The proposed part 153 also makes conforming changes to regulations to reflect the Commission's diminished responsibilities in the regulation of natural gas imports and exports under DOE's currently effective delegation orders.

The proposed rule also updates the type of information and exhibits that an applicant must include in its application. The Commission proposes to revise its filing requirements to match its current responsibilities and does not propose to change its substantive policies.

Other proposed changes to part 153 reflect the separate but related nature of the Commission's and DOE's responsibilities concerning natural gas import and export issues. The Commission's proposed revisions will make clear that the part 153 regulations apply only to the siting, construction, operation, or modification of facilities for the import or export of natural gas. On the other hand, DOE's responsibility is the authorization of requests to import/export natural gas.<sup>21</sup>

Proposed § 153.6, codifying current Commission practice, requires that an application to the Commission under section 3 be filed simultaneously with

or after the filing of the related application with DOE for authority to import or export natural gas.<sup>22</sup> The information an applicant must file with FERC to support its requested authorization is different from that required to be filed to support an application to import/export natural gas.<sup>23</sup>

#### C. Electronic Filing

The Commission is not proposing to modify part 153 at this time to require an applicant to file its applications on electronic media. The Commission will review in a future proceeding the electronic filing requirements for the entire certificate application process, including existing electronic filing requirements for part 157 applications and appropriate electronic filing procedures to adopt for part 153 applications. The Commission will determine where changes are necessary to reflect current policies and modify existing electronic filing requirements as necessary to streamline and update the filing process.

As was done in NOPRs in Docket Nos. RM95-3-000<sup>24</sup> and RM95-4-000,<sup>25</sup> the Commission will solicit participation of the industry and other users of filed information in formulating final electronic filing instructions.

#### D. The Revised Regulations

The proposed part 153 is arranged by subparts. General provisions, including the regulatory purpose and definitions, are set out in subpart A. Applications under NGA section 3 and applications for a Presidential Permit are addressed in subparts B and C, respectively, with revised section designations. The requirements for paper filing and certain procedural matters are set forth in subpart D.

Since the amendments to part 153 are extensive (with some regulatory text

retained and other text deleted), it is appropriate to republish the entire regulatory text of part 153 instead of identifying many fragmentary amendments to the current text. The proposed regulations are discussed below.

#### 1. Part 153—Applications for Authorization To Construct, Operate or Modify Facilities Used for the Export or Import of Natural Gas

The Commission proposes the new heading for part 153 to replace the current heading (application for authorization to export or import natural gas).

#### 2. Authority Citation

The Commission is proposing to revise the authority citation for part 153 to reflect current legal authority—DOE Delegation Order No. 0204-112 and Executive Order 10485, as amended by Executive Order 12038.

#### 3. Subpart A—General Provisions

a. *Section 153.1 Purpose.* Proposed § 153.1 states that the purpose of part 153 is to implement the Commission's authorities delegated under section 3 of the Natural Gas Act and Executive Order 10485, as amended. Part 153 establishes revised procedures for applying for authorization under section 3 and for a Presidential Permit.

b. *Section 153.2 Definitions.* The Commission is proposing to define the terms "DOE/FE" (Department of Energy/Office of Fossil Energy), "NBSIR" (National Bureau of Standards Information Report), and "person" for purposes of part 153.

The Commission proposes in § 153.2 to cross-reference DOE's definition of "person" stated at 10 CFR 590.102(m), which DOE uses for purposes of considering applications for import/export authorization.<sup>26</sup> A "person" is defined by DOE as "any individual, firm, estate, trust, partnership, association, company, joint-venture, corporation, United States local, state and federal governmental unit or instrumentality thereof, charitable, educational or other institution, and others including any officer, director, owner, employee, or duly authorized representative of the foregoing." The Commission's proposed definition replaces the undefined use of "person" in current § 153.1(a) with a comprehensive listing of potential applicants.

The proposed new definition would by its own terms automatically incorporate any future changes by DOE

<sup>18</sup> See *Panhandle Eastern Pipe Line Company*, 62 FERC ¶ 61,190 (1993).

<sup>19</sup> See *EcoElectrica, L.P.*, 75 FERC ¶ 61,157 (1996), *Yukon Pacific Corporation* 39 FERC ¶ 61,216 (1987), and *Phillips Petroleum Company*, 37 FPC 777 (1967).

<sup>20</sup> Thus, the part 153 regulations and this NOPR do not address filing requirements applicable to the construction of any connecting facilities transporting natural gas in interstate commerce. Such facilities would be within the scope of section 7 and the Commission's part 157 regulations.

<sup>21</sup> Under DOE regulations, applications must be filed at least 60 days prior to the proposed import or export, unless a later date is permitted for good cause shown. See 10 CFR 590.202. DOE processes applications for import/export authority on an expedited basis.

<sup>22</sup> The person filing with DOE for import or export authorization may be a shipper of the FERC applicant and need not be the FERC applicant.

<sup>23</sup> DOE's regulations permit an applicant to submit copies of relevant documents filed or intended to be filed with FERC to satisfy the requirements of DOE's regulations. See 10 CFR 590.202. These regulations would permit a DOE applicant to submit its application before FERC to satisfy DOE's requirement that the applicant provide a description of the facilities to be used or constructed for the proposed import/export. The information that a DOE applicant files with DOE concerning imports/exports would not, however, generally satisfy the informational requirements of part 153.

<sup>24</sup> Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs, 60 FR 3111 (January 13, 1995).

<sup>25</sup> Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 60 FR 3141 (January 13, 1995).

<sup>26</sup> 10 CFR 590.102(m).



in its definition of "person." The proposed definition would not change current Commission practice in processing applications under section 3 or Executive Order 10485, as amended. The Commission would administer the proposed definition of "person" consistent with its statutory authority.<sup>27</sup>

#### 4. Subpart B—Application under Section 3

a. *Section 153.5 Who Shall Apply.* Proposed § 153.5(a) retains the requirement that a person file an application to seek authorization under section 3 and adds a new provision, codifying current practice, requiring the filing of an application in order to amend an existing authorization. References to the necessity of filing an application for import/export authority are deleted.

Current § 153.1(b) is rewritten as proposed § 153.5(b) to revise and restate the current cross-reference to Presidential Permits as a requirement that an applicant must also simultaneously apply under subpart C for a Presidential Permit for the construction of border facilities at the international boundary between the United States and Canada or Mexico.

b. *Section 153.6 Time of Filing.* Current filing requirements as to the form and number of paper copies of applications are deleted from current § 153.2 and are included in new subpart D to avoid duplication of regulatory text.

The portion of the third sentence of current § 153.2 stating the time of making applications for the import and export of natural gas is deleted. In its place, proposed § 153.6 codifies current practice to require the simultaneous or prior filing of an application with DOE for authority to import or export natural gas. Proposed § 153.6 recognizes the related nature of applications before the Commission and DOE. The current section heading is revised.

c. *Section 153.7 Contents of Application.* Proposed § 153.7 eliminates obsolete references in the text and heading of current § 153.3 to information concerning import or export applications and to filing fees.<sup>28</sup> Informational requirements in current §§ 153.3(a) through 153.3(c) identify the

applicant. These informational requirements are revised and retained in proposed § 153.7(a)(1) through (a)(3) with a paragraph heading added. The informational requirements in current §§ 153.3(d) through 153.3(f) are deleted because they are associated with the import and export of natural gas.

The requirement in current paragraph 153.3(g) to describe proposed facilities is retained, expanded, and redesignated as proposed § 153.7(b) with a separate paragraph heading added. The information required by § 153.7(b) should provide the Commission with sufficient details of the applicant's proposal to permit the Commission to process applications under subparts B and C, as applicable.

Proposed § 153.7(b) requires the applicant to include a summary of its proposal. In addition, proposed § 153.7(b) requires the applicant to file a description of the proposed facilities and a description of state, foreign, or other Federal licenses or permits for the construction or operation of facilities (revising a similar requirement in current § 153.11(d) applicable to Presidential Permits). The reference in current § 153.11(d) to permits in connection with the import/export of natural gas is deleted. Proposed § 153.7(b) includes a new requirement that the applicant must also state the status of any non-FERC regulatory proceedings (United States or foreign) related to the proposal.

Proposed § 153.7(c) requires the applicant to file two statements with its application. One statement reflects a revision of the requirement in current § 153.3(h)(1) that an applicant demonstrate that its proposal will not be inconsistent with the public interest and the other statement requires, for the first time, a description of the nature of the transportation service offered. A separate heading is added. Proposed § 153.7(c)(1) identifies illustrative elements of the public interest (without restriction on the Commission's ability to request other information as necessary in proposed § 153.21(b) to cure deficiencies in an application.

The first illustrative element of the public interest is reflected in Commission precedent under NGA section 3 (and section 7) and is not part of the current part 153 regulations.

Proposed § 153.7(c)(1)(i) requires the applicant to file a statement demonstrating that the proposal will access new foreign supplies of natural gas and new markets, enhance system reliability and flexibility and not impair service to existing customers. For example, a freeze-up of Gulf coast production platforms may require

increased reliance on Canadian or Mexican-source natural gas, which could necessitate the construction of additional border-crossing facilities. Also, the possibility of a break-down in service over critical energy corridors at the borders or the existence of transportation bottlenecks could warrant the construction of looping transportation facilities.

Proposed § 153.7(c)(1)(ii) deletes the reference to bundled sales service in current paragraph (h)(2) and substitutes "transportation service" in the provision requiring the applicant to show that the proposal will not impair service to United States customers.

Proposed § 153.7(c)(iii) revises the requirement to file a statement describing certain contracts in current § 153.11(c) applicable to Presidential Permits. Proposed § 153.7(c)(iii) requires the applicant for section 3 authorization to file a statement describing any existing contracts involving the control of operations at import/export facilities or transportation rates that could prevent competing United States companies from extending their activities in the same general area. Such agreements could interfere with free trade in natural gas between the United States and Canada or Mexico. They may also be inconsistent with proposed § 153.10 which provides that section 3 authorizations are not exclusive to the holder.

Proposed § 153.7(c)(2) establishes a new requirement that the applicant include a statement that the proposed import/export facilities will be used: (1) To render transportation services under Part 284, (2) to provide private transportation, or (3) to provide service that is exempt from the provisions of the NGA pursuant to sections 1(b) or 1(c) thereof.<sup>29</sup> This requirement will enable the Commission to determine whether the applicant's operations are consistent with the Commission's open access transportation policies. Current § 153.5 (other information) is redesignated as proposed § 153.21(b)(rejection of applications), and § 153.5 is deleted.

d. *Section 153.8 Required Exhibits.* The Commission proposes to

<sup>29</sup> Section 1(b) states that the provisions of the NGA apply, *inter alia*, to the transportation of natural gas in interstate commerce but not to "any other transportation," the local distribution of natural gas, or the production or gathering of natural gas. Section 1(c) exempts a Hinshaw pipeline from the provisions of the NGA. The Commission, however, regulates the activities of these exempt entities in foreign commerce under section 3. See, e.g., Vermont Gas System, Inc., 24 FERC ¶ 61,366 (1983) (LDC); Interenergy Sheffield Processing, 78 FERC ¶ 61,085 (1997) (gathering); and Havre Pipeline Company, *et al.*, 71 FERC ¶ 61,292 (1995) (intrastate pipeline/gatherer engaging in foreign commerce).

<sup>27</sup> The Commission has plenary and elastic authority under NGA section 3 to prevent gaps in regulation between Federal and local jurisdiction as applied to import and export facilities. See *Distrigas Corporation v. FPC*, 495 F.2d 1057 at 1064 (D.C. Cir. 1974).

<sup>28</sup> The informational filing requirements in proposed §§ 153.7 and 153.8 are proposed to apply to applications under subpart C for Presidential Permits for the construction of import/export facilities at the border as well.

redesignate current § 153.4 as proposed § 153.8, which retains the requirement to file current Exhibits A through C in new paragraphs (a)(1), (a)(2), and (a)(3), respectively, with editorial revisions. Current Exhibit A is revised to incorporate the requirement of current § 153.11(a)(3) that an applicant for a Presidential Permit describe the amount and classes of capital stock issued by a corporate applicant and the nationality of officers, directors, and stockholders, and the amount and class of stock held by each. The Commission proposes to eliminate obsolete exhibits D and E (contracts for the export or import of natural gas).

Proposed § 153.8(a) requires an applicant to file new exhibits D (copy of any construction and operation agreements), E (LNG-related engineering data), E-1 (LNG-related seismic information for certain facilities), and F (an environmental report required by part 380 for LNG and non-LNG related facilities). Applicants may refer to the "Guidance Manual for Environmental Report Preparation" to assist in the preparation of these exhibits.

New exhibit D codifies current practice in processing applications under section 3 for pipeline facilities, which do not involve the import/export of LNG. Exhibit D requires the applicant to verify the business feasibility of the import/export project by filing copies of construction and operation agreements. These contracts will show how the applicant and its Canadian or Mexican counterpart intend to jointly construct and operate the border-crossing facilities.

New exhibits E, E-1, and F codify existing practice which requires an applicant for the construction of LNG facilities to provide sufficient information that will enable the Commission to determine whether the new facilities will be constructed and operated safely and with minimal adverse environmental impact. These exhibits are justified by the significant safety and environmental implications of LNG terminal facilities. The proposed rule revises the existing map exhibit as proposed Exhibit G to eliminate the current reference to a scale not greater than 20 miles to the inch and, in its place, to require a map of suitable scale.

*e. Section 153.9 Transferability.* The Commission proposes to redesignate current § 153.6 as § 153.9, revise current paragraph (a) to delete references to authorizations for the import/export of natural gas, and substitute references to authorizations under section 3. Proposed § 153.9 adds headings to current paragraphs (a) and (b) to clarify

that authorizations under subpart B are not transferable or assignable.

*f. Section 153.10 Authorization Not Exclusive.* The Commission proposes to redesignate current § 153.7 as § 153.10 and to revise the current regulation to eliminate references to authorizations for the import/export of natural gas, replacing them with references to authorizations for construction and operation under section 3 of the NGA. Under proposed § 153.10, which codifies current Commission practice, if the Commission authorizes the construction of facilities pursuant to section 3, the Commission is not prevented from granting authorization to another applicant under section 3 at the same general location.<sup>30</sup> Current § 153.8 (filing of import/export contracts, rate schedules, etc.) is proposed to be deleted as obsolete.

#### 5. Subpart C—Application for a Presidential Permit

*a. Section 153.15 Who Shall Apply.* The existing heading prefacing current §§ 153.10 through 153.12 is deleted and replaced with a more concise heading (Application for a Presidential Permit) substituted under a new subpart C of part 153. The Commission is proposing to redesignate current § 153.10 as § 153.15 and to divide proposed § 153.15 into paragraphs (a) and (b) with individual headings.

The Commission is proposing to use the same definition of person in paragraph (a) as is used in subpart B and is deleting the reference in current § 153.10 to any "person, firm or corporation." It is appropriate to use the same definition because the same entity that applies under subpart C to construct and operate border facilities would need to apply for authorization under subpart B. Proposed paragraph (b) cross-references the requirement to file simultaneously an application under subpart B for the siting or construction of facilities, deleting the current cross-reference to applications for authorization to import or export natural gas.

*b. Section 153.16 Contents of Application.* The Commission is proposing to redesignate current § 153.11 as § 153.16, with a revised heading. Filing requirements for Presidential Permit applications stated in the first sentence of current § 153.11 are deleted and relocated to new subpart D of part 153. Obsolete references to the payment of filing fees are deleted.

<sup>30</sup> See, e.g., Tenneco Baja California Corporation, 75 FERC ¶ 61,192 (1996) and Pacific Interstate Offshore Company, 74 FERC ¶ 61,350 (1996).

Current informational requirements for filing an application for a Presidential Permit for the construction or modification of border facilities are virtually identical to the current informational requirements for applications under NGA section 3. Thus, to avoid duplication of regulatory text, filing requirements for applications for Presidential Permits are the same as those stated in subpart B for section 3 authorization. Proposed § 153.16(a) states that an applicant for a Presidential Permit for the construction and operation of border facilities that complies with the informational filing requirements under subpart B is not required to satisfy separate filing requirements under subpart C.

Accordingly, current §§ 153.11(a)(1) and (a)(2) and the first part of paragraph (a)(3) are deleted as they duplicate the same provisions in proposed § 153.7(a). The remainder of current § 153.11(a)(3) is redesignated in proposed § 153.8 (Exhibit A). Current § 153.11(a)(4) is revised to update references to applicants "subventioned" (subsidized) by a foreign government and is relocated to proposed § 153.7(a)(3). Current § 153.11(b), requiring an applicant to file a map, is deleted because it duplicates the same requirement in current § 153.4 and proposed § 153.8(a)(8) (Exhibit G).

Current § 153.11(c), concerning anti-competitive agreements, and § 153.11(d), concerning permits granted by a foreign government, are revised to eliminate out-dated references to bundled gas service, "landing licenses," and import/export permits. These sections are redesignated as proposed §§ 153.7(c)(1)(iii) and 153.7(b), respectively.

Certain amendments to an existing Presidential Permit do not involve related section 3 applications because these amendments do not propose the construction or modification of import/export facilities. For example, an applicant may propose to revise articles of an existing Presidential Permit that deal with non-facilities issues, e.g., authorized design capacity, name of the Permittee, or whether the facility may be used both to import and export natural gas. Proposed § 153.16(b) requires that applicant to provide information identifying itself pursuant to proposed § 153.7(a) and to fully explain and justify its proposed amendment. This applicant would not be required to provide the remainder of information required by proposed §§ 153.7 and 153.8, applicable to the construction of facilities.

Current § 153.12, authorizing the Commission to request such other

information in connection with an application as it may deem pertinent, is deleted. In its place, proposed § 153.21(b) authorizes the Commission to direct the applicant to file such information as may be necessary to cure a deficient application.

c. *Section 153.17 Effectiveness of Presidential Permit.* Proposed § 153.17 codifies the Commission's existing practice of requiring a Permittee to accept an issued Presidential Permit by executing, with proof of proper authorization, the Testimony of Acceptance of the Presidential Permit. The Permittee would be required to file a copy of the executed Testimony of Acceptance with the Secretary prior to the start of construction.<sup>31</sup>

#### 6. Subpart D—Paper Media and Other Requirements

a. *Section 153.20 General Rule.* The Commission proposes to relocate its current filing requirements for paper media in subpart D.

b. *Section 153.21 Conformity with Requirements.* Proposed § 153.21 states the requirement that an application must conform to the requirements of part 153.

c. *Section 153.22 Amendments and Withdrawals.* Proposed § 153.22 applies the Commission's Rules of Practice and Procedure applicable to amending or withdrawing pleadings to amending or withdrawing an application under subpart B or subpart C of part 153.

d. *Section 153.23 Reporting Requirement.* The NOPR would delete as obsolete the only post-authorization reporting requirement in current part 153.<sup>32</sup> Interstate pipelines are currently required to file operational information about facilities authorized under section 3 in their FERC Form No. 2 (annual report), FERC Format No. 567 (annual system flow diagram), and annual report of estimated peak capacity pursuant to 18 CFR 284.12.

Commission regulations, however, do not require applicants which are not natural gas companies to file operational information with the Commission concerning facilities authorized under section 3.<sup>33</sup> Accordingly, the Commission proposes in § 153.23 to require applicants which are not otherwise required to file operating

information concerning facilities authorized under section 3 with the Commission to report the completion of construction or modification, the date service commenced, and annually the continued operation of the import/export facilities.<sup>34</sup>

#### IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.<sup>35</sup> The Commission is not required to make such analyses if a rule would not have such an effect.

The Commission does not believe that this rule would have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of small entity.<sup>36</sup> Further, the filing requirements of small entities are reduced by the rule. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### V. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.<sup>37</sup> No environmental consideration is raised by the promulgation of a rule that is procedural or that does not substantially change the effect of legislation or regulations being amended.<sup>38</sup> The instant rule updates the part 153 regulations and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. Accordingly, no environmental consideration is necessary.

<sup>34</sup> Effective November 13, 1995, the Commission eliminated its annual report of import/export volumes in FPC Form 14. See Final rule, Revisions to Uniform System of Accounts, Forms, Statements and Reporting Requirements for Natural Gas Companies, 60 FR 53019 (October 11, 1995). The Commission eliminated FPC Form 14 because importers/exporters currently file quarterly reports with DOE/FE including the same volume and price information.

<sup>35</sup> 5 U.S.C. 601-612.

<sup>36</sup> 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

<sup>37</sup> 18 CFR 380.4.

<sup>38</sup> 18 CFR 380.4(a)(2)(ii).

#### VI. Public Comment Procedures

The Commission invites all interested persons to submit written comments on this NOPR.

An original and 14 copies must be filed with the Commission no later than April 11, 1997. Comments must refer to Docket No. RM97-1-000 and be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Additionally, comments should be submitted on computer diskette in WordPerfect 5.1/5.2 format (Dos or Windows version) or in ASCII format, with the name of the filer, Docket No. RM97-1-000, and the format used (WP or ASCII) on the outside of the diskette.

All written submissions will be placed in the Commission's public file and will be available for public inspection, during regular business hours, at the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426.

#### List of Subjects in 18 CFR Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.  
Lois D. Cashell,  
Secretary.

For the reasons set out in the preamble, the Commission proposes to revise 18 CFR part 153 to read as follows.

### **PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS**

#### **Subpart A—General Provisions**

Sec.  
153.1 Purpose and scope.  
153.2 Definitions.

#### **Subpart B—Application Under Section 3**

153.5 Who shall apply.  
153.6 Time of filing.  
153.7 Contents of application.  
153.8 Required exhibits.  
153.9 Transferability.  
153.10 Authorization not exclusive.

#### **Subpart C—Application for a Presidential Permit**

153.15 Who shall apply.  
153.16 Contents of application.  
153.17 Effectiveness of Presidential Permit.

#### **Subpart D—Paper Media and Other Requirements**

153.20 General rule.  
153.21 Conformity with requirements.  
153.22 Amendments and withdrawals.  
153.23 Reporting Requirements.

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949-1953 Comp., p. 970, as

<sup>31</sup> See MidCon Texas Pipeline Corporation, 77 FERC ¶ 61,205 (1996).

<sup>32</sup> Current § 153.8 (filing of import/export contracts and rate schedules pursuant to part 154 of the Commission's regulations).

<sup>33</sup> The Commission has imposed such reporting as a condition in individual section 3 proceedings. See, e.g., Yukon Pacific Company, L.P., 71 FERC ¶ 61,197 (1995) and EcoElectrica, L.P., 75 FERC ¶ 61,157 (1996).

amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204-112, 49 FR 6684 (February 22, 1984).

### Subpart A—General Provisions

#### § 153.1 Purpose and scope.

The purpose of this part is to implement the Commission's delegated authorities under section 3 of the Natural Gas Act and Executive Order 10485, as amended by Executive Order 12038. Subpart B of this part establishes filing requirements an applicant must follow to obtain authorization under section 3 of the NGA for the siting, construction, operation, place of entry for imports or place of exit for exports. Subpart C of this part establishes filing requirements an applicant must follow to apply for a Presidential Permit, or an amendment to an existing Presidential Permit, for border facilities at the international boundary between the United States and Canada or Mexico.

#### § 153.2 Definitions.

(a) *DOE/FE* means the Department of Energy/Office of Fossil Energy or its successor office.

(b) *NBSIR* means the National Bureau of Standards Information Report.

(c) *Person* means an individual or entity as defined in 10 CFR 590.102(m).

### Subpart B—Application Under Section 3

#### § 153.5 Who shall apply.

(a) *Applicant*. Any person proposing to site, construct, operate, or modify facilities which are to be used for the export of natural gas from the United States to a foreign country or for the import of natural gas from a foreign country or to amend an existing authorization shall file with the Commission an application for authorization therefor under subpart B of this part and section 3 of the Natural Gas Act.

(b) *Cross-reference*. Any person applying under paragraph (a) of this section to construct facilities at the borders of the United States and Canada or Mexico must also simultaneously apply for a Presidential Permit under subpart C of this part.

#### § 153.6 Time of filing.

An application filed pursuant to § 153.5(a) shall be made simultaneous with or after the filing of any related applications with DOE/FE for exporting or importing natural gas, except where otherwise ordered by the Commission for good cause shown.

#### § 153.7 Contents of application.

Every application under subpart B of this part shall include, in the order indicated, the following:

- (a) *Information regarding applicant*.
- (1) The exact legal name of applicant;
  - (2) The name, title, and post office address, telephone and facsimile numbers of the person to whom correspondence in regard to the application shall be addressed;
  - (3) If a corporation, the state or territory under the laws of which the applicant was organized, and the town or city where applicant's principal office is located. If applicant is incorporated under the laws of, or authorized to operate in, more than one state, all pertinent facts should be stated. If applicant company is owned wholly or in part by any government entity, or directly or indirectly subsidized by any government entity; or, if applicant company has any agreement for such ownership or subsidization from any government, provide full details of ownership and/or subsidies.

(b) *Summary*. A detailed summary of the proposal, including descriptions of the facilities utilized in the proposed export or import of natural gas; state, foreign, or other Federal governmental licenses or permits for the construction, operation, or modification of facilities in the United States, Canada, or Mexico; and the status of any state, foreign, or other Federal regulatory proceedings which are related to the proposal.

(c) *Statements*. (1) A statement demonstrating that the proposal or proposed construction is not inconsistent with the public interest, including, where applicable, a demonstration that the proposal:

(i) Will access new foreign supplies of natural gas and serve new market demand, enhance the reliability and flexibility of the applicant's pipeline system, the dependability of international energy trade, and will not impair transportation service to existing customers;

(ii) Will not impair the ability of the applicant to render transportation service at reasonable rates to customers in the United States; and,

(iii) will not involve any existing contract(s) between the applicant and a foreign government or person concerning the control of operations or rates for the delivery or receipt of natural gas which may restrict or prevent other United States companies from extending their activities in the same general area, with copies of such contracts.

(2) A representation that the proposal will be used to render transportation

services under part 284 of this chapter, private transportation, or service that is exempt from the provisions of the Natural Gas Act pursuant to sections 1(b) or 1(c) thereof.

#### § 153.8 Required exhibits.

(a) An application must include the following exhibits:

(1) *Exh. A*. A certified copy of articles of incorporation, partnership or joint venture agreements, and by-laws of applicant; the amount and classes of capital stock; nationality of officers, directors, and stockholders, and the amount and class of stock held by each;

(2) *Exh. B*. A detailed statement of the financial and corporate relationship existing between applicant and any other person or corporation;

(3) *Exh. C*. A statement, including signed opinion of counsel, showing that the construction, operation, or modification of facilities for the export or the import of natural gas is within the authorized powers of applicant, that applicant has complied with laws and regulations of the state or states in which applicant operates;

(4) *Exh. D*. If the proposal is for a pipeline interconnection to import or export natural gas, a copy of any construction and operation agreement between the applicant and the operator(s) of border facilities in the United States and Canada or Mexico;

(5) *Exh. E*. If the proposal is to import or export LNG, evidence that an appropriate and qualified concern will properly and safely receive or deliver such LNG, including a report containing detailed engineering and design information. The Commission staff's "Guidance Manual for Environmental Report Preparation" may be obtained from the Commission's Office of Pipeline Regulation, 888 First Street, NE, Washington, DC 20426;

(6) *Exh. E-1*. If the LNG import/export facility is to be located at a site in zones 2, 3, or 4 of the Uniform Building Code's Seismic Risk Map of the United States, or where there is a risk of surface faulting or ground liquefaction, a report on earthquake hazards and engineering. Guidelines are contained in "Data Requirements for the Seismic Review of LNG Facilities," NBSIR 84-2833. This document may be obtained from the National Technical Information Service or the Commission's Office of Pipeline Regulation, 888 First Street, NE, Washington, DC 20426;

(7) *Exh. F*. An environmental report as specified in § 380.3 of this chapter. Refer to Commission staff's "Guidance Manual for Environmental Report Preparation;" and

(8) *Exh. G.* A geographical map of a suitable scale and detail showing the physical location of the facilities to be utilized for the applicant's proposed export or import operations. The map should indicate with particularity the ownership of such facilities at or on each side of the border between the United States and Canada or Mexico, if applicable.

(b) The applicant may incorporate by reference any exhibit required by paragraph (a) of this section already on file with the Commission.

#### § 153.9 Transferability.

(a) *Non-transferable.* Authorizations under subpart B of this part and section 3 of the Natural Gas Act shall not be transferable or assignable. A Commission order granting such authorization shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of facilities used thereunder by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to operations of the facilities remains substantially the same as before the transfer and as stated in the initial application for such authorization.

(b) *Supplemental orders.* The Commission also may make, at any time subsequent to the original order of authorization, after opportunity for hearing, such supplemental orders concerning the operation of the facilities as it may find necessary or appropriate.

#### § 153.10 Authorization not exclusive.

No authorization granted pursuant to subpart B of this part and section 3 of the Natural Gas Act shall be deemed to prevent the Commission from granting authorization under subpart B to any other person at the same general location, or to prevent any other person from making application for such authorization.

#### Subpart C—Application for a Presidential Permit.

##### § 153.15 Who shall apply.

(a) *Applicant.* Any person proposing to construct, operate, maintain, or connect facilities or to change the operation or maintenance of facilities at the borders of the United States and Canada or Mexico, for the export or import of natural gas to or from those countries, or to amend an existing Presidential Permit, shall file with the

Commission an application for a Presidential Permit under subpart C of this part and Executive Order 10485, as amended by Executive Order 12038.

(b) *Cross-reference.* Any person applying under paragraph (a) of this section for a Presidential Permit for the construction and operation of border facilities must also simultaneously apply for authorization under subpart B of this part.

#### § 153.16 Contents of application.

(a) *Cross-reference.* The submission of information under §§ 153.7 and 153.8 of subpart B of this part shall be deemed sufficient for purposes of applying for a Presidential Permit or an amendment to an existing Presidential Permit under subpart C of this part for the construction and operation of border facilities.

(b) *Amendment Not Proposing Construction.* An applicant proposing to amend the article(s) of an existing Presidential Permit (other than facilities aspects) must file information pursuant to § 153.7(a) and a summary and justification of its proposal.

#### § 153.17 Effectiveness of Presidential Permit.

A Presidential Permit, once issued by the Commission, shall not be effective until it has been accepted by the highest authority of the Permittee, as indicated by Permittee's execution of a Testimony of Acceptance, and a certified copy of the accepted Presidential Permit and the executed Testimony of Acceptance has been filed with the Commission.

#### Subpart D—Paper Media and Other Requirements

##### § 153.20 General rule.

(a) *Number of Copies.* Applications under subpart B of this part must be submitted to the Commission in an original and 7 conformed paper copies. Applications under subpart C of this part must be submitted to the Commission in an original and 9 conformed paper copies.

(b) *Certification.* All applications must be signed in compliance with § 385.2005 of this chapter.

(1) The signature on an application constitutes a certification that: the signer has read the filing signed and knows the contents of the paper copies; and, the signer possesses the full power and authority to sign the filing.

(2) An application must be signed by one of the following:

(i) The person on behalf of whom the application is made;

(ii) An officer, agent, or employee of the governmental authority, agency, or

instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(c) *Where to file.* The paper copies and an accompanying transmittal letter must be submitted in one package to: Office of the Secretary, Federal Energy Regulatory Commission, Washington, DC 20426.

#### § 153.21 Conformity with requirements.

(a) *General rule.* Applications under subparts B and C must conform with the requirements of this part.

(b) *Rejection of applications.* If an application does not conform to the requirements of this part, the Director of the Office of Pipeline Regulation will notify the applicant of all deficiencies. Deficient applications not amended within 20 days of the notice of deficiency, or such longer period as may be specified in the notice of deficiency, will be rejected by the Director of the Office of Pipeline Regulation as provided by § 385.2001(b) of this chapter. Copies of a rejected application will be returned. An application which relates to an operation, service, or construction concerning which a prior application has been filed and rejected, shall be docketed as a new application. Such new application shall state the docket number of the prior rejected application.

#### § 153.22 Amendments and withdrawals.

Amendments to or withdrawals of applications must conform to the requirements of §§ 385.215 and 385.216 of this chapter.

#### § 153.23 Reporting requirements.

Each person authorized under part 153 that is not otherwise required to file information concerning the start of construction or modification of import/export facilities, the completion of construction or modification, and the commencement of service must file such information with the Commission within 10 days after such event. Each such person must also report by March 1 of each year the estimated peak day capacity and actual peak day usage of its import/export facilities.

[FR Doc. 97-3199 Filed 2-7-97; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Part 223**

RIN 0596-AB21

**Disposal of National Forest Timber;  
Cancellation of Timber Sale Contracts**

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; extension of public comment period

**SUMMARY:** A proposed rule to change the procedure for calculating damages when timber sale contracts are cancelled was published on December 30, 1996 (61 FR 68690) with the comment period closing February 13, 1997. Timber industry reviewers have asked for additional time to complete their review of this proposed rule because a substantial amount of this comment period was used for the review of two other timber-related rules proposed by Forest Service.

**DATES:** Comments must be received by close of business March 17, 1997.

**ADDRESSES:** Send written comments to Director, Timber Management Staff, MAIL STOP 1105, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

**FOR FURTHER INFORMATION CONTACT:** Rex Baumbach, Timber Management Staff, (202) 205-0855.

Dated: February 3, 1997.

David G. Unger,  
Associate Chief.

[FR Doc. 97-3160 Filed 2-7-97; 8:45 am]

BILLING CODE 3410-11-M

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 300**

[FRL-5685-5]

**National Oil and Hazardous  
Substances Pollution Contingency  
Plan National Priorities List**

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Sealand, Limited Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 3 announces its intent to delete the Sealand, Limited Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and

Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA has determined that the Site poses no significant threat to public health or the environment, as defined by CERCLA, and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

**DATES:** Comments concerning this Site may be submitted on or before March 12, 1997.

**ADDRESSES:** Comments may be submitted to Lesley Brunker, Remedial Project Manager, 3HW23, Environmental Protection Agency Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 566-3239.

Comprehensive information on this Site is available for viewing at the Site information repositories at the following locations: U.S. EPA Region 3, Hazardous Waste Technical Information Center, 841 Chestnut Building, Philadelphia, PA, 19107, (215) 566-5363; Appoquinimink Public Library, 118 Silver Lake Road, Middletown, DE 19709, (302) 378-5290.

**FOR FURTHER INFORMATION CONTACT:** Lesley Brunker (3HW23), EPA Region 3, 841 Chestnut Building, Philadelphia, PA, 19107, (215) 566-3239.

**SUPPLEMENTARY INFORMATION:**

Table of Contents

- I. Introduction.
- II. NPL Deletion Criteria.
- III. Deletion Procedures.
- IV. Basis of Intended Site Deletion.

**I. Introduction**

The Environmental Protection Agency (EPA) Region 3 announces its intent to delete the Sealand, Limited Site located in Mount Pleasant, New Castle County, Delaware 19709 from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, and requests comments on this deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this Site for thirty days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Sealand, Limited Site and explains how the Site meets the deletion criteria.

**II. NPL Deletion Criteria**

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Sites may not be deleted from the NPL until the state in which the site is located has concurred on the proposed deletion. EPA is required to provide the state with 30 working days for review of the deletion notice prior to its publication in the Federal Register.

Pursuant to the NCP, 40 CFR 300.425(e)(3), all sites deleted from the NPL are eligible for further Fund-financed remedial action should future conditions warrant such action. When there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

**III. Deletion Procedures**

Section 300.425(e)(4) of the NCP sets forth requirements for site deletions to assure public involvement in the decision. During the proposal to delete a site from the NPL, EPA is required to conduct the following activities:

(i) Publish a notice of intent to delete in the Federal Register and solicit comment through a public comment period of a minimum of 30 calendar days;

(ii) Publish a notice of availability of the notice of intent to delete in a major local newspaper of general circulation at or near the site that is proposed for deletion;

(iii) Place copies of information supporting the proposed deletion in the information repository at or near the site proposed for deletion; and,

(iv) Respond to each significant comment and any significant new data submitted during the comment period in a Responsiveness Summary.

If appropriate after consideration of comments received during the public comment period, EPA then publishes a notice of deletion in the Federal Register and places the final deletion package, including the Responsiveness Summary, in the Site repositories.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. As stated in Section II of this Notice, Section 300.425(e)(3) of the NCP provides that the deletion of a site from the NPL does not preclude eligibility for future response actions.

#### IV. Basis for Intended Site Deletion

The following site summary provides EPA's rationale for the proposal to delete the Sealand, Limited Site from the NPL.

The Site is a former waste oil recycling facility operated between August of 1982 until August of 1983 by Sealand, Limited, Incorporated (Inc.). It is located in Mt. Pleasant, Delaware, approximately two miles south of the Chesapeake and Delaware Canal and several hundred feet east of the intersection of Routes 896 and 71/301. Land use in the area surrounding the site is a mix of residential and industrial. The Site is bordered on the west by an active Conrail spur, to the south by Route 71/301, and to the north and east by a 15-acre parcel of land owned by Ticon Minerals, Inc.

During its operation, Sealand, Limited accepted a variety of waste oil products for treatment and recycling. The facility was abandoned in August of 1983. Twenty-one steel tanks or hoppers, one 10,000 gallon wooden storage tank, approximately 300 55-gallon drums, and various mixing chambers and pressure vessels were left onsite. An inspection by the Delaware Department of Natural Resources and Environmental Control (DNREC) revealed that the wooden storage tank and numerous 55-gallon drums were leaking hazardous substances onto the ground.

In response, EPA initiated an emergency removal action in December of 1983. During this action, all of the drums were removed from this site, as was all of the liquid contained in the various tanks, which were cleaned and left near the Site. The process area was capped with one foot of clay and six inches of topsoil.

In December of 1988, EPA and 14 Potentially Responsible Parties (PRPs) entered into an Administrative Order on Consent to conduct a Remedial

Investigation/Feasibility Study (RI/FS) at the Site. During the Remedial Investigation, both ground water and the soil beneath and near the capped area were sampled. Low levels of volatile organic compounds and some semivolatile compounds were found in the soil beneath the cap. Metals were found in Site soil at levels generally consistent with background levels. Neither volatile nor semivolatile compounds were found at significant concentrations in the ground water. One onsite well contained elevated levels of metals, particularly nickel; however, there was no clear correlation between the Site and the metals.

During the Risk Assessment, ground water was not considered a potential contaminant exposure pathway. The most likely exposure scenarios included children who could be exposed to shallow soil while trespassing on the Site, and workers who could be exposed to subsurface soil during construction activities. The Risk Assessment assumed that the Site, which is zoned for industrial use and is bordered by an active Conrail freight line and a paving company, would not be rezoned for residential use. Given this assumption, the risks associated with the two most likely exposure scenarios were below the lower boundary of the acceptable risk range. It was determined that the Site did not pose a threat to human health or the environment, and the Region issued a Record of Decision (ROD) calling for no further action in September of 1991.

During the preparation of the ROD, DNREC expressed concern about the proposed remedy. They believed that the contaminants which would be left in place beneath the cap could pose a future threat to ground water. In response to this concern, EPA included in the selected remedy a review of the site five years after the signing of the ROD, even though a five year review would not ordinarily be required for this type of remedy. Furthermore, EPA acknowledged in the ROD that although Federal law did not require action at the site, the State was still free to act under its own laws. Nonetheless, DNREC did not concur with the ROD.

Subsequent to the signing of the ROD, DNREC took action pursuant to the authority of 7 Del. C., Chapter 91, the Delaware Hazardous Substance Cleanup Act (HSCA). HSCA was not considered an Applicable or Relevant and Appropriate Requirement (ARAR) during the remedy selection process, as ARARs are not considered in a no action decision. DNREC required the PRPs to install additional monitoring wells and to resample the ground water. The

results of the sampling showed no organic contamination in the wells. However, some metals, including nickel, were present at elevated levels in some wells. There was no clear pattern to the wells containing metals; one is apparently upgradient of the contaminated soil, and adjacent to the active Conrail tracks.

Using this information, DNREC issued a Proposed Plan of Remedial Action in October of 1995. The proposed remedial action included five years of continued ground water monitoring, as well as deed restrictions to ensure that the property's zoning does not change from industrial to residential. This plan has since been finalized, and DNREC is negotiating with the PRPs to conduct this work.

Based on the information presented above, EPA has determined that the Site does not pose a significant threat to human health or the environment and that no further action, consistent with CERCLA, is required. Thus, the required NPL deletion criteria presented in Section II, above, have been met. DNREC has concurred on this determination. Correspondence documenting this concurrence is included in the Site repositories.

The ROD stated that EPA would conduct a review of the Site five years after the signing of the ROD to reevaluate Site conditions. The evaluation was completed in September of 1996, and concluded that the remedy selected in the ROD remained protective of human health and the environment and that no further action, and no additional site reviews, will be necessary, particularly in light of DNREC's planned actions.

EPA, with the concurrence of DNREC, believes that the criteria for deletion of the Site have been met. Therefore, EPA is proposing deletion of the Site from the NPL. Documents supporting this action are available in the Site repositories described above.

Dated: January 15, 1997.  
Stanley L. Laskowski,  
*Acting Regional Administrator, EPA Region 3.*

[FR Doc. 97-2993 Filed 2-7-97; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 300

[FRL-5684-8]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Conklin Dumps site from the National Priorities List: Request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) Region II announces its intent to delete the Conklin Dumps site from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the Conklin Dumps to date have been protective of public health, welfare, and the environment.

**DATES:** Comments concerning the deletion of the Conklin Dumps site from the NPL may be submitted on or before March 12, 1997.

**ADDRESSES:** Comments concerning the deletion of the Conklin Dumps site from the NPL may be submitted to: Arnold R. Bernas, P.E., Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th floor, New York, NY 10007-1866.

Comprehensive information on the Conklin Dumps site is contained in the EPA Region II public docket, which is located at EPA's Region II office (the 18th floor), and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. For further information, or to request an appointment to review the public docket, please contact Mr. Bernas at (212) 637-3964.

Background information from the Regional public docket is also available for viewing at the Conklin Dumps site's Administrative Record repository located at: Conklin Town Hall, 1271 Conklin Road, Conklin, NY 13748.

**FOR FURTHER INFORMATION CONTACT:** Arnold Bernas at (212) 637-3964.

**SUPPLEMENTARY INFORMATION:**

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- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion

**I. Introduction**

EPA Region II announces its intent to delete the Conklin Dumps site from the NPL and requests public comment on this action. The NPL is Appendix B to

the NCP, which EPA promulgated pursuant to Section 105 of CERCLA, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions (RAs) financed by the Hazardous Substances Superfund Response Trust Fund (the "Fund"). Pursuant to § 300.425 (e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed RAs, if conditions at such site warrant action.

EPA will accept comments concerning the Conklin Dumps site for thirty (30) days after publication of this document in the Federal Register (until March 12, 1997).

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses how the Conklin Dumps site meets the deletion criteria.

**II. NPL Deletion Criteria**

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR § 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, will consider whether any of the following criteria have been met:

1. That responsible or other persons have implemented all appropriate response actions required; or
2. All appropriate Fund-financed responses under CERCLA have been implemented, and no further cleanup by responsible parties is appropriate; or
3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

**III. Deletion Procedures**

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist agency management.

The following procedures were used for the intended deletion of the Conklin Dumps site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New York has concurred with the deletion decision.

3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This notice announces a thirty (30)-day public comment period on the deletion package starting on February 10, 1997 and concluding on March 12, 1997.

4. The Region has made all relevant documents available in the regional office and the local site information repository.

EPA Region II will accept and evaluate public comments and prepare a Responsiveness Summary, which will address the comments received, before a final decision is made. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. If, after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the Federal Register. The NPL will reflect any deletions in the next update. Public notices and copies of the Responsiveness Summary will be made available to the public by EPA Region II.

**IV. Basis for Intended Site Deletion**

*Site History and Background*

The Conklin Dumps site originally consisted of two landfilled areas totaling about 37 acres, referred to as the Upper and Lower Landfills. The Lower Landfill, which was operated between 1964 and 1969, contained approximately 48,000 cubic yards of wastes before it was excavated and consolidated with the Upper Landfill. The Upper Landfill, which originally contained approximately 55,000 cubic yards of waste, was operated from 1969 until 1975, when a closure order was issued by the New York State Department of Environmental Conservation (NYSDEC). The property is currently owned by the Town of Conklin.

A two-phase hydrogeologic investigation was completed by O'Brien and Gere Engineers for the Broome County Industrial Development Agency in 1984 and 1985; additional field work was performed in 1986. In June 1986, the site was nominated for inclusion on the National Priorities List. In June 1987, a Consent Order was signed



between the Town of Conklin and NYSDEC, which covered the performance of a remedial investigation and feasibility study (RI/FS) and the remedial design (RD)/remedial action (RA).

The RI, which was completed in December 1988, indicated limited ground-water contamination in the immediate vicinity of the Upper Landfill. Confirmatory sampling, performed in June 1990, confirmed the RI findings and provided additional validated data.

An FS report was completed in January 1991.

EPA, in consultation with NYSDEC, issued a Proposed Plan on February 3, 1991. A public comment period began on February 4, 1991 and extended until March 6, 1991. A public meeting was held at the Conklin Town Hall on February 25, 1991. A ROD, which was signed by the EPA Regional Administrator on March 29, 1991, called for, among other things, capping of the Upper Landfill and the Lower Landfill in-place, leachate collection, either on- or off-site treatment of the leachate, and long-term monitoring.

During preliminary design activities associated with the selected remedy, it was determined that the construction of a leachate collection trench and cap at the Lower Landfill would present significant engineering difficulties due to the proximity of an adjacent wetland and railroad tracks. In order to eliminate the leachate seeps at the Lower Landfill, it would be necessary to install a leachate collection system below the water table. A leachate collection system installed below the water table, however, would collect vast amounts of uncontaminated ground water and could adversely impact the adjacent wetland by dewatering a portion of it, unless hydraulic barriers were installed (which in itself could adversely impact the wetland). In addition, installing a cap on the Lower Landfill could negatively impact the adjacent wetland in that it would encroach on the wetland. Due to these technical feasibility and environmental concerns, the selected remedy was modified by an Explanation of Significant Differences (ESD) in September 1992. The modified remedy consists of the excavation of the Lower Landfill, consolidation of the excavated Lower Landfill contents onto the Upper Landfill, capping of the Upper Landfill, construction of a leachate collection system, and either on- or off-site treatment of the leachate.

#### Lower Landfill

The RD associated with the excavation of the Lower Landfill and

consolidation of the excavated wastes onto the Upper Landfill commenced in April 1991 and was completed in September 1992.

The excavation of the Lower Landfill began in January 1993. The composition of the wastes that were encountered during the excavation was primarily soil and decomposed organic matter intermixed with scrap metal, bottles and fabric from a local tent manufacturer. Although four 55 gallon drums were encountered, they were found to be empty or contained non-hazardous debris, and were crushed and disposed of in the Upper Landfill.

The waste that was excavated from the Lower Landfill was deposited on the Upper Landfill in approximately one-foot lifts. This effort was completed in July 1993.

A Remedial Action Report, documenting the completion of the excavation of the Lower Landfill was approved on September 29, 1993.

#### Upper Landfill

The RD associated with the capping of the consolidated wastes on the Upper Landfill and the construction of a leachate collection, storage, and pre-treatment system commenced in April 1991 and was completed in July 1993.

The compaction and regrading of the excavated waste mass, installation of a leachate recovery system, construction of a final cover system for the Upper Landfill, and the installation of an eight-foot high chain linked fence around the Upper Landfill to restrict access, was performed from October 1993 to November 1994.

#### Leachate Storage and Pre-Treatment System

In June 1995, the Binghamton-Johnson City Joint Sewer Board approved the Town of Conklin's application for discharge of the leachate from the Upper Landfill into the sanitary sewer system for treatment at the Binghamton-Johnson City Joint Sewage Treatment Plant in Vestal, New York. This approval required that the Town obtain an industrial wastewater discharge permit and temporarily store the leachate in an on-site storage tank while it is sampled and analyzed to determine if it meets the discharge requirements of the permit.

The construction of a leachate storage, pre-treatment system, and pipeline to the sewer interceptor, which began in November 1995, included the installation of a 30,000 gallon horizontal steel storage tank with a secondary containment dike, installation of a leachate pre-treatment system, consisting of a series of bag filters to

remove solids, and installation of a pipe to discharge the leachate from the storage and pre-treatment system to the sanitary sewer system. Although the work was completed in January 1996, a final inspection could not be conducted until after the snow melt in June 1996.

A Remedial Action Report, documenting the completion of the construction of the final cover system and leachate collection system for the Upper Landfill, leachate collection tank installation, and construction of a pipeline to the sewer interceptor was approved on July 15, 1996.

A Superfund Site Close-Out Report for the site was approved on September 13, 1996.

#### *Summary of Operation and Maintenance and Five-Year Review Requirements*

Pursuant to terms of the Consent Order signed with NYSDEC on June 12, 1987, the Town of Conklin will perform post-remediation operation and maintenance associated with the Upper Landfill's final cover system and the leachate collection and pre-treatment systems. These activities will consist of landfill cover system inspection and maintenance (including grass mowing, fence repairs, soil cover repairs); leachate collection system inspection, operation, and maintenance; and leachate pre-treatment system inspection, operation, and maintenance. In addition, groundwater, surface water, and leachate sampling and analysis will be performed.

A statutory review of the long-term monitoring and inspection program reports will be performed in January 1998, five years after the initiation of the RA, to assure that the remedy remains effective in protecting human health and the environment.

#### *Summary of How the Deletion Criteria Has Been Met*

All of the completion requirements for this site have been met as specified in OSWER Directive 9320.2-09. Specifically, based on the field observations associated with NYSDEC construction oversight, the results of the preliminary post-construction and the final post-construction inspections, and the results of samples collected during the implantation of the remedy, it has been determined that construction for the Conklin Dumps site has been completed and that the construction activities performed on-site were consistent with the RD plans and specifications and conform with the remedies selected in the ROD, as modified by the ESD.

EPA, with concurrence from the State on December 16, 1996, has determined that the response actions undertaken at the Conklin Dumps site are protective of human health and the environment.

In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. EPA, in consultation with the State, has determined that all appropriate responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Having met the deletion criteria, EPA proposes to delete the Conklin Dumps site from the NPL.

Dated: January 17, 1997.

William J. Muszynski,

*Acting Regional Administrator.*

[FR Doc. 97-2994 Filed 2-7-97; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

#### 42 CFR Part 68a

RIN 0905-AE56

#### National Institutes of Health Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The National Institutes of Health (NIH) proposes to issue a regulation to implement provisions of the Public Health Service Act authorizing the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds. The purpose of the program is the recruitment and retention of highly qualified health professionals who are from disadvantaged backgrounds to clinical research, as employees of the NIH, by providing repayment of qualified educational loans.

**DATES:** Comments must be received on or before April 11, 1997, in order to assure that NIH will be able to consider the comments in preparing the final rule.

**ADDRESSES:** Comments should be sent to Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, Building 31, Room 1B05, 31 CENTER DR MSC 2075, BETHESDA, MD 20892-2075.

**FOR FURTHER INFORMATION CONTACT:** Jerry Moore at the address above, or

telephone (301) 496-4606 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The NIH Revitalization Act of 1993 (Pub. L. 103-43) was enacted June 10, 1993, adding section 487E of the Public Health Service (PHS) Act, 42 U.S.C. 288-5. Section 487E authorizes the Secretary to carry out a program of entering into contracts with appropriately qualified health professionals from disadvantaged backgrounds with substantial educational loan debt relative to income. Under such contracts, qualified health professionals agree to conduct clinical research as NIH employees for a minimum of two years, in consideration of the Federal Government agreeing to repay a maximum of \$20,000 annually of the principal and the interest of the educational loans of such health professionals. This program is known as the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds. The NIH is proposing to amend title 42 of the Code of Federal Regulations by adding a new part 68a to govern the administration of this loan repayment program.

The proposed regulation specifies the scope and purpose of the program, who is eligible to apply, how individuals apply to participate in the program, how participants are selected, and the terms and conditions of the program. The purpose of this notice is to invite public comment on the proposed regulation. The following is provided as public information.

#### Executive Order 12866

Executive Order 12866 requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term "significant regulatory action" contained in section 3(f) of the Order, pre-publication review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) is necessary. This proposed rule has been reviewed under Executive Order 12866 by OIRA and has been deemed not significant.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that regulatory proposals be analyzed to determine whether they create a significant impact on a substantial number of small entities. I certify that any final rule resulting from

this proposal will not have any such impact.

#### Paperwork Reduction Act

This proposed rule does not contain any information collection requirements which are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The application forms for use by the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds have been submitted to OMB for approval.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered program affected by the proposed regulation is:

93.220—NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds

List of Subjects in 42 CFR Part 68a

Health—clinical research, medical research; Loan programs—health.

Dated: December 2, 1996.

Harold Varmus,

*Director, National Institutes of Health.*

For reasons presented in the preamble, it is proposed to amend title 42 of the Code of Federal Regulations by adding a new Part 68a to read as set forth below.

#### PART 68A—NATIONAL INSTITUTES OF HEALTH (NIH) CLINICAL RESEARCH LOAN REPAYMENT PROGRAM FOR INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS (CR-LRP)

##### Sec.

68a.1 What is the scope and purpose of the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (CR-LRP)?

68a.2 Definitions.

68a.3 Who is eligible to apply?

68a.4 Who is eligible to participate?

68a.5 Who is ineligible to participate?

68a.6 How do individuals apply to participate in the CR-LRP?

68a.7 How are applicants selected to participate in the CR-LRP?

68a.8 What does the CR-LRP provide to participants?

68a.9 What loans qualify for repayment?

68a.10 What does an individual have to do in return for loan repayments received under the CR-LRP?

68a.11 How does an individual receive loan repayments beyond the initial two-year contract?

68a.12 What will happen if an individual does not comply with the terms and conditions of participation in the CR-LRP?

68a.13 Under what circumstances can the service or payment obligation be canceled, waived, or suspended?

68a.14 When can a CR-LRP payment obligation be discharged in bankruptcy?

68a.15 Additional conditions.

68a.16 What other regulations and statutes apply?

Authority: 42 U.S.C. 288-5.

**§ 68a.1 What is the scope and purpose of the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (CR-LRP)?**

This part applies to the award of educational loan payments under the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (CR-LRP) authorized by section 487E of the Public Health Service Act (42 U.S.C. 288-5). The purpose of this program is to recruit and retain appropriately qualified health professionals, who are from disadvantaged backgrounds and have substantial educational debt relative to income, to conduct clinical research as NIH employees.

**§ 68a.2 Definitions.**

As used in this part:

*Act* means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.).

*Applicant* means an individual who applies to, and meets the eligibility criteria for the CR-LRP.

*Approved clinical research* means clinical research approved by the Clinical Research Loan Repayment Committee.

*Clinical privileges* means the delineation of privileges for patient care granted to qualified health professionals by the NIH Medical Board or other appropriate credentialing board.

*Clinical research* means activities which qualify for inclusion as clinical research in the CR-LRP as determined by the Clinical Research Loan Repayment Committee.

*Clinical Research Loan Repayment Committee (CR-LRC)* means the scientific board assembled to review, rank, and approve or disapprove Clinical Research Loan Repayment Program applications. The CR-LRC is composed of NIH scientific staff and co-chaired by the Associate Director for Clinical Research, NIH, and the Associate Director for Research on Minority Health, NIH. Members are nominated by the Deputy Director, Intramural Research, NIH, and the co-chairs, and appointed by the Director, NIH.

*Clinical Research Loan Repayment Program (CR-LRP or Program)* means the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds

authorized by section 487E of the Act, as amended.

*Clinical Research Loan Repayment Program (CR-LRP or Program) contract* refers to the agreement, which is signed by an applicant and the Secretary, wherein the applicant from a disadvantaged background agrees to engage in clinical research as an employee of the NIH and the Secretary agrees to repay qualified educational loans for a prescribed period as specified in this part.

*Clinical researcher* means an NIH employee with clinical privileges who is conducting approved clinical research.

*Commercial loans* means loans made by banks, credit unions, savings and loan associations, not-for-profit organizations, insurance companies, schools, and other financial or credit institutions which are subject to examination and supervision in their capacity as lending institutions by an agency of the United States or of the State in which the lender has its principal place of business.

*Current payment status* means that a qualified educational loan is not past due in its payment schedule as determined by the lending institution.

*Debt threshold* refers to the minimum amount of qualified educational debt an individual must have, on his/her program eligibility date, in order to be eligible for Program benefits and, for purposes of eligibility under this part, debt threshold means that the qualified educational debt must equal or exceed 20 percent of an individual's annual NIH salary on his/her program eligibility date.

*Educational expenses* means the cost of the health professional's education, including the tuition expenses and other educational expenses such as fees, books, supplies, educational equipment and materials, and laboratory expenses.

*Government loans* means loans made by Federal, State, county, or city agencies which are authorized by law to make such loans.

*Individual from disadvantaged background* means an individual who:

(1) comes from an environment that inhibited the individual from obtaining the knowledge, skill and ability required to enroll in and graduate from a health professions school; or

(2) comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The Secretary periodically publishes

these income levels in the Federal Register.

*Institute, Center, or Agency (ICA)* means an institute, center, or agency of the National Institutes of Health.

*Living expenses* means the reasonable cost of room and board, transportation and commuting costs, and other reasonable costs incurred during an individual's attendance at an educational institution.

*Participant* means an individual whose application to the CR-LRP has been approved and whose Program contract has been executed by the Secretary.

*Program* means the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds.

*Program eligibility date* means the date on which an individual's Program contract is executed by the Secretary and that individual is engaged in approved clinical research as an employee of the NIH.

*Qualified educational loans and interest/debt* include Government and commercial educational loans and interest for:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other reasonable living expenses incurred.

*Reasonable educational and living expenses* means those educational and living expenses which are equal to or less than the sum of the school's estimated standard student budget for educational and living expenses for the degree program and for the year(s) during which the participant was enrolled in school. If there is no standard budget available from the school or if the participant requests repayment for educational and living expenses which exceed the standard student budget, reasonableness of educational and living expenses incurred must be substantiated by additional contemporaneous documentation, as determined by the Secretary.

*Repayable debt* means the portion, as established by the Secretary, of an individual's total qualified educational debt relative to the NIH salary, which can be paid by the CR-LRP. Specifically, qualifying educational debt amounts in excess of 50 percent of the

debt threshold will be considered for repayment.

*Salary* means base pay plus quarters, subsistence, and variable housing allowances, if applicable.

*School* means undergraduate, graduate, and health professions schools which are accredited by a body or bodies recognized for accreditation purposes by the Secretary of Education.

*Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

*Service* means the Public Health Service.

*State* means one of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

*Withdrawal* means a request by a participant, prior to the Program making payments on his or her behalf, for withdrawal from Program participation. A withdrawal is without penalty to the participant and without obligation to the Program.

#### **§ 68a.3 Who is eligible to apply?**

To be eligible to apply to the CR-LRP, an individual must be a citizen, national, or permanent resident of the United States; hold a M.D., Ph.D., D.O., D.D.S., D.M.D., A.D.N./B.S.N., or equivalent degree; have, on his/her program eligibility date, qualified educational debt equal to or in excess of the debt threshold; and be an individual from a disadvantaged background.

#### **§ 68a.4 Who is eligible to participate?**

To be eligible to participate in the CR-LRP, an applicant must have the recommendation of the employing ICA Scientific Program Director, the concurrence of the employing ICA Director, and the approval of the CR-LRC. Since participation in the Program is contingent, in part, upon employment with NIH, a Program contract may not be awarded to an applicant until an employment commitment has been made by the employing ICA Personnel Department.

#### **§ 68a.5 Who is ineligible to participate?**

The following individuals are ineligible for CR-LRP participation:

- (a) Persons who are not eligible applicants as specified under § 68a.3;
- (b) Persons who owe an obligation of health professional service to the

Federal Government, a State, or other entity, unless a deferral is granted for the length of his/her service obligation under the CR-LRP. The following are examples of programs which have a service obligation: Physicians Shortage Area Scholarship Program, National Research Service Award Program, Public Health Service Scholarship, National Health Service Corps Scholarship Program, Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program, Indian Health Service Scholarship Program, and the NIH AIDS Research Loan Repayment Program.

(c) Persons who are not NIH employees, such as Intramural Research Training Award (IRTA) recipients, Visiting Fellows, National Research Service Award (NRSA) recipients, Guest Researchers or Special Volunteers, NIH-National Research Council (NRC) Biotechnology Research Associates Program participants, and Intergovernmental Personnel Act (IPA) participants; or

(d) Persons who do not have clinical privileges.

#### **§ 68a.6 How do individuals apply to participate in the CR-LRP?**

An application for participation in the CR-LRP shall be submitted to the NIH office which is responsible for the Program's administration, in such form and manner as the Secretary may prescribe.

#### **§ 68a.7 How are applicants selected to participate in the CR-LRP?**

To be selected for participation in the CR-LRP, applicants must satisfy the following requirements:

- (a) Applicants must meet the eligibility requirements specified in § 68a.3 and § 68a.4.
- (b) Applicants must not be ineligible for participation as specified in § 68a.5.
- (c) Applicants must be selected for approval by the CR-LRC, based upon a review of their applications.

#### **§ 68a.8 What does the CR-LRP provide to participants?**

(a) Loan repayments: For each year of service the individual agrees to serve, with a minimum of 2 years of obligated service, the Secretary may pay up to \$20,000 per year of a participant's repayable debt.

(b) Under § 68a.8(a), the Secretary will make payments in the discharge of debt to the extent appropriated funds are available for these purposes.

#### **§ 68a.9 What loans qualify for repayment?**

(a) The CR-LRP will repay participants' lenders the principal, interest, and related expenses of

qualified Government and commercial educational loans obtained by participants for the following:

- (1) Undergraduate, graduate, and health professional school tuition expenses;
- (2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and
- (3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

(b) The following educational loans are ineligible for repayment under the CR-LRP:

- (1) Loans obtained from other than a government entity or commercial lending institution;
- (2) Loans for which contemporaneous documentation is not available;
- (3) Loans or portions of loans obtained for educational or living expenses which exceed the standard of reasonableness as determined by the participant's standard school budget for the year in which the loan was made, and are not determined by the Secretary to be reasonable based on additional documentation provided by the individual;
- (4) Loans, financial debts, or service obligations incurred under the following programs: Physicians Shortage Area Scholarship Program (Federal or State), National Research Service Award Program, Public Health and National Health Service Corps Scholarship Training Program, National Health Service Corps Scholarship Program, Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program, Indian Health Service Program, and similar programs, upon determination by the Secretary, which provide loans, scholarships, loan repayments, or other awards in exchange for a future service obligation;

(5) Any loan in default or not in a current payment status;

(6) Loan amounts which participants have paid or were due to have paid prior to the program eligibility date; and

(7) Loans for which promissory notes have been signed after the program eligibility date.

(b) Under § 68a.8(a), the Secretary will make payments in the discharge of debt to the extent appropriated funds are available for these purposes.

#### **§ 68a.10 What does an individual have to do in return for loan repayments received under the CR-LRP?**

Individuals must agree to be engaged in approved clinical research, as employees of the NIH, for a minimum initial period of two consecutive years.

**§ 68a.11 How does an individual receive loan repayments beyond the initial two-year contract?**

An individual may apply for and the Secretary may grant extension contracts for one-year periods, if there is sufficient debt remaining to be repaid and the individual is engaged in approved clinical research as an NIH employee.

**§ 68a.12 What will happen if an individual does not comply with the terms and conditions of participation in the CR-LRP?**

(a) Absent withdrawal (see § 68a.2) or termination under paragraph (d) of this section, any participant who fails to complete the minimum two-year service obligation required under the Program contract will be considered to have breached the contract and will be subject to assessment of monetary damages and penalties as follows:

(1) Participants who leave during the first year of the initial contract are liable for amounts already paid by the NIH on behalf of the participant plus an amount equal to \$1,000 multiplied by the number of months of the original service obligation.

(2) Participants who leave during the second year of the contract are liable for amounts already paid by the NIH on behalf of the participant plus \$1,000 for each unserved month.

(b) Payments of any amount owed under paragraph (a) of this section shall be made within one year of the participant's breach (or such longer period as determined by the Secretary).

(c) Participants who sign a continuation contract for any year beyond the initial two-year period and fail to complete the one-year period specified are liable for the pro rata amount of any benefits advanced beyond the period of completed service.

(d) Terminations will not be considered a breach of contract in cases where such terminations are beyond the control of the participant as follows:

(1) Terminations for cause or for convenience of the Government will not be considered a breach of contract and monetary damages will not be assessed.

(2) Occasionally, a participant's research assignment may evolve and change to the extent that the individual is no longer engaged in approved clinical research. Similarly, the research needs and priorities of the ICA and/or the NIH may change to the extent that a determination is made that the health professional's skills may be better utilized in a non-clinical research

assignment. Under these circumstances, the following will apply:

(i) Program participation and benefits will cease as of the date an individual is no longer engaged in approved clinical research; and

(ii) Normally, job changes of this nature will not be considered a breach of contract on the part of either the NIH or the participant. Based on the recommendation of the ICA Director and concurrence of the Secretary, the participant will be released from the remainder of his or her service obligation without assessment of monetary penalties. The participant in this case will be permitted to retain all Program benefits made or owed by NIH on his/her behalf up to the date the individual is no longer engaged in approved clinical research, except the pro rata amount of any benefits advanced beyond the period of completed service.

**§ 68a.13 Under what circumstances can the service or payment obligation be canceled, waived, or suspended?**

(a) Any obligation of a participant for service or payment to the Federal Government under this part will be canceled upon the death of the participant.

(b) The Secretary may waive or suspend any service or payment obligation incurred by the participant upon request whenever compliance by the participant:

- (1) Is impossible,
- (2) Would involve extreme hardship to the participant, or
- (3) If enforcement of the service or payment obligation would be against equity and good conscience.

(4) The Secretary may approve a request for a suspension of the service or payment obligations for a period of 1 year. A renewal of this suspension may also be granted.

(c) Compliance by a participant with a service or payment obligation will be considered impossible if the Secretary determines, on the basis of information and documentation as may be required, that the participant suffers from a physical or mental disability resulting in the permanent inability of the participant to perform the service or other activities which would be necessary to comply with the obligation.

(d) In determining whether to waive or suspend any or all of the service or payment obligations of a participant as imposing an undue hardship and being against equity and good conscience, the Secretary, on the basis of information

and documentation as may be required, will consider:

(1) The participant's present financial resources and obligations;

(2) The participant's estimated future financial resources and obligations; and

(3) The extent to which the participant has problems of a personal nature, such as a physical or mental disability or terminal illness in the immediate family, which so intrude on the participant's present and future ability to perform as to raise a presumption that the individual will be unable to perform the obligation incurred.

**§ 68a.14 When can a CR-LRP payment obligation be discharged in bankruptcy?**

Any payment obligation incurred under § 68a.12 may be discharged in bankruptcy under Title 11 of the United States Code only if such discharge is granted after the expiration of the five-year period beginning on the first date that payment is required and only if the bankruptcy court finds that a nondischarge of the obligation would be unconscionable.

**§ 68a.15 Additional conditions.**

When a shortage of funds exists, participants may be funded partially, as determined by the Secretary. However, once a CR-LRP contract has been signed by both parties, the Secretary will obligate such funds as necessary to ensure that sufficient funds will be available to pay benefits for the duration of the period of obligated service unless, by mutual written agreement between the Secretary and the applicant, specified otherwise. Benefits will be paid on a quarterly basis after each service period unless specified otherwise by mutual written agreement between the Secretary and the applicant.

The Secretary may impose additional conditions as deemed necessary.

**§ 68a.16 What other regulations and statutes apply?**

Several other regulations and statutes apply to this part. These include, but are not necessarily limited to:

Debt Collection Act of 1982, Pub. L. 97-365 (5 U.S.C. 5514);

Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*);

Federal Debt Collection Procedures Act of 1990, Pub. L. 101-647 (28 U.S.C. 1); and Privacy Act of 1974 (5 U.S.C. 552a).

[FR Doc. 97-3215 Filed 2-7-97; 8:45 am]

BILLING CODE 4140-01-P

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY****44 CFR Part 206**

RIN 3067-AC61

**Criminal and Civil Penalties Under the  
Robert T. Stafford Disaster Relief and  
Emergency Assistance Act****AGENCY:** Federal Emergency  
Management Agency (FEMA).**ACTION:** Proposed rule.

**SUMMARY:** FEMA proposes to increase its maximum civil penalty under the Robert T. Stafford Disaster Relief & Emergency Assistance Act (42 U.S.C. 5157(d)) from \$5,000 to \$5,500. This increase is authorized by the Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 28 U.S.C. 2461 note).

**DATES:** We invite comments on this proposed rule and will accept comments until April 11, 1997.

**ADDRESSES:** Please send written comments to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) (202) 646-4536.

**FOR FURTHER INFORMATION CONTACT:** Richard S. Buck, IV, Office of Financial Management, Financial Policy Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4091.

**SUPPLEMENTARY INFORMATION:** Congress mandated in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Section 31001(s)(1) that Federal agencies, including FEMA, adjust their maximum civil penalties either by the factor calculated under the mathematical formulae set out in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Adjustment Act, 28 U.S.C. 2461, note, Section 4) or by 10%, whichever is less. The Adjustment Act requires agencies to increase their maximum civil penalties to reflect changes in the Department of Labor's consumer price index of all urban consumers (CPI).

In 1988 Congress enacted Section 314(d) of the Robert T. Stafford Disaster Relief & Emergency Assistance Act (42 U.S.C. 5157(d)) (Stafford Act) and set the maximum civil monetary penalty for any person "\* \* \* who knowingly violates any order or regulation issued under this [Stafford] Act \* \* \*" at \$5,000. Since passage of the Stafford Act and FEMA's publishing its implementing regulations at 44 CFR 206.14(d), the CPI has increased by more than 33%. However, the Debt

Collection Improvement Act (Pub. L. 104-134, § 31001(s)(2)) sets a maximum increase of 10% for the initial monetary penalty adjustments. For FEMA this would be \$500. Thus, the adjusted Stafford Act maximum civil monetary penalty would be \$5,500.

This change is required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134).

This rule would set the maximum Stafford Act civil monetary penalty for those violations occurring 30 days after publication of the final rule at \$5,500. For violations occurring on or before 30 days after publication of the final rule, the maximum civil monetary penalty would remain \$5,000.

**National Environmental Policy Act**

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

**Regulatory Flexibility Act**

I certify that this rule will not have a significant impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule increases civil monetary penalties to be paid by the small number of persons who knowingly violate regulations issued under the Stafford Act.

**Paperwork Reduction Act**

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

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12162, Federalism, dated October 26, 1987.

Executive Order 12887, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12887.

**List of Subjects in 44 CFR Part 206**

Disaster assistance, Penalties.

Accordingly, 44 CFR part 206 is proposed to be amended as follows:

**PART 206—FEDERAL DISASTER  
ASSISTANCE FOR DISASTERS  
DECLARED ON OR AFTER  
NOVEMBER 23, 1988**

1. Section 206.14(d) is revised to read as follows:

**§ 206.14 Criminal and civil penalties.**

\* \* \* \* \*

(d) *Civil penalty.* Any individual who knowingly violates any order or regulation on or before [30 days after publication of final rule] shall be subject to a civil penalty of not more than \$5,000 for each violation. Any individual who knowingly violates any order or regulation after [30 days after publication of final rule] shall be subject to a civil penalty of not more than \$5,500 for each violation.

Dated: January 31, 1997.

James L. Witt,

Director.

[FR Doc. 97-2965 Filed 2-7-97; 8:45 am]

BILLING CODE 6718-02-P

**FEDERAL COMMUNICATIONS  
COMMISSION****47 CFR Parts 36, 51, 61 and 69**

[CC Docket Nos. 96-45, 96-262, and 96-98; DA 97-239]

**Implementation of the  
Telecommunications Act of 1996**

**AGENCY:** Federal Communications Commission.

**ACTION:** Request for comment; extension of comment period.

**SUMMARY:** The Common Carrier Bureau of the Federal Communications Commission here extends time for parties to comment on issues raised by its January 9, 1997 Staff Analysis of economic cost computer models submitted in connection with several pending proceedings implementing the Telecommunications Act of 1996. The Public Notice setting the original comment deadlines was published in the Federal Register on February 5, 1997.

**DATES:** Comments in response to the Public Notice are due February 13, 1997, and replies are due February 20, 1997.

**ADDRESSES:** Commenters must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** David A. Konuch, 202-418-0199 or Brad Wimmer, 202-418-1847.

**SUPPLEMENTARY INFORMATION:** Released: January 31, 1997.

Extension of Time Granted for Parties To Submit Comments in Response to Commission Staff's Analysis of Cost Proxy Models

*Comment Date:* February 13, 1997

*Reply Comment Date:* February 20, 1997

1. On January 9, 1997, the Commission Staff released a Staff Analysis intended to stimulate discussion of criteria for the evaluation, and use, of forward-looking cost proxy models in determining universal service support payments, cost-based access charges, and interconnection and unbundled network element pricing. Also on January 9, 1997, the Common Carrier Bureau ("Bureau") issued a Public Notice seeking comment on issues raised in the Staff Analysis, and setting deadlines of February 3, 1997 for initial comments, and February 14, 1997 for replies. The Public Notice indicated that the record gathered in response to the Staff Analysis might at a future date be associated with the official record of certain pending rulemakings to which it may be relevant and used to support Commission determinations in those rulemakings. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform*, CC Docket No. 96-262, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98.

2. On January 24, 1996, Pacific Telesis Group, Sprint Corporation, and U S WEST, Inc., ("Petitioners"), filed a Motion for Extension of Time to File Comments in response to the *Public Notice*. For the reasons below, the deadlines for filing initial and reply comments are being extended until February 13 and February 20, 1997, respectively.

3. First, the Staff Analysis focused on models submitted previously to the Commission, but the model sponsors have indicated that these models will be superseded by newer versions to be released by January 31, 1997, and by February 5, 1997. These new models are the Benchmark Cost Proxy Model ("BCPM"), to be submitted by Petitioners, and Hatfield 3, to be submitted by AT&T and MCI. Additionally, another model, Dr. Ben Johnson's Telecom Economic Cost Model, was filed in the universal service proceeding earlier this month. Inasmuch as the new models are intended to improve on the earlier versions, it would be more efficient for commenters and Commission staff to focus their efforts on evaluating the new models

instead of the superseded versions. In addition, because the new models are scheduled to be released shortly before and after the current comment deadline, commenters will not be able to evaluate them at all in comments here without an extension.

4. The extension being granted is not the full period sought by Petitioners. We want to ensure that the responses filed to the Staff Analysis are available for possible use by the Commission in acting by May 8, 1997, on the recommendation of the Federal-State Universal Service Joint Board. Any longer extension could easily jeopardize such use of the record.

5. Among other things, parties should address in their comments whether, and to what extent, the new models: (1) Meet the criteria set forth in the Staff Analysis; (2) improve on potential shortcomings of the prior versions of the models.

Federal Communications Commission.  
William F. Caton,  
*Acting Secretary*.

[FR Doc. 97-3187 Filed 2-7-97; 8:45 am]

BILLING CODE 6712-01-P

# Notices

Federal Register

Vol. 62, No. 27

Monday, February 10, 1997

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.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Docket No. TB-97-04]

#### National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

*Name:* National Advisory Committee for Tobacco Inspection Services.

*Date:* March 20, 1997.

*Time:* 9:00 a.m.

*Place:* United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Tobacco Division, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina, 27608.

*Purpose:* To elect officers, review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*) and to discuss the level of tobacco inspection services currently provided to producers by AMS. The Committee will recommend the desired level of services to be provided to producers by AMS and an appropriate fee structure to fund the recommended services for the 1997-98 selling season. The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, AMS, U.S. Department of Agriculture, Room 502, Annex Building, P.O. Box 96456, Washington, D.C. 20090-6456, (202) 205-0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: February 4, 1997.

John P. Duncan,

*Director, Tobacco Division.*

[FR Doc. 97-3136 Filed 2-7-97; 8:45 am]

BILLING CODE 3410-02-P

### Forest Service

#### Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southwest Oregon PIEC Advisory Committee will meet on February 27, 1997 at the City Council Chambers 6th and A Streets, Grants Pass, Oregon. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Report on effects on staff reductions to the Federal Agencies; (2) Final decision on Grazing Standards proposal; (3) Presentation on how grazing standards will be implemented; (4) Subcommittee work session (4) Public comments. All Province Advisory committee meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:**

Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee staff, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone 541-858-2322.

Dated: February 3, 1997.

James T. Gladen,

*Forest Supervisor, Designated Federal Official.*

[FR Doc. 97-3239 Filed 2-7-97; 8:45 am]

BILLING CODE 3410-11-M

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## ASSASSINATION RECORDS REVIEW BOARD

### Sunshine Act Meeting

**DATES:** February 13-14, 1997.

**PLACE:** ARRB, 600 E Street, NW., Washington, DC.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Review and Accept Minutes of Closed Meeting.
2. Review of Assassination Records.
3. Other Business.

**CONTACT PERSON FOR MORE INFORMATION:** Eileen Sullivan, Assistant Press and Public Affairs Officer, 600 E Street, NW., Second Floor, Washington, DC

20530. Telephone: (202) 724-0088; Fax: (202) 724-0457.

David G. Marwell,

*Executive Director.*

[FR Doc. 97-3379 Filed 2-6-97; 2:32 pm]

BILLING CODE 6118-01-P

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## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Georgia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Friday, February 21, 1997, at the Peachtree/Midtown branch, Atlanta-Fulton County Public Library, 1315 Peachtree Street, NE, Atlanta, Georgia 30309. The purpose of the meeting is: 1) review the status of the Commission and its advisory committees; 2) discuss civil rights conference plans; and 3) discuss civil rights problems and/or progress in the State and Nation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Victoria Jenkins, 404-758-6350, or Bobby D. Doctor, Director of the Southern Regional Office, 404-730-2476 (TDD 404-730-2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 3, 1997.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 97-3138 Filed 2-7-97; 8:45 am]

BILLING CODE 6335-01-P

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### Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the



Louisiana Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Monday, March 3, 1997, at the Holiday Inn Crowne Plaza, 333 Poydras, New Orleans, Louisiana 70130. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913-551-1400 (TDD 913-551-1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 3, 1997.

Carol-Lee Hurley,  
Chief, Regional Programs Coordination Unit.  
[FR Doc. 97-3139 Filed 2-7-97; 8:45 am]

BILLING CODE 6335-01-P

### Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Tuesday, February 25, 1997, at the Cabot Lodge, 2375 North State Street, Jackson, Mississippi 39202. The purpose of the meeting is to review and vote on a draft report, Civic Crisis and Civic Challenge: Police Community Relations in Jackson.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913-551-1400 (TDD 913-551-1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 4, 1997.

Carol-Lee Hurley,  
Chief, Regional Programs Coordination Unit.  
[FR Doc. 97-3141 Filed 2-7-97; 8:45 am]

BILLING CODE 6335-01-P

### Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the North Carolina Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Wednesday, March 5, 1997, at Fayetteville State University, Chancellor's Boardroom, 1200 Murchison Road, Fayetteville, North Carolina 28301. The purpose of the meeting is to review the status of the Commission and its advisory committees; discuss plans for meeting with the Governor to follow up on church burning reports; discuss the draft of a report; and discuss civil rights progress/programs in North Carolina and the Nation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Asa Spaulding, 919-233-7613, or Bobby D. Doctor, Director of the Southern Regional Office, 404-730-2476 (TDD 404-730-2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 3, 1997.

Carol-Lee Hurley,  
Chief, Regional Programs Coordination Unit.  
[FR Doc. 97-3140 Filed 2-7-97; 8:45 am]

BILLING CODE 6335-01-P

## DEPARTMENT OF COMMERCE

### Bureau of the Census

#### Quarterly Summary of State and Local Tax Revenue

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, 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)).

**DATES:** Written comments must be submitted on or before April 11, 1997.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David A. Kellerman, U.S. Bureau of the Census, Governments Division, Washington, DC 20233-6800, 800-242-4523, e-mail: dkellerman@census.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

State and local government tax collections amount to about 660 billion dollars annually. Quarterly measurement of and reporting on these massive fund flows provide valuable insight into trends in the national economy and that of individual states. Information collected on the type and quantity of taxes collected gives comparative data on how state and local governments fund their public sector obligations. These data are used in the National Income and Product Account quarterly estimates developed by the Bureau of Economic Analysis and are widely used by state revenue and tax officials, academicians, media representatives, and others.

This program formerly included federal as well as state and local government tax data. We eliminated the federal data since this information is available elsewhere. However, the respondent burden remains unchanged because we obtained the federal data from public records.

##### II. Method of Collection

Most of the data for this program are gathered by mail canvass of appropriate state and local government offices. In some instances, data are compiled by trained representatives of the Bureau of the Census from official records.

##### III. Data

*OMB Number:* 0607-0112.  
*Form Number:* F-71, F-72, F-73.  
*Type of Review:* Regular.  
*Affected Public:* State and local government.  
*Estimated Number of Respondents:* 6,006.  
*Estimated Time Per Response:* 0.2521.  
*Estimated Total Annual Burden Hours:* 6,057 (6,006 X .2521 X 4).  
*Estimated Total Annual Cost:* \$174,368.

*Respondent's Obligation:* Voluntary.  
*Legal Authority:* Title 13 U.S.C.,  
Section 182.

#### IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 4, 1997.

Linda Engelmeier,

*Acting Departmental Forms Clearance  
Officer, Office of Management and  
Organization.*

[FR Doc. 97-3161 Filed 2-7-97; 8:45 am]

BILLING CODE 3510-07-P

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#### International Trade Administration

##### Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of initiation of process to revoke export trade certificate of review No. 85-00004.

**SUMMARY:** The Secretary of Commerce issued an export trade certificate of review to Trust International Services Company, Inc. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent Trust International Services Company, Inc.

**FOR FURTHER INFORMATION CONTACT:** W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR

part 325. Pursuant to this authority, a certificate of review was issued on May 9, 1985 to Trust International Services Company, Inc.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14 (a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to Trust International Services Company, Inc. on April 15, 1996, a letter containing annual report questions with a reminder that its annual report was due on June 23, 1996. Additional reminders were sent on October 28, 1996, and on January 3, 1997. The Department has received no written response to any of these letters.

On February 4, 1997, and in accordance with Section 325.10 (c)(1) of the Regulations, a letter was sent by certified mail to notify Trust International Services Company, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the Federal Register. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the

Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the Federal Register of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the Federal Register (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: February 4, 1997.

W. Dawn Busby,

*Director, Office of Export Trading Company  
Affairs.*

[FR Doc. 97-3162 Filed 2-7-97; 8:45 am]

BILLING CODE 3510-DR-MP

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#### CONSUMER PRODUCT SAFETY COMMISSION

##### Proposed Collection; Comment Request; Clothing Textiles, Vinyl Plastic Film

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of clothing, and textiles and related materials intended for use in clothing. This collection of information is in regulations implementing the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR Part 1611). These regulations establish requirements for testing and recordkeeping for manufacturers and importers who furnish guarantees for products subject to the flammability standards for clothing textiles and vinyl plastic film. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

**DATES:** Written comments must be received by the Office of the Secretary not later than April 11, 1997.

**ADDRESSES:** Written comments should be captioned "Clothing Textiles and Film, Collection of Information" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East West Highway, Bethesda, Maryland.

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed extension of the collection of information, or to obtain a copy of 16 CFR Parts 1610 and 1611, call or write Robert E. Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0416, extension 2264.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Clothing and fabrics intended for use in clothing (except children's sleepwear in sizes 0 through 14) are subject to the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610). Clothing made from vinyl plastic film and vinyl plastic film intended for use in clothing (except children's sleepwear in sizes 0 through 14) are subject to the Standard for the Flammability of Vinyl Plastic Film (16 CFR Part 1611). These standards prescribe a test to assure that articles of wearing apparel, and fabrics and film intended for use in wearing apparel, are not dangerously flammable because of rapid and intense burning. (Children's sleepwear and fabrics and related materials intended for use in children's sleepwear in sizes 0 through 14 are subject to other, more stringent flammability standards, codified at 16 CFR Parts 1615 and 1616.) The flammability standards for clothing textiles and vinyl plastic film were made mandatory by the Flammable Fabrics Act of 1953 (FFA) (Pub. L. 83-88, 67 Stat. 111; June 30, 1953).

Section 8 of the FFA (15 U.S.C. 1197) provides that a person who receives a guaranty in good faith that a product complies with an applicable flammability standard is not subject to criminal prosecution for a violation of the FFA resulting from the sale of any product covered by the guaranty. Section 8 of the FFA requires that a guaranty must be based on "reasonable and representative tests." The Commission estimates that about 1,000 manufacturers and importers of clothing, and of textiles and vinyl film intended for use in clothing, issue guaranties that the products they

produce or import comply with the applicable standard.

**B. Testing and Recordkeeping**

Regulations implementing the flammability standards for clothing textiles and vinyl plastic film prescribe requirements for testing and recordkeeping by firms that issue guaranties. See 16 CFR Part 1610, Subpart B, and 16 CFR Part 1611, Subpart B.

The Commission uses the information compiled and maintained by firms that issue these guaranties to help protect the public from risks of injury or death associated with clothing and fabrics and vinyl film intended for use in clothing. More specifically, the information helps the Commission arrange corrective actions if any products covered by a guaranty fail to comply with the applicable standard in a manner that creates a substantial risk of injury or death to the public. The Commission also uses this information to determine whether the requisite testing was performed to support the guaranties.

The Office of Management and Budget (OMB) approved the collection of information in the enforcement regulations implementing the standards for clothing textiles and vinyl plastic film under control number 3041-0024. OMB's most recent extension of approval will expire on May 31, 1997. The Commission proposes to request an extension of approval without change for the collection of information in those regulations.

**C. Estimated Burden**

The Commission staff estimates that about 1,000 firms which manufacture or import products subject to the flammability standards for clothing textiles and vinyl plastic film issue guaranties that the products they produce or import comply with the applicable standard. The Commission staff estimates that these standards and implementing regulations will impose an average annual burden of about 101.6 hours on each of those firms. That burden will result from conducting the testing and maintaining records required by the implementing regulations. The total annual burden imposed by the standards and regulations on all manufacturers and importers of clothing textiles and vinyl plastic film will be about 101,600 hours.

The hourly wage for the testing and recordkeeping required by the standards and regulations is about \$12, for an estimated annual cost to the industry of \$1,219,200.

The Commission will expend approximately one-half month of

professional staff time reviewing and evaluating the records maintained by manufacturers and importers of wearing apparel, clothing textiles and vinyl film subject to the standards. The annual cost to the Federal government of the collection of information in the sleepwear standards and implementing regulations is estimated to be \$2,800.

**D. Request for Comments**

The Commission solicits written comments from all interested persons about the proposed extension of approval of the collection of information in the flammability standards for clothing textiles and vinyl film and the enforcement regulations implementing those standards. The Commission specifically solicits information about the hourly burden and monetary costs imposed by the collection of information on firms subject to this collection of information. The Commission also seeks information relevant to the following topics:

- Whether the collection of information is necessary for the proper performance of the Commission's functions;
- Whether the information will have practical utility for the Commission;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other form of information technology.

Dated: February 5, 1997.

Sadye E. Dunn,

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 97-3242 Filed 2-7-97; 8:45 am]

BILLING CODE 3255-01-P

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**DEPARTMENT OF DEFENSE**

**Department of the Army**

**Program for Qualifying Department of Defense (DOD) Brokers**

**AGENCY:** Military Traffic Management Command, DOD.

**ACTION:** Notice (Request for Comments).

**SUMMARY:** The Carrier Qualification Program is being amended to add qualification standards for brokers and to expand the basic Agreement to include brokers. The effect is that brokers will be eligible to qualify to compete in DOD transportation procurements on the same or similar terms as other carriers. A copy of the

Agreement between MTMC and brokers is available upon request.

**DATES:** Comments must be submitted on or before April 11, 1997.

**ADDRESSES:** Comments may be mailed to: Headquarters, Military Traffic Management Command, ATTN: MTOP-QQ, Room 630, 5611 Columbia Pike, Falls Church, VA 22041-5050.

**FOR FURTHER INFORMATION CONTACT:**

Rick Wirtz, MTOP-QQ, telephone (703) 681-6393.

**SUPPLEMENTARY INFORMATION:** MTMC is the agency established within the DOD for the procurement of land transportation services from commercial carriers on behalf of DOD shippers. Historically brokers could not participate in DOD traffic because the broker was an intermediary between the shipper and the carrier, essentially duplicating the mission performed by MTMC of matching the DOD shipper's requirements with a carrier which can accommodate to move. Brokers were not carriers, did not perform transportation, did not assume responsibility for the transportation, and did not publish tariffs or offer Government rate tenders or enter into Government bills of lading (GBLs) or other transportation contracts. Today, in the deregulated transportation environment, brokers can and do conduct carrier operations, perform transportation, and assume responsibility for the transportation, and no reason appears why they may not voluntarily enter into the DOD standard tender/GBL and other transportation contracts arranged by MTMC.

Consequently, MTMC is now proposing to change its policy, in order to offer brokers the opportunity to qualify for participation in DOD transportation procurements, except shipments requiring a Transportation Protective Services (TPS). Under MTMC's new policy, brokers interested in competing for DOD traffic, except TPS shipments, could apply for qualification by executing the basic Agreement, and by complying with requirements for submission of evidence of insurance (public liability and cargo), a list of underlying carriers which the broker intends to use in the movement of DOD shipments, a performance bond, and other standard requirements.

Gregory D. Showalter,  
*Army Federal Register Liaison Officer.*  
[FR Doc. 97-3164 Filed 2-7-97; 8:45 am]

BILLING CODE 3710-08-M

**Office of the Secretary**

**Defense Intelligence Agency, Scientific Advisory Board Closed Meeting**

**AGENCY:** Department of Defense, Defense Intelligence Agency.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

**DATES:** February 14, 1997 (800 a.m. to 1600 p.m.).

**ADDRESSES:** The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340-5100.

**FOR FURTHER INFORMATION CONTACT:** Maj. Michael W. Lamb, USAF, Executive Secretary, DIA Scientific Advisory Board, Washington, D.C. 20340-1328 (202) 231-4930.

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: February 5, 1997.

L.M. Bynum,  
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*  
[FR Doc. 97-3188 Filed 2-7-97; 8:45 am]  
BILLING CODE 5000-04-M

**Department of the Navy**

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Navy, DOD.  
**ACTION:** Delete record systems.

**SUMMARY:** The Department of the Navy proposes to delete systems of records notices in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendment consists of changing the system identifier of N01740-2, Family Dependent Care Program, last published on October 17, 1996, at 61 FR 54176, to N01740-1, Family Dependent Care Program.

**DATES:** The actions will be effective on March 12, 1997, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685-6545 or DSN 325-6545.

**SUPPLEMENTARY INFORMATION:** The amendment consists of changing the system identifier of N01740-2, Family Dependent Care Program, last published on October 17, 1996, at 61 FR 54176, to N01740-1, Family Dependent Care Program.

The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

Dated: February 5, 1997.

L.M. Bynum,  
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DELETION  
N11012-1**

**SYSTEM NAME:**

Navy Personnel Billeting System (NPBS) (*February 22, 1993, 58 FR 10815*).

Reason: System was never implemented.

[FR Doc. 97-3189 Filed 2-7-97; 8:45 am]

BILLING CODE 5000-04-F

**DEPARTMENT OF EDUCATION**

**National Assessment Governing Board: Meeting Cancellation**

**AGENCY:** National Assessment Governing Board; Education.

**ACTION:** Cancellation.

**SUMMARY:** This notice announces the cancellation of a closed meeting of the National Assessment Governing Board's Nominations Committee that was published in the Federal Register, Vol. 62, No. 2, page 400, Friday, January 3, 1997. This meeting has been cancelled due to a delay in receipt of materials necessary for the Committee's work.

Dated: February 5, 1997.

Roy Truby,  
*Executive Director, National Assessment Governing Board.*

[FR Doc. 97-3163 Filed 2-7-97; 8:45 am]

BILLING CODE 4000-01-M

**DEPARTMENT OF ENERGY****Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National 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), Los Alamos National Laboratory.

**DATES:** Tuesday, February 11, 1997: 6:30 p.m.-9:30 p.m., 8:00 p.m. to 8:15 p.m. (public comment session).

**ADDRESSES:** Hotel Santa Fe, 1501 Paseo de Peralta, Santa Fe, New Mexico 87501.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ann DuBois, Los Alamos National Laboratory Citizens' Advisory Board Support, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800) 753-8970, or (505) 753-8970, or (505) 262-1800.

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

*Tentative Agenda:* Tuesday, February 11, 1997.

6:30 p.m. Call to Order and Welcome

7:00 p.m. Old Business

8:00 p.m. Public Comment

8:15 p.m. New Business—Wes

McKinley, Foreman of the Rocky Flats Special Grand Jury

9:30 p.m. Adjourn

*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 Ms. Ann DuBois, at (800) 753-8970. 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. 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 Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185-5400.

Issued at Washington, DC on February 4, 1997.

Rachel M. Samuel,

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 97-3172 Filed 2-7-97; 8:45 am]

**BILLING CODE 6450-01-P**

**Office of Energy Research, High Energy Physics Advisory Panel; Notice of Open Meeting**

**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 given of a meeting of the High Energy Physics Advisory Panel.

**DATES:** Thursday, March 13, 1997; 9:00 a.m. to 6:00 p.m.; and Friday, March 14, 1997; 9:00 a.m. to 4:00 p.m.

**ADDRESSES:** Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Diebold, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-22, GTN, Germantown, Maryland 20874, Telephone: (301) 903-4801.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

*Tentative Agenda*

*Thursday, March 13, 1997 and Friday, March 14, 1997*

Discussion of Department of Energy High Energy Physics Programs and FY 1998 Budget

Discussion of National Science Foundation Elementary Particle Physics Programs and FY 1998 Budget

Discussion of the Status of the Large Hadron Collider Project and U.S. Participation

Discussion of University-based High Energy Physics Programs

Discussion of Planning for the Future of the National High Energy Physics Program

Reports on and Discussions of Topics of General Interest in High Energy Physics

Public Comment (10 minute rule)

*Public Participation:* The two-day meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

*Minutes:* Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on February 4, 1997.

Rachel M. Samuel,

*Acting Deputy Advisory Committee, Management Officer.*

[FR Doc. 97-3171 Filed 2-7-97; 8:45 am]

**BILLING CODE 6450-01-P**

**Federal Energy Regulatory Commission**

[Docket No. RP97-5-002]

**Algonquin Gas Transmission Company; Notice of Compliance Filing**

February 4, 1997.

Take notice that on January 30, 1997, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective April 1, 1997.

Algonquin states that this filing is made in compliance with Order No. 587 and the Commission's Order, issued in Docket No. RP97-5-000 on November 15, 1996.

Algonquin states that these tariff sheets reflect the modifications required by the November 15, 1996 Order, as well as the requirements of Order No. 587 that interstate pipelines follow standardized procedures for critical business practices-nominations, flowing gas (allocations, balancing, and measurement) invoicing, and capacity release. Algonquin requests that the Commission grant any waiver that may be necessary to place these tariff sheets into effect on the date requested.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state

commissions, and all parties on the RP97-5-000 service list.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97-3151 Filed 2-7-97; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP96-81-002]**

**Carnegie Interstate Pipeline; Notice of Proposed Changes in FERC Gas Tariff**

February 4, 1997.

Take notice that on January 29, 1997, Carnegie Interstate Pipeline Company (CIPCO) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date February 1, 1996:

Twelfth Revised Sheet No. 7  
First Revised Sheet No. 141  
First Revised Sheet No. 141A  
First Revised Sheet No. 142

CIPCO states that filing implements the settlement approved by the Commission in a letter order issued January 15, 1997. The filing terminates CIPCO's Transportation Cost Rate tracker mechanism and implements the settlement.

CIPCO states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are

available for public inspection in the public reference room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97-3148 Filed 2-7-96; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP94-229-005]**

**Granite State Gas Transmission, Inc.; Notice of Report of Refunds**

February 4, 1997.

Take notice that on January 31, 1997, Granite State Gas Transmission, Inc. (Granite State) filed a report of refunds to its firm transportation customers, Bay State Gas Company and Northern Utilities, Inc., of excess revenues received from interruptible transportation service on its system during the 12 months ended October 31, 1996. Granite State states that the report is made in compliance with Article II of the Stipulation and Agreement settling Docket No. RP94-229-000, approved April 13, 1995. (71 FERC ¶ 61,065)

According to Granite State, copies of the refund report were served on its firm transportation customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 11, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97-3147 Filed 2-7-97; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP97-4-002]**

**Panhandle Eastern Pipe Line Company, Notice of Compliance Filing**

February 4, 1997.

Take notice that on January 30, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on

Appendix A to the filing to be effective April 1, 1997.

Panhandle asserts that the purpose of this filing is to comply with the Commission's Order on compliance Filings issued November 15, 1996 in Docket No. RP97-4-000 to reflect the requirements of Order No. 587 that interstate pipelines follow standardized procedures for critical business practices—nominations, flowing gas (allocations, balancing and measurement), invoicing and capacity release.

Panhandle states that copies of the filing were served on all affected customers, applicable state regulatory agencies and all parties on the Service list.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97-3150 Filed 2-7-97; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP97-3-002]**

**Texas Eastern Transmission Corporation; Notice of Compliance Filing**

February 4, 1997.

Take notice that on January 30, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing to become effective April 1, 1997.

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's Order on Compliance Filings issued November 15, 1996 in Docket No. RP97-3-000 (November 15 Order).

Texas Eastern states that these actual tariff sheets reflect the modifications required in the November 15 Order to incorporate the requirements of Order No. 587 that interstate pipelines follow

standardized procedures for critical business practices—nominations, flowing gas (allocations, balancing and measurement), invoicing and capacity release.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern, interested state commissions, current interruptible customers and all parties on the service list.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,  
Secretary.

[FR Doc. 97-3149 Filed 2-7-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-54-013]

### Trunkline Gas Company; Notice of Annual Reconciliation Report

February 4, 1997.

Take notice that on January 31, 1997, Trunkline Gas Company (Trunkline) tendered for filing working papers reflecting its fifth annual take-or-pay volumetric surcharge reconciliation. Trunkline states that the information is submitted pursuant to Article II, Section 8 of the Stipulation and Agreement in the above-captioned proceeding which requires Trunkline to submit, on an annual basis a report of the take-or-pay volumetric surcharge amounts collected from its customers.

Trunkline states that copies of this filing have been served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 11, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are

on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,  
Secretary.

[Fr Doc. 97-3146 Filed 2-7-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP97-6-002]

### Trunkline Gas Company; Notice of Compliance Filing

February 4, 1997.

Take notice that on January 30, 1997, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing to be effective April 1, 1997.

Trunkline asserts that the purpose of this filing is to comply with the Commission's Order on Compliance Filings issued November 15, 1996 in Docket No. RP97-6-000 to reflect the requirements of Order No. 587 that interstate pipelines follow standardized procedures for critical business practices—nominations, flowing gas (allocations, balancing and measurement), invoicing and capacity release.

Trunkline states that copies of the filing were served on all affected customers, applicable state regulatory agencies and all parties on the service list.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,  
Secretary.

[FR Doc. 97-3152 Filed 2-7-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL97-23-000, et al.]

### American Recovery Company, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 3, 1997.

Take notice that the following filings have been made with the Commission:

1. American Recovery Company, Inc.

[Docket No. EL97-23-000]

Take notice that on January 27, 1997, American Recovery Company, Inc., tendered for filing an application requesting the Commission to take enforcement action requiring the Rockwood Electric Utility Board to implement Commission rules consistent with PURPA, Section 210, to encourage cogeneration and small power production and to purchase the electric power generated by the Roanwood Regional Waste Wood Biomass Disposal Facility at and for rates that are just and reasonable to Rockwood Electric Utility Board, (REU) and its consumers and in the public interest by being less than the REU avoided cost set forth in 18 CFR 292.101(b)(6) and that do not discriminate against the QF Roanwood Regional Waste Wood Biomass Disposal Facility.

*Comment date:* February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Cleveland Electric Illuminating

[Docket No. ER96-2858-000]

Take notice that on January 30, 1997, the Cleveland Electric Illuminating Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Soyland Power Cooperative, Inc.

[Docket No. ER96-2967-000]

Take notice that on January 22, 1997, Soyland Power Cooperative, Inc. tendered for filing amendment in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Soyland Power Cooperative, Inc.

[Docket No. ER96-2968-000]

Take notice that on January 22, 1997, Soyland Power Cooperative, Inc. tendered for filing amendment in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Soyland Power Cooperative, Inc.

[Docket No. ER96-2969-000]

Take notice that on January 22, 1997, Soyland Power Cooperative, Inc. tendered for filing amendment in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 6. Soyland Power Cooperative, Inc.

[Docket No. ER96-2970-000]

Take notice that on January 22, 1997, Soyland Power Cooperative, Inc. tendered for filing amendment in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 7. Soyland Power Cooperative, Inc.

[Docket No. ER96-2971-000]

Take notice that on January 22, 1997, Soyland Power Cooperative, Inc. tendered for filing amendment in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 8. Soyland Power Cooperative, Inc.

[Docket No. ER96-2972-000]

Take notice that on January 22, 1997, Soyland Power Cooperative, Inc. tendered for filing amendment in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 9. Soyland Power Cooperative, Inc.

[Docket No. ER96-2973-000]

Take notice that on January 22, 1997, Soyland Power Cooperative, Inc. tendered for filing amendment in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 10. Soyland Power Cooperative, Inc.

[Docket No. ER96-2974-000]

Take notice that on January 22, 1997, Soyland Power Cooperative, Inc. tendered for filing amendment in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 11. Southwestern Public Service Company

[Docket No. ER96-3027-000]

Take notice that on January 27, 1997, Southwestern Public Service Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 12. Soyland Power Cooperative, Inc.

[Docket No. ER97-295-000]

Take notice that on January 22, 1997, Soyland Power Cooperative, Inc. tendered for filing an amendment in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 13. Northern Indiana Public Service Company

[Docket No. ER97-458-001]

Take notice that on January 24, 1997, Northern Indiana Public Service Company (Northern Indiana) filed its revised Power Sales Tariff in compliance with the Commission's Order of January 10, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 14. PacifiCorp

[Docket No. ER97-839-000]

Take notice that on January 30, 1997, PacifiCorp tendered for filing an amendment in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 15. MidAmerican Energy Company

[Docket No. ER97-899-000]

Take notice that on January 16, 1997, MidAmerican Energy Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 16. Montaup Electric Company

[Docket No. ER97-1332-000]

Take notice that on January 21, 1997, Montaup Electric Company (Montaup) filed revised tariff sheets to its Open Access Transmission Tariff to synchronize that tariff with the NEPOOL Open Access Tariff and to comply with the Restated NEPOOL Agreement filed on December 31, 1996. The revised sheets provide for a revenue credit to reduce the revenue requirement underlying the transmission rates contained in the pending settlement agreement in Docket No. ER96-1090 by revenues received by Montaup under the NEPOOL Open Access Tariff and Restated NEPOOL Agreement. Article II of that settlement agreement authorizes this compliance filing as an exception to a moratorium against rate changes to become effective before April 21, 1997.

Montaup requests that this filing be allowed to become effective when the NEPOOL Open Access Tariff and Restated NEPOOL Agreement are

allowed to become effective. Montaup requests waiver of the 60-day notice requirement so that this filing may be permitted to become effective on March 1, 1997, assuming the NEPOOL Open Access Tariff and Restated NEPOOL Agreement are allowed to become effective as requested on that date.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 17. Central Illinois Public Service Company

[Docket No. ER97-1333-000]

Take notice that on January 21, 1997, Central Illinois Public Service Company (CIPS) submitted fifteen service agreements, dated between December 22, 1996 and January 3, 1997, establishing the following as customers under the terms of CIPS' Open Access Transmission Tariff: Aquila Power Corporation, Cenerprise Inc., Citizens Lehman Power Sales, The Dayton Power & Light Company, Enron Power Marketing, Inc., Kimball Power Company, Michigan Companies, NIPSCO Energy Services, Inc., NorAm Energy Services, Inc., Missouri Public Service, Sonat Power Marketing L.P., Stand Energy Corporation, Union Electric Company, Vitol Gas & Electric LLC and West Plains Energy—Kansas.

CIPS requests an effective date of December 22, 1996 for these service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon the foregoing customers and the Illinois Commerce Commission.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 18. Northern States Power Company (Minnesota Company)

[Docket No. ER97-1334-000]

Take notice that on January 21, 1997, Northern States Power Company (Minnesota) (NSP) tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and Wisconsin Electric Power Company.

NSP requests that the Commission accept the agreement effective December 18, 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:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 19. Northern States Power Company (Minnesota Company)

[Docket No. ER97-1335-000]

Take notice that on January 21, 1997, Northern States Power Company



(Minnesota) (NSP) tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and Wisconsin Electric Power Company.

NSP requests that the Commission accept the agreement effective January 1, 1997, 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:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Northern States Power Company (Minnesota Company)

[Docket No. ER97-1336-000]

Take notice that on January 21, 1997, Northern States Power Company (Minnesota) (NSP) tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (Point of Delivery: Wisconsin Electric Power Co.) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective May 1, 1997, 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:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Cambridge Electric Light Company

[Docket No. ER97-1337-000]

Take notice that on January 21, 1997, Cambridge Electric Light Company (Cambridge) submitted for filing the following changes to its Open Access Transmission Tariff: (1) to implement a proposed comprehensive restructuring by the New England Power Pool (NEPOOL), effective on the date that the NEPOOL tariff becomes effective (which is anticipated to be March 1, 1997); (2) to provide for transmission on its portion of the Hydro Quebec HVDC facilities, effective December 31, 1996; and (3) to comply with the Commission's November 13, 1997 order requiring Cambridge to clarify its point-to-point transmission scheduling procedures, effective November 13, 1996. With respect to the NEPOOL restructuring, Cambridge requests a waiver of the 60-day prior notice requirement of section 205 of the Federal Power Act.

Copies of the filing were served upon all parties in Docket No. OA96-178 and the Massachusetts Department of Public Utilities, as well as all entities which have requested service under Cambridge's Tariff.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. The Washington Water Power Company

[Docket No. ER97-1339-000]

Take notice that on January 21, 1997, The Washington Water Power Company ("WWP"), tendered for filing an amendment to its compliance filing in response to the Commission's Letter Order of November 29, 1996 in the above Docket, 77 FERC ¶ 61,233 (1996).

Copies of the filing were served upon the Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission and the service list.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Electric Company

[Docket No. ER97-1341-000]

Take notice that on January 21, 1997, Commonwealth Electric Company (Commonwealth), submitted for filing the following changes to its Open Access Transmission Tariff: (1) To implement a proposed comprehensive restructuring by the New England Power Pool (NEPOOL), effective on the date that the NEPOOL tariff becomes effective (which is anticipated to be March 1, 1997); (2) to provide for transmission on its portion of the Hydro Quebec HVDC facilities, effective December 31, 1996; and (3) to comply with the Commission's November 13, 1997 order requiring Commonwealth to clarify its point-to-point transmission scheduling procedures, effective November 13, 1996. With respect to the NEPOOL restructuring, Commonwealth requests a waiver of the 60-day prior notice requirement of 205 of the Federal Power Act.

Copies of the filing were served upon all parties in Docket No. OA96-167 and the Massachusetts Department of Public Utilities, as well as all entities which have requested service under Commonwealth's Tariff.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Fitchburg Gas and Electric Light Company

[Docket No. ER97-1342-000]

Take notice that on January 21, 1997, Fitchburg Gas and Electric Light Company (Fitchburg), filed certain original and revised tariff sheets to reflect changes to its Open Access Transmission Tariff. Fitchburg states that the changes to Fitchburg's tariff are designed to conform with the Open Access Restructuring proposal filed by the New England Power Pool (NEPOOL) in Docket Nos. ER97-1079-000 and

OA97-237-000, in compliance with the Commission's Order No. 888.

As a participant in NEPOOL, Fitchburg has agreed to provide pool-wide transmission services exclusively pursuant to the NEPOOL Open Access Tariff. The purpose of Fitchburg's open access tariff, submitted in this docket, will be to provide Point-to-Point and Network Integration Service across Fitchburg's non-Pool transmission facilities, as described more fully in the filing.

Further, Fitchburg states that pursuant to an agreement with New England Power Company (NEP), the parties have agreed to a transitional arrangement whereby the costs of certain of Fitchburg's pool transmission facilities which are integrated with NEP's pool transmission facilities will be recovered through NEP's Regional Network Service, as explained more fully therein.

Fitchburg requests that the revised and original tariff sheets submitted herein be made effective on March 1, 1997, the proposed effective date of the NEPOOL restructuring agreement.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Soyland Power Cooperative, Inc.

[Docket No. ER97-1344-000]

Take notice that on January 22, 1997, Soyland Power Cooperative, Inc. (Soyland), tendered for filing an initial rate schedule pursuant to § 205 of the Federal Power Act and Section 35.12 of the regulations of the Federal Energy Regulatory Commission (Commission). Soyland determined that its change in status to a Commission-regulated "public utility" from a rural electric cooperative regulated by the Administrator of the Rural Utilities Service necessitated the filing of this contract.

The filing consists of an Interchange Agreement dated January 13, 1988, between Soyland and Southern Illinois Power Cooperative (SIPC). Soyland has not engaged in any interchange transactions since September 13, 1996, the date it became a Commission-regulated public utility. Included with the filing is a notice of cancellation of the January 13, 1988 Interchange Agreement, effective November 30, 1996.

Copies of the filing were served upon SIPC, SIPC's Illinois Counsel, and the Illinois Commerce Commission.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 26. Soyland Power Cooperative, Inc.

[Docket No. ER97-1345-000]

Take notice that on January 22, 1997, Soyland Power Cooperative, Inc. (Soyland), tendered for filing an initial rate schedule pursuant to § 205 of the Federal Power Act and § 35.12 of the regulations of the Federal Energy Regulatory Commission (Commission). Soyland determined that its change in status to a Commission-regulated "public utility" from a rural electric cooperative regulated by the Administrator of the Rural Utilities Service necessitated the filing of this contract.

The filing consists of an Interchange Agreement dated October 28, 1982, between Soyland and Southern Illinois Power Cooperative (SIPC). Soyland is not currently engaged in any interchange transactions with SIPC, nor has it engaged in any such transactions since September 13, 1996, the date it became a Commission-regulated public utility. Soyland terminated the October 28, 1982 Interchange Agreement effective November 30, 1996. Included with the filing is a notice of cancellation.

Copies of the filing were served upon SIPC, SIPC's Illinois Counsel, and the Illinois Commerce Commission.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 27. Southern California Edison Company

[Docket No. ER97-1360-000]

Take notice that on January 23, 1997, Southern California Edison Company (Edison), tendered for filing Service Agreements (Service Agreements) with the following entities for Point-to-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff) filed in compliance with FERC Order No. 888:

1. Aquila Power Corporation
2. Arizona Public Service Company
3. Bonneville Power Administration
4. Electric Clearinghouse, Inc.
5. Engelhard Power Marketing
6. Enron Power Marketing, Inc.
7. PanEnergy Trading and Market Services, L.L.C.
8. Public Service Company of New Mexico
9. Salt River Project
10. San Diego Gas & Electric Company
11. Sierra Pacific Power
12. Southern California Edison Company-Energy Supply & Marketing
13. UtiliCorp United, Inc.

Edison filed the executed Service Agreements with the Commission in

compliance with applicable Commission regulations. Edison also submitted a revised Sheet No. 152 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of January 24, 1997 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 28. Boston Edison Company

[Docket No. ER97-1361-000]

Take notice that on January 23, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Taunton Municipal Lighting Plant (Taunton). Boston Edison requests that the Service Agreement become effective as of January 1, 1997.

Edison states that it has served a copy of this filing on Taunton and the Massachusetts Department of Public Utilities.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 29. Boston Edison Company

[Docket No. ER97-1362-000]

Take notice that on January 23, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Bangor Hydro Electric Company (Bangor). Boston Edison requests that the Service Agreement become effective as of January 1, 1997.

Edison states that it has served a copy of this filing on Bangor and the Massachusetts Department of Public Utilities.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 30. Pennsylvania Power &amp; Light Company

[Docket No. ES97-21-000]

Take notice that on January 29, 1997, Pennsylvania Power & Light Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue promissory notes and other evidences of secured and

unsecured indebtedness in either domestic or foreign markets, from time to time, in an aggregate principal amount of up to \$750 million outstanding at any one time, on or before February 28, 1999, with a final maturity date no later than one year from the date of issuance.

*Comment date:* February 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 31. Southern Gas and Electric Company

[Docket No. FA95-17-001]

Take notice that on January 28, 1997, South Gas and Electric Company tendered for filing its refund report in the above-referenced docket.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 32. James A. Hagen

[Docket No. ID-2986-000]

Take notice that on January 24, 1997, James A. Hagen (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director, PECO Energy Corporation  
Director, Penn Mutual Life Insurance Company

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 33. Richard G. Gilmore

[Docket No. ID-2987-000]

Take notice that on January 24, 1997, Richard G. Gilmore (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director, PECO Energy Corporation  
Trustee, Seventeen Legg Mason, Inc. Mutual Funds

*Comment date:* February 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 34. M. Walter D'Alessio

[Docket No. ID-2988-000]

Take notice that on January 24, 1997, M. Walter D'Alessio (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director, PECO Energy Corporation  
President and Chief Executive Officer,  
Legg Mason Real Estate Services

*Comment date:* February 20, 1997, 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. 97-3197 Filed 2-7-97; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER97-1343-000, et al.]

**El Paso Electric Company, et al.;  
Electric Rate and Corporate Regulation  
Filings**

February 4, 1997.

Take notice that the following filings have been made with the Commission:

1. El Paso Electric Company

[Docket No. ER97-1343-000]

Take notice that on January 22, 1997, El Paso Electric Company (EPE), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that EPE has satisfied the requirements for WSPP membership. Accordingly, EPE requests that the Commission amend the WSPP Agreement to include it as a member.

EPE requests waiver of the 60-day prior notice requirement to permit its membership in the WSPP to become effective as of January 10, 1997, the date EPE fulfilled all requirements for membership in the WSPP.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. New York State Electric & Gas Corporation

[Docket No. ER97-1347-000]

Take notice that on January 22, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing with the Federal Energy Regulatory Commission NYSEG's Power Sales Tariff, FERC Electric Rate Schedule, Original Volume No. 1, which permits NYSEG to make wholesale power sales at market-based rates or cost-based rates.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER97-1348-000]

Take notice that on January 22, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to MidCon Power Services Corp. (MidCon).

Con Edison states that a copy of this filing has been served by mail upon MidCon.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER97-1349-000]

Take notice that on January 22, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Plum Street Energy Marketing, Inc. (Plum Street).

Con Edison states that a copy of this filing has been served by mail upon Plum Street.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER97-1350-000]

Take notice that on January 22, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Niagara Mohawk Power Corporation (NiMo).

Con Edison states that a copy of this filing has been served by mail upon NiMo.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER97-1351-000]

Take notice that on January 23, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing a Non-

Firm Point-to-Point Transmission Agreement between itself and InterCoast Power Marketing Company dated October 1, 1996.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Great Bay Power Corporation

[Docket No. ER97-1352-000]

Take notice that on January 22, 1997, Great Bay Power Corporation (Great Bay), tendered for filing two service agreements between New England Power Company and Great Bay and Vitol Gas Electric LLC 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 with New England Power Company is proposed to be effective January 15, 1997 and the service agreement with Vitol Gas & Electric LLC is proposed to be effective January 1, 1997.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Edison Company

[Docket No. ER97-1353-000]

Take notice that on January 22, 1997, Commonwealth Edison Company ("Edison") submitted Amendment No. 19 to the Interconnection Agreement between Edison and Illinois Power Company ("Illinois Power"). Amendment No. 19 eliminates certain service schedules that provide services redundant to those services now obtainable through Edison's and Illinois Power's unbundled power sales and open-access transmission tariffs. The Commission has previously designated the Interconnection Agreement as Edison's FERC Rate Schedule No. 5.

Edison requests an effective date of December 31, 1996 for Amendment No. 19 and, accordingly, seeks waiver of the Commission's requirements. Copies of this filing were served upon Illinois Power and the Illinois Commerce Commission.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER97-1354-000]

Take notice that on January 22, 1997, Public Service Company of New Mexico (PNM), submitted for filing executed service agreements for non-firm point-to-point transmission service under the terms of PNM's Open Access transmission Service Tariff with the

following transmission service customers: Electric Clearinghouse, Inc., PanEnergy Trading & Market Services, Arizona Public Service Company, Enron Power Marketing, Inc., Public Service Company of Colorado, Nevada Power Company, Western Power Services, Inc., and Aquila Power Corporation. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 10. Baltimore Gas and Electric Company

[Docket No. ER97-1355-000]

Take notice that on January 22, 1997, Baltimore Gas and Electric Company (BGE), tendered for filing copies of the following Service Agreements for Non-Firm Transmission Service between Baltimore Gas and Electric Company and VTEC Energy, Inc., NorAm Energy Services, Inc., The Power Company of America, L.P., Carolina Power & Light Company, Sonat Power Marketing Inc., Coral Power L.L.C., New England Power Company, Equitable Power Services Company and Electric Clearinghouse, Inc. pursuant to the Transmission Service Tariff filed in the above-referenced proceeding. BGE requests an effective date of January 27, 1997, for these Service Agreements to take effect. Pursuant to 35.11 of the Commission's Rules of Practice and Procedure, BGE hereby requests a waiver of the sixty day notice requirement as the Transmission Tariff under which BGE will provide the requested service has been accepted by the Commission, subject to refund.

Copies of this filing have been served upon the Public Service Commission of Maryland, each party to the Service Agreements, and the Service List in the above-referenced proceeding.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 11. Louisville Gas and Electric Company

[Docket No. ER97-1357-000]

Take notice that on January 22, 1997, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Midcon Power Services Corp. under Rate GSS.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 12. Western Resources, Inc.

[Docket No. ER97-1358-000]

Take notice that on January 22, 1997, Western Resources, Inc., tendered for

filing non-firm transmission agreements between Western Resources and Midwest Energy, Inc., Vitol Gas & Electric LLC, and Minnesota Power & Light Company. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective January 9, 1997.

Copies of the filing were served upon Midwest Energy, Inc., Vitol Gas & Electric LLC, Minnesota Power & Light Company, and the Kansas Corporation Commission.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 13. Northeast Utilities Service Company

[Docket No. ER97-1359-000]

Take notice that on January 22, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing revisions to the Northeast Utilities (NU) System Companies' open access transmission service tariff to take into account service provided under the New England Power Pool (NEPOOL) open access transmission tariff filed with the Commission on December 31, 1996.

NUSCO requests an effective date of March 1, 1997 or such other effective date approved by the Commission for the NEPOOL tariff.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 14. Boston Edison Company

[Docket No. ER97-1363-000]

Take notice that on January 23, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Western Power Services, Inc. (Western). Boston Edison requests that the Service Agreement become effective as of January 1, 1997.

Boston Edison states that it has served a copy of this filing on Western and the Massachusetts Department of Public Utilities.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 15. Boston Edison Company

[Docket No. ER97-1364-000]

Take notice that on January 23, 1997, Boston Edison company (Boston Edison), tendered for filing a Service

Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for Central Vermont Public Service Co. (Central Vermont). Boston Edison requests that the Service Agreement become effective as of January 1, 1997.

Boston Edison states that it has served a copy of this filing on Central Vermont and the Massachusetts Department of Public Utilities.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 16. Puget Sound Power & Light Company

[Docket No. ER97-1365-000]

Take notice that on January 24, 1997, Puget Sound Power & Light Company, as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service ("Service Agreement") with Puget Sound Power & Light Company, as Transmission Customer. A copy of the filing was served upon Puget.

The Service Agreement is for firm point-to-point transmission service.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 17. The Detroit Edison Company

[Docket No. ER97-1366-000]

Take notice that on January 24, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for Non-firm Point-to-Point Transmission Service (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS-1 Tariff), FERC Electric Tariff No. 1, between Detroit Edison and the following parties: Wyandotte Municipal Service (dated as of December 20, 1996); Michigan South Central Power Agency (dated as of December 31, 1996); Michigan Public Power Agency (dated as of January 1, 1997); and Cinergy Services, Inc. (dated as of January 21, 1997). Detroit Edison requests that the Service Agreements be made effective as of January 1, 1997.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 18. The Detroit Edison Company

[Docket No. ER97-1367-000]

Take notice that on January 24, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Wholesale Power Sales Transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS-2), FERC Electric Tariff No. 2, between Detroit Edison and Cinergy Services, Inc., dated as of

January 21, 1997. Detroit Edison requests that the Service Agreement be made effective as of January 1, 1997.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 19. Commonwealth Edison Company

[Docket No. ER97-1368-000]

Take notice that on January 24, 1997, Commonwealth Edison Company (ComEd), tendered for filing a revised Service Schedule 8 to its PSRT-1 Tariff. Service Schedule 8 provides for the sale, assignment or transfer of rights held by ComEd for transmission service on the systems of Transmission Providers as defined in Order No. 888.

ComEd requests an effective date of January 25, 1997 and has therefore requested that the Commission waive the Commission's notice requirement. Copies of this filing have been served on the Illinois Commerce Commission and all customers served under ComEd's PSRT-1 Tariff.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 20. Niagara Mohawk Power Corporation

[Docket No. ER97-1369-000]

Take notice that on January 23, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission executed firm Service Agreements between NMPC and multiple parties (Purchasers). The Service Agreements specify that the Purchasers have signed on to and have agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and the Purchasers to enter into separately scheduled transactions under which NMPC will sell to the Purchasers capacity and/or energy as the parties may mutually agree.

In its filing NMPC also included a Certificate of Concurrence for each Purchaser.

NMPC is: (a) Generally requesting an effective date of January 1, 1997 for the agreements, and (b) requesting waiver of the Commission's notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission, and the companies included in a Service List enclosed with the filing.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 21. Cinergy Services, Inc.

[Docket No. ER97-1370-000]

Take notice that on January 28, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Union Electric Company.

Cinergy and Union Electric Company are requesting an effective date of January 1, 1997.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 22. Cinergy Services, Inc.

[Docket No. ER97-1371-000]

Take notice that on January 28, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Ohio Edison Company/Pennsylvania Power Company.

Cinergy and Ohio Edison Company/Pennsylvania Power Company are requesting an effective date of December 15, 1996.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 23. Baltimore Gas and Electric Company

[Docket No. ER97-1372-000]

Take notice that on January 28, 1997, Baltimore Gas and Electric Company (BGE), filed Service Agreements with: Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (collectively Allegheny Power), dated January 1, 1997; Atlantic City Electric Company, dated January 1, 1997; Consolidated Edison of New York, dated January 1, 1997; PECO Energy Company, dated January 1, 1997; Delmarva Power & Light Company, dated December 30, 1996; Public Service Electric and Gas Company, dated December 23, 1996; USGen Power Services, L.P., dated September 16, 1996; Sonat Power Marketing L.P., dated January 3, 1997; Equitable Power Services Co., dated December 5, 1996; The Power Company of America, L.P., dated November 27, 1996; NorAm Energy Services, Inc., dated December 5, 1996; CPS Utilities, dated December 5, 1996; and DuPont Power Marketing Inc., dated January 2, 1997 under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreements, BGE agrees to provide services to the parties to the Service Agreements under the provisions of the Tariff. BGE requests an

effective date of January 1, 1997 for the Service Agreements.

BGE states that a copy of the filing was served upon the Public Service Commission of Maryland.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 24. PacifiCorp

[Docket No. ER97-1373-000]

Take notice that on January 23, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Notice of Termination of Service Agreement No. 10 to PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 4 (Tariff) and revisions to the Tariff.

Copies of this filing were supplied to Cheyenne Light, Fuel and Power Company, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464-6122 (9600 baud, 8 bits, no parity, 1 stop bit).

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 25. American Electric Power Service Corporation

[Docket No. ER97-1375-000]

Take notice that on January 23, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements with numerous parties, under the AEP Companies' Point-to-Point Transmission Service Tariffs. The Transmission Tariff has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after December 30, 1996.

A copy of the filing was served upon the parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

*Comment date:* February 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 26. Duke Power Company

[Docket No. ER97-1393-000]

Take notice that on January 27, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Federal

Energy Sales, Inc. (Federal Energy). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Federal Energy non-firm point-to-point transmission service under its Pro Forma Open Access Transmission Tariff.

*Comment date:* February 18, 1997, 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. 97-3198 Filed 2-7-97; 8:45 am]

BILLING CODE 6717-01-P

#### [Project Nos. 11595-000 et al.]

#### Hydroelectric Applications [Arizona Independent Power, Inc., et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11595-000.

c. *Date filed:* November 27, 1996.

d. *Applicant:* Arizona Independent Power, Inc.

e. *Name of Project:* Azipco Pumped Storage Project.

f. *Location:* Partially on lands administered by the Bureau of Land Management, at White Tank Regional Park, in Maricopa County, Arizona.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)—825(r).

h. *Applicant Contact:* Frank L. Mazzone, President, Arizona Independent Power, Inc. 746 Fifth Street East, Sonoma, CA 95476, (707) 996-2573.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219-2827.

j. *Comment Date:* March 27, 1997.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) A 340-foot-high earthen dam creating a 180-acre upper reservoir; (2) two 25-foot-diameter, 11,200-foot-long underground penstocks; (3) a 220-foot-high earthen dam creating a 150-acre lower reservoir; (4) an underground powerhouse containing five generating units with a total installed capacity of 1,250 MW; (5) a 2,400-foot-long access tunnel; (6) two 40-mile-long transmission lines of undetermined route interconnecting with an existing Arizona Public Service Company transmission line; (7) and appurtenant facilities.

The proposed project will utilize water from the Bureau of Reclamation's Colorado River (Aqueduct) System.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11593-000.

c. *Date filed:* October 18, 1996.

d. *Applicant:* Savage Rapids R.R. Hydroelectric Company.

e. *Name of Project:* Savage Rapids Project.

f. *Location:* Near the town of Grants Pass, on the Rogue River, in Josephine County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Dean Jackson, J.B. Dean, Inc., 35925 Agness Illahe Road, Agness, Oregon 97406, (541) 247-0808.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219-2827.

j. *Comment Date:* March 27, 1997.

k. *Description of Project:* The proposed project would consist of: (1) The Grants Pass Irrigation District's existing 28-foot-high dam and 2-mile-long, 400-foot-wide reservoir; (2) a powerhouse containing two generating units with a total installed capacity of 1,200 kilowatts; (3) improvements to the existing fish passage facility; and (4) appurtenant facilities. The project will not raise the reservoir water.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11596-000.

c. *Date filed:* January 2, 1997.

d. *Applicant:* Kenneth R. Dantoin, Jr.

e. *Name of Project:* Little Kaukauna Lock and Dam Project.

f. *Location:* On the Fox River, in the Town of Lawrence, Brown County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Kenneth R. Dantoin, Jr., 11919 N. Bridgewater Drive 74W, Mequon, WI 53092 (414) 242-9897.

i. *FERC Contact:* Mary Golato (202) 219-2804.

j. *Comment Date:* April 4, 1997.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Little Kaukauna Lock and Dam and Reservoir, and would consist of the following facilities: (1) A reconstructed powerhouse integral with the dam having a total proposed installed capacity of 1,600 kilowatts; (2) a new transmission line; and (3) appurtenant facilities. The average annual generation is estimated to be 13.13 gigawatthours. The cost of the studies under the permit will not exceed \$50,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, N.E., Room 2-A, Washington, D.C. 20426, or by calling (202) 219-1371. A copy is also available for inspection and reproduction at Mr. Kenneth R. Dantoin, Jr., 11919 N. Bridgewater Drive, 74W, Mequon, WI 53092 (414) 242-9897.

4 a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2131.

c. *Date filed:* February 21, 1996.

d. *Submitted By:* Wisconsin Electric Power Company, current licensee.

e. *Name of Project:* Kingsford.

f. *Location:* On the Menominee River, in the City of Kingsford, Township of Breitung, Dickinson County, Michigan, and in the Towns of Aurora and Florence, Florence County, Wisconsin.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license:* January 1, 1979.

i. *Expiration date of original license:* October 31, 2001.

j. *The project consists of:* (1) An 849-foot-long concrete gravity dam comprising; (a) a 242-foot-long, 43-foot-high gated spillway section having ten 20-foot-wide, 14-foot-high tainter gates; (b) an integral powerhouse and intake section; and (c) a 42-foot-long sluiceway section having three submerged 4-foot-diameter sluice tubes and a trash sluice; (2) a 317-foot-long, 26-foot-high east earth embankment, a 313-foot-long, 6-foot-high detached east earth dike, and a 129-foot-long, 26-foot-high west earth

dike, all having concrete core walls; (3) a reservoir having a 506-acre surface area at normal pool elevation 1,068.0 feet m.s.l.; (4) a 119-foot-long, 72.5-foot-wide reinforced-concrete powerhouse containing three 2,400-kW generating units for a total installed generating capacity of 7,200-kW; and (5) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Wisconsin Electric Power Company, Annex Building Room A-265, 333 West Everett, Milwaukee, Wisconsin 53201, (414) 221-2500.

l. *FERC contact:* Charles T. Raabe (202) 219-2811.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by October 31, 1999.

5 a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2142.

c. *Date filed:* December 27, 1996.

d. *Submitted By:* Central Maine Power Company, current licensee.

e. *Name of Project:* Indian Pond.

f. *Location:* On the Kennebec River, in Chase Stream, Indian Stream, Sapling, and Big Squaw Townships, Somerset and Piscataquis Counties, Maine.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license:* January 1, 1952.

i. *Expiration date of current license:* December 31, 2001.

j. The project consists of: (1) A concrete gravity-type dam composed of an intake section, a gated spillway section, a flashboard section, a log sluice section, a bulkhead section, and flanked on the left bank by an earth dike; (2) a detached earth dike; (3) a nine-mile-long reservoir having a 3,666-acre surface area at normal pool elevation 955 feet U.S.G.S.; (4) four penstocks; (5) a powerhouse having four generating units with a total installed generating capacity of 76,400-kW; (6) a 1,750-foot-long tailrace; (7) a 13.2/115-kV, 83,333-kVA substation; (8) a 29.5-mile-long, 115-kV transmission line; and (9) appurtenant facilities;

k. Pursuant to 18 CFR 16.7, information on the project is available at: Central Maine Power Company, Anthony Avenue, Augusta, Maine 04330, (207) 626-9600.

l. *FERC contact:* Charles T. Raabe (202) 219-2811.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license

and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1999.

6 a. *Type of Application:* Application to Delete 128 Acres from the Project Boundary.

b. *Project No:* 2833-055.

c. *Application Filed:* January 3, 1997.

d. *Applicant:* Public Utility District No. 1 of Lewis County.

e. *Name of Project:* Cowlitz Falls Project.

f. *Location:* Cowlitz River in Lewis County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Gary H. Kalich, Public Utility District No. 1 of Lewis County, 321 N.W. Pacific Avenue, Chehalis, WA 98532-0330, (360) 748-9261.

i. *FERC Contact:* Heather Campbell, (202) 219-3097.

j. *Comment Date:* March 13, 1997.

k. *Description of Proposal:* The licensee filed a proposal to delete 128 acres from the project boundary. The lands which are predominantly agricultural were included as part of the Buffer Zone Management Plan for which the licensee would have obtained an easement. The lands are located in the upper reaches of the reservoir between river mile 95 and 100.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

7 a. *Type of Filing:* Request for Extension of Time to Commence Project Construction.

b. *Applicant:* Mount Hope Waterpower Project, LLP.

c. *Project No.:* The proposed Mount Hope Pumped Storage Hydroelectric Project, FERC No. 9401-041, is to be located on Mount Hope Lake in Morris County, New Jersey.

d. *Date filed:* December 30, 1996.

e. *Pursuant to:* Public Law 104-247.

f. *Applicant Contacts:*

Chris Beaver, Mount Hope Hydro, Inc., 627 Mount Hope Road, Wharton, NJ 07885-2837, (201) 361-1072;

Sam Behrends, IV, LeBoeuf, Lamb, Greene & MacRae, LLP, 1875 Connecticut Avenue, NW., Washington, DC 20009-5728, (202) 986-8000.

g. *FERC Contact:* Mr. Lynn R. Miles, (202) 219-2671.

h. *Comment Date:* March 13, 1997.

i. *Description of the Request:* The licensee for the subject project has requested that the deadline for commencement of construction at its

project be extended. The deadline to commence project construction for FERC Project No. 9401 would be extended to August 3, 1999. The deadline for completion of construction will be extended to August 3, 2005.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

8 a. *Type of Application:* Amendment of License.

b. *Project No:* 2528-046.

c. *Date Filed:* 11/19/96.

d. *Applicant:* Central Maine Power Company.

e. *Name of Project:* Cataract Project.

f. *Location:* On the Saco River, York County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

Gary A. Boyle, Environmental and Licensing, Central Maine Power Company, North Augusta Office Annex, 41 Anthony Avenue, Augusta, ME 04330, (207)621-4447.

i. *FERC Contact:* Mohamad Fayyad, (202) 219-2665.

j. *Comment Date:* March 17, 1997.

k. *Description of Amendment:*

Licensee proposes to delete one of the project generating stations, the NKL powerhouse and related facilities, which has an authorized installed capacity of 900 kW. The licensee states that NKL powerhouse has been non-operational since the license was issued in 1989, and isn't cost effective to rehabilitate as was intended under the license.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

9 a. *Type of Application:* Amendment of Exemption

b. *Project No.:* 6819-004.

c. *Date Filed:* March 7, 1996.

d. *Applicant:* Desert Water Agency.

e. *Name of Project:* Snow Creek Project.

f. *Location:* Near Snow Creek Village in Riverside County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)-825(r)

h. *Applicant Contact:*

Mr. David K. Luker, Assistant General Manager-Operations, Desert Water Agency, 1200 Gene Autry Trail South, P.O. Box 1710, Palm Springs, CA 92263-1710, (619) 323-4971.

i. *FERC Contact:* Robert Gwynn, (202) 219-2764.

j. *Comment Date:* March 17, 1997.

k. *Description of Filing:* Desert Water Agency proposes a change in project operations to the Snow Creek Power Project to allow waters currently diverted from Falls Creek for municipal use to also be used for incidental power

generation. The change would allow diversions from Falls Creek of up to 1.5 cfs to be conveyed to Palm Springs via the Snow Creek Penstock, Power Plant, and Pipeline. The proposed change involves the replacement of the existing Falls Creek diversion, replacement of the existing 10" pipeline between Snow Creek dam and Falls Creek dam with a 12" pipeline, and the construction of a booster station along the 12" replacement pipeline.

1. This paragraph also consists of the following standard paragraphs: B, C1, and D2.

#### Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work

proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must

also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 31, 1997, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 97-3196 Filed 2-7-97; 8:45 am]

BILLING CODE 6717-01-P

#### Sunshine Act Meeting

February 5, 1997.

The following notice of meeting is published pursuant to section 3(a) of the government in the sunshine act (Pub. L. No. 94-409), 5 U.S.C. 552B:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** FEBRUARY 12, 1997, 10:00 a.m.

**PLACE:** Room 2C, 888 first street, N.E. Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

\*Note—Items Listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, secretary, telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.





OMITTED.

CAG-48.

DOCKET# CP95-317, 001, WILLIAMS  
NATURAL GAS COMPANY  
OTHER#S CP95-318, 001, WILLIAMS GAS  
PROCESSING—MID-CONTINENT  
REGION COMPANY

CAG-49.

DOCKET# CP96-186, 004, ANR PIPELINE  
COMPANY

CAG-50.

DOCKET# CP96-337, 001, ANR PIPELINE  
COMPANY

CAG-51.

DOCKET# CP97-11, 000, FLORIDA GAS  
TRANSMISSION COMPANY AND  
TENNESSEE GAS PIPELINE COMPANY

CAG-52.

DOCKET# CP95-264, 001, MIDAMERICAN  
ENERGY COMPANY

CAG-53.

OMITTED.

CAG-54.

DOCKET# CP97-19, 000, LOMEX OIL &  
GAS COMPANY, MR. JERRY LUTZ, MR.  
& MRS. EARL COON, AND MR. & MRS.  
CARL MEYERS, V. ANR PIPELINE CO.

CAG-55.

DOCKET# CP93-258, 009, MOJAVE  
PIPELINE COMPANY

CAG-56.

DOCKET# CP96-201, 001, ALGONQUIN  
GAS TRANSMISSION CORPORATION

CAG-57.

DOCKET# RP96-338, 001, TEXAS  
EASTERN TRANSMISSION  
CORPORATION  
OTHER#S RP96-338, 000, TEXAS  
EASTERN TRANSMISSION  
CORPORATION

Hydro Agenda

H-1.

RESERVED.

Electric Agenda

E-1.

RESERVED.

Oil and Gas Agenda

I.

PIPELINE RATE MATTERS

PR-1.

DOCKET# RM91-11, 006, PIPELINE  
SERVICE OBLIGATIONS AND  
REVISIONS TO REGULATIONS  
GOVERNING SELF-IMPLEMENTING  
TRANSPORTATION, ET AL.  
OTHER#S RM87-34, 072, REGULATION  
OF NATURAL GAS PIPELINES AFTER  
PARTIAL WELLHEAD DECONTROL

II.

PIPELINE CERTIFICATE MATTERS

PC-1.

RESERVED.

Lois D. Cashell,

Secretary.

[FR Doc. 97-3336 Filed 2-6-97; 11:04 am]

BILLING CODE 6717-01-P

[Docket No. CP97-202-000, et al.]

**USG Pipeline Company, et al.; Natural  
Gas Certificate Filings**

January 31, 1997.

Take notice that the following filings  
have been made with the Commission:

1. USG Pipeline Company

[Docket No. CP97-202-000]

Take notice that on January 22, 1997, USG Pipeline Company (USGPC), P.O. Box 806278, 125 S. Franklin St., Chicago, Illinois 60680-4124 filed an application in Docket No. CP97-202-000 pursuant to section 7(c) of the Natural Gas Act, and Subpart A of Part 157 of the Commission's Regulations for a certificate of public convenience and necessity and a request for waivers of the applicable portions of Parts 154, 201, 250, and 260 of the Commission's regulations. USGPC, a wholly-owned subsidiary of USG Corporation, states that it seeks Commission authorization to construct, own, and operate an interstate pipeline which will extend approximately 14.5 miles from a point of interconnection with East Tennessee Natural Gas Company in Marion County, Tennessee, to a point of delivery at the site of planned manufacturing facilities located in Jackson County, Alabama. USGPC states further that the pipeline will be constructed and operated to serve its affiliate and only customer, United States Gypsum Company. USGPC states that the pipeline will be financed out of corporate funds.

*Comment date:* February 21, 1997, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP97-203-000]

Take notice that on January 24, 1997, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP97-203-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a segment of pipeline and a tap and valve assembly (the Dixie tap) and the service related thereto, in Scurry County, Texas, under El Paso's blanket certificate issued in Docket Nos. CP82-435-000 and CP88-433-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that these minor facilities were available for utilization by El Paso to provide natural gas service

to West Texas Gas, Inc. (West Texas) for resale to Dixie Petro-Chem., Inc.. To date, El Paso states that West Texas has never requested gas service from El Paso through these facilities and that West Texas does not have a current or future need for gas service here and that no other customers are served through the facilities. El Paso states that it has no future need for the facilities and by letter agreement dated December 5, 1996, El Paso and West Texas agreed to abandon in place approximately 0.959 mile of 6-5/8" O.D. pipeline extending from the 12-3/4" O.D. Snyder Line to the American Magnesium Company Line and a tap and valve assembly, with appurtenances and service thereto. Ground disturbance will be limited to existing, previously-disturbed right-of-way.

*Comment date:* March 17, 1997, in accordance with Standard Paragraph G at the end of this notice.

3. ANR Pipeline Company

[Docket No. CP97-204-000]

Take notice that on January 24, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97-204-000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an interruptible gas transportation service for Texas Eastern Transmission Corporation (TETCO) performed under ANR's Rate Schedule X-154 which was authorized in Docket No. CP86-209-000, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR states that abandonment is being proposed because there has not been any service provided under the agreement for a number of years and that the parties have mutually agreed to termination. No imbalances exist. ANR states that under the approved agreement, ANR received up to 10,000 Dth/day for the account of TETCO in Ship Shoal Area Block 178, and delivered a thermally equivalent volume of gas less one percent for compressor fuel use to an existing onshore interconnection with TETCO in St. Landry Parish, Louisiana. By mutual agreement, ANR states that the parties have agreed to terminate the transportation service effective close of business October 31, 1996. No facilities are proposed to be abandoned and that service obligations to its remaining customers will not be impaired after abandonment authorization.

*Comment date:* February 21, 1997, in accordance with Standard Paragraph F at the end of this notice.

## 4. Williams Natural Gas Company

[Docket No. CP97-206-000]

Take notice that on January 24, 1997, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP97-206-000 a request pursuant to 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon in place by sale to Warren Energy Resources, Limited Partnership (Warren), formerly NGC Resources, approximately 27.3 miles of 16-inch lateral pipeline, related service and facilities, under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to abandon in place by sale to Warren approximately 27.3 miles of the Rodman (Enid) 16-inch lateral pipeline (Line "TM"), related service and facilities located in Alfalfa, Major and Garfield Counties, Oklahoma.

WNG states that, as set out in the Assignment and Bill of Sale, WNG's right-of-way service obligation to the six domestic customers located on the 16-inch pipeline to be abandoned will be assumed by Warren since all facilities serving the domestics are part of the Assignment and Bill of Sale. WNG states that the sales price of the line is \$690,000.

*Comment date:* March 17, 1997, in accordance with Standard Paragraph G at the end of this notice.

## 5. ANR Pipeline Company

[Docket No. CP97-207-000]

Take notice that on January 27, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP96-207-000 a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval and permission to operate under the blanket certificate issued in Docket No. CP88-532-000, pursuant to Section 7(c) of the Natural Gas Act (NGA), an existing interconnection in Kane County, Illinois, that has been constructed pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that it constructed an interconnection (Hampshire Interconnection) with Northern Illinois Gas Company (NiGas) in November,

1995 pursuant to NGPA Section 311. ANR further states that the facilities consist of meter station, heater, separator, flow control facilities, and approximately 2,900 feet of sixteen-inch piping. ANR indicates that the facilities cost approximately \$3,200,000. ANR asserts that it has been delivering natural gas to NiGas at this interconnection for delivery to North Shore Gas Company under Rate Schedule ETS of ANR's FERC Gas Tariff, Second Revised Volume No. 1.

By this application, ANR seeks authorization to operate the Hampshire Interconnection under the provisions of Section 7(c) of the NGA. ANR asserts that the NiGas Interconnection is designed for 300 MMcf/day.

*Comment date:* March 17, 1997, in accordance with Standard Paragraph G at the end of this notice.

## Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97-3195 Filed 2-7-97; 8:45 am]

BILLING CODE 6717-01-P

## Southeastern Power Administration

## Intent to Formulate Revised Power Marketing Policy Georgia-Alabama-South Carolina System of Projects

**AGENCY:** Southeastern Power Administration, DOE.

**ACTION:** Notice.

**SUMMARY:** Pursuant to its Procedure for Public Participation in the Formulation of Marketing Policy published in the Federal Register of July 6, 1978, 43 FR 29186, Southeastern intends to revise its marketing policy for future disposition of power from its Georgia-Alabama-South Carolina System of Projects.

The current power marketing policy published on December 28, 1994, for the Southeastern Power Administration's (Southeastern) Georgia-Alabama-South Carolina System is reflected in contracts for the sale of system power which are maintained in Southeastern's headquarter's offices. Proposals and recommendations for consideration in formulating the proposed revised marketing policy are solicited, as are requests for further information or consultation.

**EFFECTIVE DATE:** Comments must be submitted on or before April 11, 1997.

**ADDRESSES:** Five copies of written proposals or recommendations should be submitted to the Administrator, Southeastern Power Administration, Elberton, Georgia 30635, (706) 213-3800.

**SUPPLEMENTARY INFORMATION:** A "Final Power Marketing Policy for the Georgia-

Alabama-South Carolina System of Projects" was developed and published in the Federal Register on December 28, 1994, 59 FR 66957 by Southeastern. Transmission contracts under this policy have been negotiated with the Southern Company, Oglethorpe Power Corporation, Alabama Electric Cooperative, South Mississippi Electric Power Association, and the Municipal Electric Authority of Georgia effective October 1, 1996. Existing transmission contracts with Duke Power Company, South Carolina Electric & Gas, and South Carolina Public Service Authority are in the process of renegotiation.

The Georgia-Alabama-South Carolina System consists of the Allatoona, Buford, Carters, Water F. George, Hartwell, Robert F. Henry, Millers Ferry, Richard B. Russell, J. Strom Thurmond, and West Point projects. The power from the projects is currently marketed to Preference Customers located in the service areas of the Southern Company, South Carolina Public Service Authority, South Carolina Electric & Gas Company, and in the Duke Power Company. The policy also deals with the allocation of power among preference customers. It includes pumping operations at the Carters and Richard B. Russell pump-storage projects and the utilization of area utility systems for essential purposes such as transmission and support. The policy also discusses wholesale rates, resale rates, and energy and economic efficiency measures.

Under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), Southeastern is responsible for the transmission and disposition of electric power and energy from reservoir projects operated by the Department of Army. Southeastern has negotiated transmission contracts with area utilities described previously under this authority. To pay the transmission fees under these contracts to area utilities Southeastern must obtain an appropriation each year in a budget approved by Congress and the President. Because of budget constraints, Southeastern has had difficulty in obtaining these appropriations. This difficulty has compelled Southeastern to consider selling the government power at the bus bar of the projects. Southeastern requests comments on this change in its marketing policy. The current policy does not contemplate such a disposition of the power from the projects.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Borchardt, Administrator, Southeastern Power Administration,

Elberton, Georgia 30635, (706) 213-3800.

Issued in Elberton, Georgia, January 30, 1997.

Charles A. Borchardt,  
Administrator.

[FR Doc. 97-3170 Filed 2-7-97; 8:45 am]

**BILLING CODE 6450-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5686-6]

### Agency Information Collection Activities: Submission for OMB Review; Comment Request; Environmental Leadership Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Environmental Leadership Program, EPA ICR number 1794.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before March 12, 1997.

**FOR FURTHER INFORMATION OR A COPY**

**CALL:** Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR no. 1794.01.

#### SUPPLEMENTARY INFORMATION:

*Title:* Environmental Leadership Program, EPA ICR number 1794.01. This is a new collection.

*Abstract:* The Environmental Leadership Program (ELP) is a voluntary program designed to accomplish several goals, including better protecting the environment and human health, encouraging environmental enhancement activities, and increasing identification and timely resolution of environmental compliance issues by ELP participants. The Program should foster constructive and open relationships between agencies, the regulated community, and the public.

As part of the application process for the ELP, facilities will be asked to submit information about their environmental management systems (EMS), compliance and EMS auditing programs, and community outreach and employee involvement programs. Federal facilities applying to the ELP must submit a statement affirming they

endorse the Code of Environmental Management Principles.

EPA will assess each applicant's information and determine whether they meet ELP requirements. EPA will conduct a compliance screening of qualifying facilities and provide a 30-day public comment period. On-site visits will be conducted at facilities that pass the initial eligibility requirements.

Upon acceptance to the ELP, facilities will be required to submit Annual Environmental Performance Reports for each of the 6 years of participation. The Annual Report should contain information on EMS activities, objectives, goals, and measures; a table of information on the formal audit (EMS and compliance) for years 2 and 5 of the 6-year performance period; an EMS performance evaluation (results and measures); information on agency inspections; compliance issues and status summary for the year; other environmental enhancement activities; and highlights from community outreach/ employee involvement and mentoring programs.

The submission of information for the purposes of application to the ELP is voluntary. The ELP will use a disclosure and confidentiality policy that includes 40 CFR Part 2 and reference to any State-specific regulations of confidentiality. Submission of the Annual Report is required for participation in the Program. The Annual Report will be made available to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/18/96 (61 FR 58750); no comments were received.

*Burden Statement:* It is estimated that approximately 75 facilities may voluntarily apply to the ELP annually. EPA estimates that participating facilities may need to spend up to 85 hours to prepare the application and supplemental information. EPA also estimates that facilities that pass the initial application/compliance screening may need to spend 32 hours during the on-site visit. Participating facilities will need an estimate of 166 hours for preparing the Annual Report.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time

needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Public, Private, or Federal facilities applying to the ELP.

*Estimated Number of Respondents:* 75 in application phase, 50 in the Annual Report phase.

*Frequency of Response:* Yearly.

*Estimated Total Annual Hour Burden:* 17,070 hours.

*Estimated Total Annualized Cost Burden:* Application—\$293,625, On-site review—\$135,600; Annual Report—\$384,550.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1794.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460 and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: February 4, 1997.

Joseph Retzer,

*Director, Regulatory Information Division.*  
[FR Doc. 97-3156 Filed 2-7-97; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5686-9]

### Renewal of Agency Information Collection Activities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package

to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

**DATES:** Comments must be submitted on or before April 11, 1997.

**ADDRESSES:** U.S. EPA, Office of Research and Development, Quality Assurance Division (MS-104), 2890 Woodbridge Avenue, Edison, NJ 08837-3679.

**FOR FURTHER INFORMATION CONTACT:** Nancy W. Wentworth, 202-260-5763, Facsimile Number 202-401-7002, wentworth.nancy@epamail.epa.gov.

### SUPPLEMENTARY INFORMATION

*Affected entities:* Entities affected by this action are those which apply for Federal financial assistance from EPA for proposed projects that include environmentally related measurements.

*Title:* ICR Number 0866, Quality Assurance Specification and Requirements, OMB Control Number 2080-0033, which expires June 30, 1997.

*Abstract:* This ICR covers the quality assurance (QA) paperwork burden that appears at 40 CFR 30.54 [which supercedes 40 CFR 30.503(d)] and 40 CFR 31.45. These are subsections from 40 CFR Part 30—General Regulations for Assistance Programs, and 40 CFR Part 31—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, respectively. The information collection activity involves the preparation of QA plans or narrative statements that provide supporting documentation sufficient to produce data that are of quality adequate to meet project objectives and (for 40 CFR 30.54) to minimize loss of data due to out-of-control conditions or malfunctions. The quality system of the 40 CFR 30.54 assistance recipient must comply with the requirements of ANSI/ASQC E4, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs." All QA submissions are reviewed and approved by an EPA certified project officer or a designated quality assurance officer.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

*Burden Statement:* The currently approved ICR estimated the burden for annual reporting and recordkeeping to be 85 hours each for 845 state and local respondents applying for assistance, and 70 hours each for 550 principal investigators who solicit assistance. The agency burden for review of QA plans and preparation assistance to respondents was estimated at 15 hours each for the estimated 1395 awards. This estimate included the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Note that the agency research grants program has expanded significantly since the last renewal.

Send comments regarding these matters or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: February 4, 1997.

Robert J. Huggett,

*Assistant Administrator for Research and Development.*

[FR Doc. 97-3220 Filed 2-7-97; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5687-3]

### Agency Information Collection Activities: Submission for OMB Review; Comment Request; Significant New Alternatives Policy (SNAP) Program Final Rulemaking Under Title VI of the Clean Air Act Amendments of 1990

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval:

Significant New Alternatives Policy (SNAP) Program Final Rulemaking under Title VI of the Clean Air Act Amendments of 1990, OMB Control No. 2060-0226, expiring February 28, 1997. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before March 12, 1997.

**FOR FURTHER INFORMATION OR A COPY CALL:** Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 1596.04.  
**SUPPLEMENTARY INFORMATION:**

*Title:* Significant New Alternatives Policy (SNAP) Program Final Rulemaking under Title VI of the Clean Air Act Amendments of 1990 (OMB Control No. 2060-0226; EPA ICR No. 1596.04) expiring 2/28/97. This is a request for extension of a currently approved collection.

*Abstract:* Information collected under this rulemaking is necessary to implement the requirements of the Significant New Alternatives Policy (SNAP) program for evaluating and regulating substitutes for ozone-depleting chemicals being phased out under the stratospheric ozone protection provisions of the Clean Air Act (CAA). Under CAA Section 612, EPA is authorized to identify and restrict the use of substitutes for class I and class II ozone-depleting substances where EPA determines other alternatives exist that reduce overall risk to human health and the environment. The SNAP program, based on information collected from the manufacturers, formulators, and/or sellers of such substitutes, provides for the identification of acceptable substitutes. Responses to the collection of information are mandatory under Section 612 for anyone who sells or, in certain cases, uses substitutes for an ozone-depleting substance after April 18, 1994, the effective date of the final rule. Anyone submitting confidential business information (CBI) as part of an information collection subject to this ICR must assert and substantiate a claim of confidentiality for the data under 40 CFR, Part 2, Subpart B, at the time of submission. Under CAA Section 114(c), emissions information may not be claimed as confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this

collection of information was published on 11/6/96 (61 FR 57411); no comments were received.

*Burden Statement:* The annual public reporting burden for persons filing a SNAP Information Notice is estimated to average 150 hours per response. The annual public reporting burden for persons filing a TSCA Addendum is estimated to average 46 hours per response. The annual public reporting burden for persons filing a notification of test marketing activity is estimated to average 2 hours per response. The annual public recordkeeping burden for persons keeping records of use of a substitute subject to narrowed use limits is estimated to average 27 hours per response. The annual public recordkeeping burden for persons keeping records of a small volume use is estimated to average 12 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Producers, vendors, and end users of substitutes for ozone-depleting chemicals.

*Estimated Number of Respondents:* 340.

*Frequency of Response:* One time only.

*Estimated Total Annual Hour Burden:* 11,515 hours.

*Estimated Total Annualized Cost Burden:* \$69,676.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1596.04 and OMB Control No. 2060-0226 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: February 4, 1997.

Joseph Retzer,

*Director, Regulatory Information Division.*

[FR Doc. 97-3229 Filed 2-7-97; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5686-7]

### Investigator-Initiated Grants: Request for Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of request for applications.

**SUMMARY:** This notice provides information on the availability of the fiscal year 1997 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedule are set forth. Grants will be competitively awarded following peer review.

**DATES:** Proposals must be received at the contact point on by February 28, 1997.

**FOR FURTHER INFORMATION CONTACT:** U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703), 401 M Street SW, Washington, DC 20460, telephone (800) 490-9194. The complete announcement can be accessed on the Internet from the EPA home page: <http://www.epa.gov/ncerqa>.

**SUPPLEMENTARY INFORMATION:** In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Bioremediation (in cooperation with the Department of Energy, National Science Foundation, and Office of Naval Research); (2) Ecosystem Restoration (in cooperation with the National Aeronautics and Space Administration).

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contacts persons for the Bioremediation RFA are EPA: Dr. Robert E. Menzer ([menzer.robert@epamail.epa.gov](mailto:menzer.robert@epamail.epa.gov)), telephone 202-2605779  
DOE: Dr. John Houghton ([john.houghton@oer.doe.gov](mailto:john.houghton@oer.doe.gov)), telephone 301-903-8288

NSF: Dr. Joanne Roskoski  
(jroskosk@nsf.gov), telephone 703-306-1480 Ext. 6421

ONR: Dr. Anna Palmisano  
(palmisa@onrhq.onr.navy.mil),  
telephone 703-696-4760

Contact persons for the Ecosystem  
Restoration RFA are

EPA: Barbara Levinson  
(levinson.barbara@epamail.epa.gov),  
telephone 202-260-5983

NASA: Tony Janetos  
(anthony.janetos@hq.nasa.gov),  
telephone 202-358-0276

Dated: February 4, 1997.

Robert J. Huggett,

*Assistant Administrator for Research and  
Development.*

[FR Doc. 97-3222 Filed 2-7-97; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5686-8]

### Request for Applications on Multiscale Ecological Assessment in the Middle Atlantic Region

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Notice of request for  
applications.

**SUMMARY:** This notice provides  
information on the availability of a  
fiscal year 1997 program announcement  
entitled, "Approaches to Multiscale  
Ecological Assessment in the Middle  
Atlantic Region," in which the area of  
research interest, eligibility and  
submission requirements, evaluation  
criteria, and implementation schedule  
are set forth. Cooperative agreements  
will be competitively awarded following  
peer review.

**DATES:** Proposals must be received at the  
contact point by March 28, 1997.

**FOR FURTHER INFORMATION CONTACT:** U.S.  
Environmental Protection Agency,  
National Center for Environmental  
Research and Quality Assurance (8703),  
401 M Street SW, Washington, DC  
20460, telephone (800) 490-9194. The  
complete announcement can be  
accessed on the Internet from the EPA  
home page: <http://www.epa.gov/ncerqa>.  
Additional information may be obtained  
from Steve Paulsen, telephone 541-754-  
4428, Email: Paulsen@mail.cor.epa.gov

**SUPPLEMENTARY INFORMATION:** Much of  
the ecological information generated  
today comes from intensive  
investigations of single sites or  
relatively small geographic areas. Yet  
many of the management questions  
being asked or the ecological  
assessments being conducted are  
focused over broad geographic regions.

The specific purpose of this solicitation  
by EPA's Environmental Monitoring and  
Assessment Program (EMAP) is to  
request proposals for cooperative  
research that lead to the development  
and demonstration of approaches to link  
site specific information with regional  
survey data and remote sensing imagery  
for conducting regional level ecological  
assessments. Proposals must focus on  
terrestrial systems in the mid-Atlantic  
area.

The RFA provides relevant  
background information, summarizes  
EPA's interest in the topic areas, and  
describes the application and review  
process.

Dated: February 3, 1997.

Robert J. Huggett,

*Assistant Administrator for Research and  
Development.*

[FR Doc. 97-3221 Filed 2-7-97; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5687-4]

### Public Meetings of the Urban Wet Weather Flows Advisory Committee, the Storm Water Phase II Advisory Subcommittee, and the Sanitary Sewer Overflow Advisory Subcommittee

**AGENCY:** Environmental Protection  
Agency.

**ACTION:** Notice.

**SUMMARY:** Notice is given that the  
Environmental Protection Agency (EPA)  
is convening separate public meetings  
for the Urban Wet Weather Flows  
(UWWF) Advisory Committee; the  
Storm Water Phase II Advisory  
Subcommittee; and the Sanitary Sewer  
Overflow (SSO) Advisory  
Subcommittee. These meetings are open  
to the public without need for advance  
registration. The UWWF Advisory  
Committee will continue discussions of  
issues related to watershed-based  
monitoring, watershed approach, storm  
water Phase I improvements, and water  
quality standards in the wet weather  
context. The Storm Water Phase II  
Advisory Subcommittee will continue  
discussions on issues concerning the  
framework for Phase II implementation.  
The SSO Advisory Subcommittee will  
continue discussions on key issues and  
the overall SSO strategy.

**DATES:** (1) *Storm Water Phase II  
Advisory Subcommittee:*

- February 20-21, 1997.
- April 17-18, 1997.
- June 12-13, 1997.

(2) *Sanitary Sewer Overflow Advisory  
Subcommittee:*

- April 21-22, 1997.

(3) *Urban Wet Weather Flows  
(UWWF) Advisory Committee:*

- April 28-29, 1997.

- July 28-29, 1997.

On the first day of the meetings listed  
above, the Storm Water Phase II meeting  
will begin at 9:00 a.m. EST and end at  
5:30 p.m. On the second day of the  
Storm Water Phase II meetings, the  
meeting will begin at 8:30 a.m. and end  
at 4:30 p.m.

The SSO Advisory Subcommittee  
meeting starts at 10:00 a.m. EST and  
ends at 5:00 p.m. On the second day, the  
meeting will begin at 8:30 a.m. and end  
at 4:00 p.m.

The UWWF Advisory Committee  
meetings will begin at 10 a.m. EST and  
end at 5:30 p.m. On the second day, the  
meetings will run from 8:00 a.m. until  
3:30 p.m. *Please Note: The March 6-7,  
1997 meeting is canceled.*

**ADDRESSES:** There is a change in  
meeting locations. The following  
meetings will be held at the Washington  
National Airport Hilton Hotel, 2399  
Jefferson Davis Highway, Arlington,  
Virginia (Crystal City). (The Hilton's  
telephone number is (703) 418-8667):

- The Storm Water Phase II meeting  
of February 20-21, 1997.

- The SSO meeting of April 21-22,  
1997.

- The UWWF meetings of April 28-  
29 and July 28-29, 1997.

The following meeting will be held at  
the Omni Inner Harbor Hotel, 101 W.  
Fayette Street, Baltimore, MD 21201  
(Omni's telephone number is (410) 385-  
6563):

- The Storm Water Phase II meeting  
of April 17-18, 1997.

The following meeting will be held at  
the Doubletree Hotel Park Terrace, 1515  
Rhode Island Avenue, NW.,  
Washington, DC (the Doubletree's  
telephone number is (202) 232-7000):

- The Storm Water Phase II meeting  
of June 12-13, 1997.

**FOR FURTHER INFORMATION CONTACT:** For  
the UWWF Advisory Committee  
meeting, contact Will Hall, Office of  
Wastewater Management, at (202) 260-  
1458, or Internet:  
[hall.william@epamail.epa.gov](mailto:hall.william@epamail.epa.gov).

For the Phase II Subcommittee  
meeting, contact Sharie Centilla, Office  
of Wastewater Management, at (202)  
260-6052 or Internet:  
[centilla.sharie@epamail.epa.gov](mailto:centilla.sharie@epamail.epa.gov).

For the SSO meeting, contact Charles  
Vanderlyn, Office of Wastewater  
Management, at (202) 260-7277 or  
Internet:  
[vanderlyn.charles@epamail.epa.gov](mailto:vanderlyn.charles@epamail.epa.gov).

Dated: February 3, 1997.

Michael B. Cook,  
Director, Office of Wastewater Management,  
Designated Federal Official.

[FR Doc. 97-3228 Filed 2-7-97; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5686-5]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer (202) 260-2740, please refer to the appropriate EPA Information Collection Request (ICR) Number.

#### SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

#### OMB Approvals

EPA ICR No. 1086.05; Standards of Performance for Onshore Natural Gas Processing Plants, was approved 01/07/97; OMB No. 2060-0120; expires 01/31/2000.

EPA ICR No. 1039.08; Monthly Progress Reports, was approved 01/02/97; OMB No. 2030-0005; expires 01/31/2000.

EPA ICR No. 0574.09; Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances; was approved 12/30/96; OMB No. 2070-0012; expires 12/31/99.

EPA ICR No. 1573.05; Part B Permit Application, Permit Modifications, and Special Permits; was approved 12/31/96; OMB No. 2050-0009; expires 12/31/99.

EPA ICR No. 0660.06; NSPS for Metal Coil Surface Coating Operations—Subpart TT; was approved 10/31/96; OMB No. 2060-0107; expires 10/31/99.

EPA ICR No. 1765.01; National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings; was approved 07/24/96; OMB No. 2060-0353; expires 07/31/99.

EPA ICR No. 1783.01; National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Form Production; was approved 01/27/97; OMB No. 2060-0357; expires 01/31/2000.

EPA ICR No. 1381.05; Recordkeeping and Reporting Requirements for 40 CFR 258, Solid Waste Disposal Facilities and Practices; was approved 01/27/97; OMB No. 2050-0122; expires 01/31/2000.

EPA ICR No. 1572.04; Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types; was approved 01/27/97; OMB No. 2050-0050; expires 01/31/2000.

EPA ICR No. 0246.06; Contractor Cumulative Claim and Reconciliation; was approved 01/29/97; OMB No. 2030-0016; expires 01/31/2000.

EPA ICR No. 1128.05; Information Requirements for Secondary Lead Smelters, Standards of Performance for New Stationary Sources—NSPS Subpart L; was approved 01/27/97; OMB No. 2060-0080; expires 01/31/2000.

Dated: February 4, 1997.

Joseph Retzer,  
Director, Regulatory Information Division.

[FR Doc. 97-3157 Filed 2-7-97; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5687-2]

### Notice of Proposed Administrative Order on Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; In Re Michigan Disposal Service Superfund Site, Kalamazoo, Michigan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, notice is hereby given that an administrative order on consent concerning the Michigan Disposal Service Superfund Site ("the Site") was issued by the Agency on September 12, 1996. Subject to review by the public pursuant to this Notice, the agreement

was approved by the United States Department of Justice on December 2, 1996. Under the terms of the Agreement, the City of Kalamazoo, Michigan Disposal Service Corporation and the Michigan Disposal Service Liquidating Trust have agreed to perform certain pre-remedial design tasks at the Site and reimburse EPA 100% of its oversight response costs for this work. These pre-remedial design tasks partially implement the remedy selected in the Record of Decision for the Site which was issued by EPA on September 30, 1991. Additionally, the Pharmacia & Upjohn Company and the Kalamazoo County Board of Commissioners will contribute \$250,000 into a trust fund to be used for pre-design work at the Site. In exchange for these commitments, the United States covenants not to sue the parties for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Section 106 or 107(a) of CERCLA or Section 7003 of RCRA for performance of the pre-design work or reimbursement of past response costs.

**DATES:** The Environmental Protection Agency will receive written comments relating to this settlement for thirty days from the date of publication of this Notice.

**ADDRESSES:** Comments should be addressed to Richard M. Murawski, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 5, Mail Code: C-29A, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and should refer to the Michigan Disposal Service Superfund Site, Kalamazoo, Michigan.

**FOR FURTHER INFORMATION CONTACT:** A copy of the settlement agreement and additional background information relating to the settlement are available for review and may be obtained in person or by mail from Richard M. Murawski, Assistant Regional Counsel, U.S. Environmental Protection Agency, Mail Code: C-29A, 77 W. Jackson Blvd., Chicago, Illinois 60604.

#### SUPPLEMENTARY INFORMATION:

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601-9675.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 97-3219 Filed 2-7-97; 8:45 am]

BILLING CODE 6560-50-P



## FEDERAL DEPOSIT INSURANCE CORPORATION

### Statement of Policy Regarding Federal Common Law and Statutory Provisions Protecting FDIC, as Receiver or Corporate Liquidator, Against Unrecorded Agreements or Arrangements of a Depository Institution Prior to Receivership

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Statement.

**SUMMARY:** The FDIC has adopted a statement of policy which sets forth when the FDIC will assert the federal common-law doctrine enunciated by the Supreme Court in *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447 (1942) and when the FDIC will assert the statutory protections set forth in 12 U.S.C. 1821(d)(9)(A) and 1823(e).

**EFFECTIVE DATE:** February 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Charlotte Kaplow, Counsel (202-736-0248), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

#### Introduction

The protection of the FDIC against unrecorded agreements or arrangements between a federally-insured depository institution (institution) and third parties is among the most important, long-standing, and powerful protections afforded the FDIC acting in either its corporate liquidator capacity (FDIC/Corporate) or in its capacity as a receiver for a failed institution (FDIC/Receiver). This statement of policy is intended to inform persons doing business with an institution of the circumstances in which: (1) The statutory provisions (12 U.S.C. 1821(d)(9)(A), 1823(e)); and (2) the rule enunciated by the Supreme Court in *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447 (1942), will be asserted by the FDIC to bar certain agreements or arrangements entered into with the institution prior to receivership. Published as an addendum are "Guidelines For Use of *D'Oench* and Statutory Provisions" (Guidelines), which are discretionary and evolving by nature but nevertheless will serve to moderate the circumstances in which the FDIC will exercise these protections.

#### Background

More than fifty years ago, the Supreme Court in *D'Oench* first recognized a federal policy of protecting FDIC/Corporate from unrecorded schemes or arrangements that would tend to mislead banking authorities. The

Court articulated a rule of law prohibiting a party who had lent himself or herself to such a scheme or arrangement from asserting against the FDIC an unrecorded agreement. This rule of law, as it subsequently has been applied by the courts, is referred to as the "*D'Oench* doctrine".

In 1950, Congress enacted section 13(e), codified at 12 U.S.C. 1823(e) (section 1823(e)), as part of the Federal Deposit Insurance Act of 1950, ch. 967, Section 2[13](e), 64 Stat. 889 (81st Cong., 2d Sess. 1950). The strict approval and recording requirements of section 1823(e) supplemented the protection afforded by the *D'Oench* doctrine. In 1982, this section was reenacted by Congress as part of the Garn-St. Germain Depository Institution Act of 1982, Pub. L. 97-320, Section 113(m), 96 Stat. 1474. Both before and after 1982 the federal courts of appeals and federal district courts consistently construed section 1823(e) and the *D'Oench* doctrine in tandem.

In August 1989, as part of the Financial Institution Reform, Recovery and Enforcement Act (FIRREA), Public Law 101-73, 103 Stat. 183, Congress expanded section 1823(e) to cover defenses raised against the FDIC in its receivership capacity, the newly created Resolution Trust Corporation (in its corporate and receivership capacities) and bridge banks. In relevant part, section 1823(e) now provides:

No agreement which tends to diminish or defeat the interest of the [FDIC] in any asset acquired by it under this section or section 1821 of this title, either as security for a loan or by purchase or as receiver of any insured depository institution, shall be valid against the [FDIC] unless such agreement—

- (A) Is in writing,
- (B) Was executed by the depository institution and any person claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution,
- (C) Was approved by the board of directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and
- (D) Has been, continuously, from the time of its execution, an official record of the depository institution.

12 U.S.C. 1823(e)

In addition, FIRREA added a new provision, section 11(d)(9)(A) (codified at 12 U.S.C. 1821(d)(9)(A) (section 1821(d)(9)(A)), which states, in relevant part, that "any agreement which does not meet the requirements set forth in

section 1823(e) \* \* \* shall not form the basis of, or substantially comprise, a claim against the receiver or the [FDIC in its corporate capacity]."

In the FDIC's view, Congress intended that sections 1823(e) (as amended by FIRREA) and 1821(d)(9)(A) should be interpreted in a manner consistent with the policy concerns underlying the *D'Oench* doctrine. Accordingly, subject to the Guidelines,<sup>1</sup> these sections bar claims that do not meet the enumerated recording requirements set forth in section 1823(e), regardless of whether a specific asset is involved, to the same extent as such claims would be barred by the *D'Oench* doctrine.

More specifically, the statutory definition of the scope of agreements to which section 1823(e) applies—*i.e.*, those agreements "which tend[] to diminish or defeat the interest of the [FDIC] in any asset acquired by it" (section 1823(e))—is *not* a "requirement" that section 1823(e) imposes on those agreements, which if not "met" renders section 1821(d)(9) inapplicable. There is no reason to suppose that Congress intended the scope of section 1821(d)(9)(A) to be coextensive with that of section 1823(e).

Section 1823(e) applies only with respect to agreements that pertain to assets held by the FDIC because the function of that section is to bar certain defenses to the FDIC's collection on such assets. Section 1821(d)(9)(A)'s function, in contrast, is to bar certain affirmative claims against the FDIC. It does so in order to affect primary conduct by providing an incentive for parties contracting with institutions to document their transactions thoroughly. That in turn: (1) Allows federal and state bank examiners to rely on an institution's records in evaluating its worth; and (2) ensures mature consideration of unusual banking transactions by senior bank or thrift officials and prevents the fraudulent insertion of new terms when an institution appears headed for failure. *Cf. Langley v. FDIC*, 484 U.S. 86, 91-92 (1987).

In interpreting the meaning of "agreement" in section 1823(e) prior to its amendment in 1989, the Supreme Court in *Langley* held that it would disserve the policies recognized in *D'Oench* to interpret section 1823(e) in a more restricted manner than *D'Oench* itself: "We can safely assume that Congress did not mean 'agreement' in section 1823(e) to be interpreted so much more narrowly than its permissible meaning as to disserve the

<sup>1</sup> The Guidelines have been in effect since late 1994.

principle of the leading case applying that term to FDIC-acquired notes.” *Langley*, 484 U.S. at 92–93. In the same way, it would disserve the policies recognized in *D’Oench* and *Langley* to interpret section 1821(d)(9)(A) more narrowly than *D’Oench* has been applied in so-called no-asset cases.<sup>2</sup>

Nevertheless, as reflected in the Guidelines, the FDIC, as a matter of policy, will not seek to bar claims which by their very nature do not lend themselves to the enumerated requirements of section 1823(e). To that end, the FDIC will continue to assert the protections of the *D’Oench* doctrine and FIRREA (sections 1821(d)(9)(A), 1823(e)) only in accordance with the Guidelines.

The FDIC has also determined, after careful consideration, that sections 1823(e) (as amended by FIRREA) and 1821(d)(9)(A) cannot be applied retroactively to alleged agreements or arrangements entered into before the enactment of FIRREA on August 9, 1989. Following the Supreme Court’s decision in *Landgraf v. USI Film Products*, 511 U.S. 244, 114 S. Ct. 1483 (1994), the courts of appeals that have addressed the issue have concluded that sections 1821(d)(9) and 1823(e) (as amended by FIRREA) do not apply in cases where the transactions at issue occurred before FIRREA’s enactment.<sup>3</sup>

No provision within FIRREA addresses the temporal reach of section 1821(d)(9) or section 1823(e) (as amended by FIRREA). If the courts were to apply those provisions to agreements made before the statute was enacted, that would alter the rights possessed by the parties to such agreements.<sup>4</sup> Under the principles articulated by the Supreme Court in *Landgraf*, Congress must therefore be presumed to have intended for those provisions to apply

<sup>2</sup>Two courts of appeals have applied section 1821(d)(9)(A) in a more constricted manner. See *John v. RTC*, 39 F.3d 773, 776 (7th Cir. 1994); and *Thigpen v. Sparks*, 983 F.2d 644 (5th Cir. 1993). Both of these cases involved pre-FIRREA facts and, consequently, as discussed *infra*, sections 1821(d)(9)(A) and 1823(e) (as amended by FIRREA) were inapplicable. Moreover, in any future case involving similar post-FIRREA facts, any decision to raise the statutory protections would have to be authorized pursuant to the Guidelines, which were not in use at the time these cases were litigated.

<sup>3</sup>See *Oklahoma Radio Assocs. v. FDIC*, 987 F.2d 685, 695–96, *motion to vacate denied*, 3 F.3d 1436 (10th Cir. 1993); *Murphy v. FDIC*, 38 F.3d 1490, 1501 (9th Cir. 1994) (*en banc*) (noting FDIC’s concession in that regard).

<sup>4</sup>Before FIRREA, a borrower could assert an affirmative claim against the FDIC or FSLIC, or a defense against FDIC/Receiver or the FSLIC, based on a written agreement that failed to meet the contemporaneous-execution, approval, and recording requirements of section 1823(e), so long as the borrower had not lent himself to an arrangement or scheme likely to mislead bank examiners. *D’Oench*, 315 U.S. at 460.

only with respect to agreements made after the enactment of FIRREA.<sup>5</sup> Thus, because the statutory provisions establish “a categorical recording scheme” (see *Langley*, 484 U.S. at 95) and *D’Oench* is an equitable doctrine (*id.* 93–95), sections 1821(d)(9)(A) and 1823(e) (as amended by FIRREA) cannot be applied retroactively.

Accordingly, the statement of policy announces that the FDIC will assert the *D’Oench* doctrine for pre-FIRREA claims to the extent section 1823(e) (as it existed prior to FIRREA) is inapplicable but the claim nevertheless runs afoul of the *D’Oench* doctrine. For claims that relate to agreements or arrangements entered into after the effective date of FIRREA, the FDIC will apply only sections 1823(e) (as amended by FIRREA) and section 1821(d)(9)(A) to bar claims not entered into in accordance with the enumerated requirements of section 1823(e) (as amended by FIRREA). In either case, these protections will be asserted only in keeping with the Guidelines.

#### FDIC Statement of Policy

1. Because sections 1821(d)(9)(A) and 1823(e) (as amended by FIRREA) do not apply to agreements entered into before the effective date of FIRREA (August 9, 1989), such agreements are governed by pre-FIRREA law, including section 1823(e) and the *D’Oench* doctrine.

2. Agreements made after the enactment of FIRREA are governed by sections 1821(d)(9)(A) and 1823(e) (as amended by FIRREA).

3. This statement of policy does not supersede the FDIC’s Statement of Policy Regarding Treatment of Security Interests After Appointment of the FDIC as Conservator or Receiver of March 23, 1993 (58 FR 16833).

By order of the FDIC Board of Directors.

Dated at Washington, DC, this 4th day of February, 1997.

Federal Deposit Insurance Corporation.  
Jerry L. Langley,  
*Executive Secretary*.

#### Addendum—FDIC Guidelines for Use of *D’Oench* and Statutory Provisions

1. *Purpose*. To set forth guidelines for the use of the *D’Oench* doctrine and in

<sup>5</sup>The retroactivity of FIRREA, however, is not determined on an all-or-nothing basis. There is no “reason to think that all the diverse provisions of the [statute] must be treated uniformly for” purposes of the retroactivity analysis. *Landgraf v. USI Film Prods.*, 511 U.S. at 280, 114 S. Ct. at 1505. Moreover, “[t]he conclusion that a particular rule operates ‘retroactively’ comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event.” *Landgraf*, 511 U.S. at 270, 114 S. Ct. at 1499.

12 U.S.C. 1821(d)(9)(A), 1823(e) (statutory provisions).

2. *Scope*. This directive applies to all Service Centers and Consolidated Offices, to all future Servicers and, to the extent feasible, to all current Servicers.

3. *Responsibility*. It is the responsibility of the FDIC Regional Directors of the Division of Resolutions and Receiverships (DRR) and Regional Counsel of the Legal Division (Legal) to ensure compliance with applicable directives by all personnel in their respective service centers.

#### 4. Background

##### a. *D’Oench* Doctrine

In an effort to protect the federal deposit insurance funds and the innocent depositors and creditors of insured financial institutions (institution(s)), the Supreme Court in the case of *D’Oench, Duhme & Co. v. FDIC*, 315 U.S. 447 (1942) adopted what is commonly known as the *D’Oench* doctrine. This legal doctrine provides that a party who lends himself or herself to a scheme or arrangement that would tend to mislead the banking authorities cannot assert defenses and/or claims based on that scheme or arrangement.

##### b. Sections 1821(d)(9)(A) and 1823(e)

In 1950, Congress supplemented the *D’Oench* doctrine with 12 U.S.C. 1823(e) which bars any agreement which “tends to diminish or defeat the interest of the [FDIC] in any asset” unless the agreement satisfies all four of the following requirements: (1) It is in writing; (2) it was executed by the depository institution and any person claiming an adverse interest under the agreement contemporaneously with the acquisition of the asset; (3) it was approved by the board of directors of the institution or its loan committee as reflected in the minutes of the board or committee; and (4) it has been continuously an official record of the institution.

In FIRREA, Congress added 12 U.S.C. 1821(d)(9)(A) which protects the FDIC against all claims which do not meet the enumerated requirements of section 1823(e).

##### c. Policy Considerations

The *D’Oench* doctrine and the statutory provisions embody a public policy designed to protect diligent creditors and innocent depositors from bearing the losses that would result if claims and defenses based on undocumented agreements could be enforced against a failed institution. The requirement that any arrangement or agreement with a failed institution must

be in writing allows banking regulators to conduct effective evaluations of open institutions and the FDIC to accurately and quickly complete resolution transactions for failed institutions. This requirement also places the burden of any losses from an undocumented or "secret" arrangement or agreement on the parties to the transaction, who are in the best position to prevent any loss.

Although the *D'Oench* doctrine and the statutory provisions generally promote essential public policy goals, overly aggressive application of the specific requirement of these legal doctrines could lead to inequitable and inconsistent results in particular cases. In order to ameliorate this possibility, the FDIC has undertaken development of these guidelines and procedures to promote the exercise of sound discretion in the application of *D'Oench* or the statutory provisions.

#### 5. Guidelines

These guidelines are intended to aid in the review of matters where the assertion of *D'Oench* or the statutory provisions is being considered. The examples given are intended to give clear direction as to when particular issues must be referred. In particular, if the use of *D'Oench* or the statutory provisions is proposed in a DRR—Operations matter within the categories set forth below, the matter and recommendation must be referred to the Associate Director—Operations for approval through the procedures contained in section 6.

In the great majority of cases, however, it is anticipated that no resort to Washington should be necessary. It is only in the categories of cases highlighted in the guidelines that Washington approval must be obtained.

##### a. Pre-Closing Vendors

*D'Oench* or the statutory provisions shall not be used as a defense against claims by vendors who have supplied goods and/or services to failed institution pre-closing when there is clear evidence that the goods/services were received. In such case, *D'Oench* or the statutory provisions shall not be asserted whether or not there are written records in the institution's files confirming a contract for the goods and/or services.

This does not mean that *D'Oench* or the statutory provisions may never be asserted against a vendor, but only that each claim must be examined carefully on its facts. When there is no evidence that goods or services were received by the failed institution or in other appropriate circumstances, the defenses

may be asserted after approval by Washington.

##### Examples Requiring Washington Approval:

1. Landscaping service filed claim for planting trees around the institution's parking lot. There is no contract for planting trees in the books and records of the institution, but there are trees around the parking lot and no record of any payment. In this example, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

2. A contingency fee attorney is unable to produce any contingency fee agreement, but there is evidence in the files that this attorney has been paid for his collection work for the past 20 years and his name appears on the court records for collection matters for which he has not been paid. In this example also, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

3. Contractor has construction contract with institution to renovate any property owned by the institution. At the time the institution fails, the contractor has completed 90% of the contract and is owed about 50% of the contract price. Here too, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

##### b. Diligent Party

*D'Oench* or the statutory provisions may not be asserted without Washington approval where the borrower or claimant took all reasonable steps to document and record the agreement or understanding with the institution and there is no evidence that the borrower or claimant participated in some activity that could likely result in deception of banking regulators, examiners, or the FDIC regarding the assets or liabilities of the institution. In particular, Washington approval is required before *D'Oench* or the statutory provisions may be asserted where the agreement is not contained in the institution's records, but where the borrower or claimant can establish by clear and convincing evidence that the agreement was properly executed by the depository institution through an officer authorized by the board of directors to execute such agreements, as reflected in the minutes of the board. Cases involving "insiders" of the depository institution require particularly careful review because of the greater opportunities of such parties to manipulate the inclusion of "agreements" within the institution's records.

Further, where it is clear that a borrower or claimant has been diligent in insisting on a written document in an apparently arms-length transaction, and had no control over the section 1823(e) requirement that the transaction be reflected in the Board of Directors' or

Loan Committee minutes, assertion of the statutory provisions solely because the transaction is not reflected in those minutes may not be appropriate. In such cases, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

##### Examples Requiring Washington Approval:

1. Plaintiff sells a large parcel of land to the borrower of the failed institution and the property description in the failed institution's Deed of Trust mistakenly includes both the parcel intended to be sold and a parcel of property not included in the sale. Prior to the appointment of the receiver, the institution agrees orally to amend the Deed of Trust, and indeed sends a letter to the title company asking for the amendment. However, there is nothing in the books and records of the institution to indicate the mistake. The institution fails and the Deed of Trust has never been amended. The borrower defaults and the FDIC attempted to foreclose on both parcels. In this example, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

2. A limited partnership applies for refinancing. A commitment letter is issued by the institution to fund a non-recourse permanent loan which requires additional security of \$1 million from a non-partner. The Board of Directors minutes reflects that approval is for a nonrecourse loan, however, the final loan documents, including the note, do not contain the nonrecourse provisions. The institution fails, the partnership defaults and it is determined that the collateral plus the additional collateral is approximately \$3 million less than the balance of the loan. In a suit by the FDIC for the deficiency, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

3. A borrower completes payment on a loan, and he has cancelled checks evidencing that his loan has been paid off. The institution's records, however, do not document that the final payment has been tendered. The institution fails and the FDIC seeks to enforce the note. Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

However, if it is clear that the borrower or claimant participated in some fraudulent or other activity which could have resulted in deception of banking regulators or examiners, then *D'Oench* or the statutory provisions may be asserted without prior approval from Washington.

##### Examples Not Requiring Washington Approval:

1. Borrower signs a note with several blanks including the amount of the loan. An officer of the institution fills in the amount of the loan as \$40,000. Bank fails, loan is in default, the FDIC sues to collect \$40,000 and the borrower claims that he or she only borrowed \$20,000. There is nothing in the institution's books and records to indicate the \$20,000 amount, and, in fact, the institution's books and records evidence

disbursement of \$40,000. *D'Oench* or the statutory provisions may be asserted.

2. Guarantor, an officer of the borrower corporation, signs a guaranty for the entire amount of a loan to the corporation. At the time of the institution's failure, the loan is in default and the corporation is in Chapter 7 bankruptcy. FDIC files suit against the guarantor for the entire amount of the loan. The guarantor claims that he has an agreement with the institution that he is only liable for the first \$25,000. There is no record in the institution's files of such an agreement. Again, *D'Oench* or the statutory provisions may be asserted.

Where the specific facts of a case raise any question as to whether *D'Oench* or the statutory provisions should be asserted, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

#### c. Integral Document

If there are documents in the books and records of the institution which indicate an agreement under the terms asserted by the claimant or borrower, the use of *D'Oench* or the statutory provisions must be carefully evaluated. Particular care must be taken before challenging a claim or defense solely because it fails to comply with the 1823(e) requirement that the agreement be reflected in the minutes of the Board of Directors or Loan Committee. While any number of cases have held that the terms of the agreement must be ascertainable on the face of the document, in some circumstances it may be appropriate to consider all of the failed institution's books and records in determining the agreement, not just an individual document. Where the records of the institution provide satisfactory evidence of an agreement, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

#### Examples Requiring Washington Approval:

1. Note in failed institution's file is for one year term on its face. However, the loan application, which is in the loan file, is for five years renewable at one year intervals. The borrower also produces a letter from an officer of the institution confirming that the loan would be renewed on a sixty month basis with a series of one year notes. In this example, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

2. Debtor executes two notes with the proviso that there is no personal liability to the debtor beyond the collateral pledged. When the notes become due they are rolled over and consolidated into one note which recited that it is a renewal and extension of the original notes but does not contain the express disclaimer of personal liability. All three notes are contained together in one loan file. Here, all of the notes should be considered as part of the institution's

records. In this example also, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

#### d. No Asset/Transactions Not Recorded in Ordinary Course of Business

The use of *D'Oench* or the statutory provisions should be limited in most circumstances to loan transactions and other similar ordinary banking transactions. If the ordinary banking transaction is not related to specific current or former assets, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions in such cases. The application of *D'Oench* or the statutory provisions also should be carefully considered before it is asserted in opposition to a tort claim, such as negligence, misrepresentation or tortious interference with business relationships, where the claim is unrelated to a loan or ordinary banking transaction or to a transaction creating or designed to create an asset. Washington approval must be obtained before asserting *D'Oench* or the statutory provisions in such cases.

#### Examples Requiring Washington Approval:

1. Three years before failure the institution sells one of its subsidiaries. The institution warrants that the subsidiary has been in "continuous and uninterrupted status of good standing" through the date of sale. The buyer in turn attempts to sell the subsidiary and discovers that the subsidiary's charter has been briefly forfeited. The prospective buyer refuses to go through with the sale and the original buyer sues the institution for breach of warranty. FDIC is appointed receiver. This transaction does not involve a lending or other banking financial relationship between the institution and the buyer. In addition, the subsidiary is not an asset on the books of the institution at the time of the receivership. In this example, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

2. In the case described above in the diligent party section, where the property description in the failed institution's Deed of Trust mistakenly includes a parcel not included in the sale, the parcel at issue is not an actual asset of the failed institution and the assertion of *D'Oench* or the statutory provisions is not be appropriate. Here too, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

However, if a claim arises out of an asset which was involved in a normal banking transaction, such as a loan, *D'Oench* or the statutory provisions would be properly asserted against such a claim despite the fact that the asset no longer exists. For example, collection on the asset does not preclude the use of *D'Oench* or the statutory provisions in

response to claims by the former debtor related to the transaction creating the asset.

#### Example Not Requiring Washington Approval:

1. A borrower obtains a loan from an institution, secured by inventory and with an agreement that allows the institution to audit the business. The business fails, the institution sells the remaining inventory, and applies the proceeds of the sale to the business's debt. Borrower sues the institution for breach of oral agreements, breach of fiduciary duty, and negligence in performance of audits of the business. Borrower then pays off remaining amount of loan and continues the lawsuit. The institution subsequently fails. Despite borrower's argument that there is no asset involved since the debt has been paid, assertion of *D'Oench* or the statutory provisions would be appropriate.

#### e. Bilateral Obligations

The facts must be examined closely in matters where the agreement which the FDIC is attempting to enforce contains obligations on both the borrower or claimant and the failed institution and the borrower or claimant is asserting that the institution breached the agreement. If the failed institution's obligation is clear on the face of the agreement and there are documents supporting the claimed breach which are outside the books and records of the institution, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

#### f. Statutory Defenses

The appropriateness of using *D'Oench* or the statutory provisions to counter statutory defenses should be evaluated on a case by case basis. Although many such defenses may be based on an agreement that is not fully reflected in the books and records of the institution, a careful analysis should be made before asserting *D'Oench* or the statutory provisions. In such cases, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

The clearest examples of situations where assertion of *D'Oench* or the statutory provisions may be appropriate occur where the opposing party is relying on a statutory defense based upon some misrepresentation or omission by the failed institution. Examples of this type of statute are unfair trade practice statutes.

On the other hand, application of *D'Oench* or the statutory provisions may not be appropriate to oppose claims based on mechanics lien statutes or statutes granting other recorded property rights. The fact that all elements of those liens may not be

reflected in the books and records of the institution should not control the application of *D'Oench* or the statutory provisions.

In analyzing the propriety of asserting the *D'Oench* or the statutory provisions, at least the following three general factors should be considered in preparation for seeking approval from Washington:

\* To what extent is the purpose of the statute regulatory, rather than remedial? If the statute simply imposes regulatory or mandatory requirements for a transaction, such as a filing requirement or maximum fee for services, assertion of *D'Oench* or the statutory provisions is unlikely to be successful.

\* To what extent is the application of the statute premised upon facts that are not reflected in the books and records of the institution? If the state statute requires the existence and/or maintenance of certain facts, but those facts are not recorded in the institution's records, then *D'Oench* or the statutory provisions may be applicable.

\* To what extent do the facts involve circumstances where the opposing party failed to take reasonable steps to document some necessary requirement or participated in some scheme or arrangement that would tend to mislead the banking authorities.

#### Examples Requiring Washington Approval:

1. A priority dispute arises involving a mechanic's lien against property on which the FDIC is attempting to foreclose. An attempt to persuade a court that the mechanic's lien is a form of secret agreement under *D'Oench*, which, if given priority over the interests of the FDIC, will tend to diminish or defeat the value of the asset may not be appropriate. In this example, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

2. State law requires insurance companies doing business in the state to deposit funds with the Commissioner of Insurance. Further, the law provides that the deposit cannot be levied upon by creditors or claimants of the insurance company. An insurance company purchases a certificate of deposit from an institution and assigns it to the Commissioner. At the same time a document is executed entitled "Requisition to the Bank" which states that the institution would not release the CD funds without authorization of the Commissioner. Subsequently the insurance company borrows money from the institution. After the loan goes into default, the institution does not roll the CD over, but rather credits the proceeds to the loan account. The institution then fails and the Commissioner files a proof of claim with the FDIC seeking payment on the CD. The FDIC may not defend the suit by claiming that the assignment documents did not meet the requirements of section 1823(e). In this example, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

3. The FDIC attempts to collect on a note which the failed institution acquired from a

mortgage broker. The note is at a 15% interest rate and the mortgage broker charged six and one half points. State law provides that interest shall be no more than 13% and that no more than one point may be charged. The FDIC may not defend the borrower's counterclaim of a usurious loan by asserting *D'Oench* or the statutory provisions. Here too, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

#### g. Section 1823(e)'s Contemporaneous Requirement

This requirement of section 1823(e) may not be asserted to invalidate a good faith workout or loan modification agreement where the sole issue is whether the contemporaneous requirement of section 1823(e) is met. Where there is an agreement which otherwise satisfies the remaining requirements of the statute, but was not executed contemporaneously with the acquisition of the asset, in most circumstances the statutory provisions should not be asserted. This applies only to workouts or loan modifications done by the failed institution prior to receivership. The assertion of the section 1823(e) contemporaneous requirement should be considered principally where the facts demonstrate that the workout or restructure was entered into in bad faith and in anticipation of institution failure.

Washington approval must be obtained before asserting *D'Oench* or the statutory provisions in these cases.

#### 6. Procedures To Obtain Washington Approval

**DRR Operations:** When facts involving the possible assertion of *D'Oench* or the statutory provisions arise, Legal should be consulted. When the assertion of *D'Oench* or statutory provisions requires Washington approval, as outlined above, prior approval must be received from the Deputy Director—Operations or his designee in Washington in all such cases. Such approval must be obtained by preparation of a memorandum identifying the facts of the case forwarded through Legal Division procedures to the Deputy Director—Operations or his designee.

**DRR Asset Management:** When facts involving the possible assertion of *D'Oench* or the statutory provisions arise, Legal should be consulted. When the assertion of *D'Oench* or the statutory provisions requires Washington approval, as outlined above, Legal Division procedures should be followed for referral to Washington. Washington Legal will consult with Washington DRR where appropriate.

**Legal:** Each attorney must carefully review the facts of each instance where the assertion of *D'Oench* or the statutory provisions is being considered under revised Litigation Procedure 3 (LP 3). All cases requiring consultation or approval within these Guidelines and/or PS must be referred to Washington pursuant to LP3 procedures.

These Guidelines are intended only to improve the FDIC's review and management of utilization of *D'Oench* or the statutory provisions. The Guidelines do not create any right or benefit, substantive or procedural, that is enforceable at law, in equity, or otherwise by any party against the FDIC, its officers, employees, or agents, or any other person. The Guidelines shall not be construed to create any right to judicial review, settlement, or any other right involving compliance with its terms.

[FR Doc. 97-3190 Filed 2-7-97; 8:45 am]

BILLING CODE 6714-01-P

## FEDERAL MARITIME COMMISSION

[Docket No. 97-02]

### McKenna Trucking Company, Inc. v. Maersk Incorporated; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by McKenna Trucking Company, Inc. ("Complainant") against Maersk Incorporated ("Respondent") was served February 5, 1997. Complainant alleges that Respondent has violated sections 10(b)(1), (4), (6), (10), (11), and (12) of the Shipping Act of 1984, 46 U.S.C. app. sections 1709(1), (4), (6), (10), (11), and (12), by receiving rebates of intermodal trucking charges, thereby charging, demanding, collection and receiving greater compensation for the transportation of property than the rates shown in its service contracts, and subjecting complainant to an unreasonable refusal to deal, while continuing to charge shippers the higher, listed rate as a portion of the total through rate.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on

the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by February 5, 1998, and the final decision of the Commission shall be issued by June 5, 1998.

Joseph C. Polking,  
Secretary.

[FR Doc. 97-3206 Filed 2-7-97; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. 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). 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 March 6, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *BanPonce Financial Corp., Popular International Bank, Inc., and BanPonce Financial Corp.*, Wilmington, Delaware; to acquire 100 percent of the voting shares of Seminole National Bank, Sanford, Florida.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Regions Financial Corporation*, Birmingham, Alabama; to merge with Gulf South Bancshares, Inc., Gretna, Louisiana, and thereby indirectly acquire Gulf South Bank and Trust Company, Gretna, Louisiana.

2. *Whitney Holding Corporation*, New Orleans, Louisiana; to acquire 100 percent of the voting shares of Merchants National Bank of Mississippi, Gulfport, Mississippi (in organization).

3. *Whitney Holding Corporation*; to merge with Merchants Bancshares, Inc., Gulfport, Mississippi, and thereby indirectly acquire Merchants Bank & Trust Company, Bay Saint Louis, Mississippi.

Board of Governors of the Federal Reserve System, February 4, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-3165 Filed 2-7-97; 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 February 24, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Creditanstalt-Bankverein*, Vienna, Austria; to engage *de novo* in making equity investments either directly or through a wholly-owned U.S. subsidiary in diversified partnerships, limited liability companies, corporations, and investment funds that engage in activities designed to promote community welfare, including developing, and/or acquiring and owning interest in, certain affordable rental housing properties, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

2. *The Toronto-Dominion Bank*, Toronto, Canada, and Waterhouse Investor Services, Inc. New York, New York; to engage through their wholly-owned subsidiary, Waterhouse Securities, Inc., New York, New York ("Company"), in the purchase and sale of securities on the order of customers as riskless principal. *See The Bank of New York Company, Inc.*, 82 Fed. Res. Bull. 748 (1996); *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989). Company would conduct this activity in accordance with the framework of limitations established in the Board's prior orders. *See Order Revising the Limitations Applicable to Riskless Principal Activities*, 82 Fed. Res. Bull. 759 (1996).

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101

Market Street, San Francisco, California 94105-1579:

1. *Philippine Commercial International Bank*, Manila, The Philippines; to engage *de novo* through its subsidiary, PCI Express Padala, Inc., Los Angeles, California, in expanding, nationwide, the geographic scope of previously-approved money transmitting activities. See *Philippine Commercial International Bank*, 77 Fed. Res. Bull. 270, at 271 (1991).

Board of Governors of the Federal Reserve System, February 4, 1997.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 97-3166 Filed 2-7-97; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Availability of Draft Guidelines for Prevention of Opportunistic Infections in HIV-Infected Persons

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** This notice announces the availability of a draft document entitled "1997 USPHS/IDSA Guidelines for Prevention of Opportunistic Infections in HIV-Infected Persons," prepared by the Centers for Disease Control and Prevention (CDC), the National Institutes of Health (NIH), and the Infectious Diseases Society of America (IDSA), for review and comment.

**DATES:** To ensure consideration, written comments on this draft document must be received on or before March 12, 1997.

**ADDRESSES:** Requests for copies of the draft 1997 USPHS/IDSA Guidelines for Prevention of Opportunistic Infections must be submitted to the Division of HIV/AIDS, Technical Information and Communications Branch, Mailstop E-49, Centers for Disease Control and Prevention, Atlanta, GA 30333; telephone (404) 639-2076, FAX (404) 639-2007. Written comments on this draft document should be sent to the same address for receipt by March 12, 1997.

**FOR FURTHER INFORMATION CONTACT:** Division of HIV/AIDS Prevention, Surveillance, and Epidemiology, National Center for HIV, STD, and TB Prevention, Mailstop E-49, Centers for Disease Control and Prevention, Atlanta

GA 30333; telephone (404) 639-2076, FAX (404) 639-2007.

**SUPPLEMENTARY INFORMATION:** Opportunistic infections (OIs) constitute a major cause of morbidity and mortality in HIV-infected persons. The draft Guidelines, prepared by the CDC, the NIH, and the IDSA in consultation with representatives from numerous Federal and non-Federal agencies and community groups, represent a comprehensive approach to prevention of OIs in HIV-infected persons and constitute a revision of the guidelines published in 1995. They include recommendations pertinent to 17 major OIs, or groups of OIs, according to (1) Prevention of exposure, (2) prevention of disease (first occurrence), and (3) prevention of disease recurrence.

Dated: February 4, 1997.

Joseph R. Carter,

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 97-3184 Filed 2-7-97; 8:45 am]

BILLING CODE 4163-18-P

#### Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC), announce the following meeting.

**NAME:** Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRS).

**TIMES AND DATES:** 8:30 a.m.-5 p.m., February 27, 1997. 9 a.m.-12 noon, February 28, 1997.

**PLACE:** Sheraton Augusta Hotel, 2651 Perimeter Parkway, Augusta, Georgia, 30909, telephone 706/855-8100, FAX 706/860-1720.

**STATUS:** Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

**BACKGROUND:** Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to

radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

**PURPOSE:** This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

**MATTERS TO BE DISCUSSED:** Agenda items include presentations from the following: (1) The National Center for Environmental Health (NCEH) regarding current activities; (2) update on the progress of current studies, presented by the National Institute for Occupational Safety and Health and ATSDR; (3) Radiological Assessments Corporation presentations regarding the Geographic Information System, the use of scenarios in Dose Reconstruction, and the selection of study areas; (4) the Medical University of South Carolina's report on Cancer Incidence 1991-1993; and (5) the SENES Oak Ridge Corporation presentation on uncertainty analysis.

Agenda items are subject to change as priorities dictate.

#### CONTACT PERSONS FOR MORE

**INFORMATION:** Paul G. Renard or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F-35), Atlanta, Georgia 30341-3724, telephone 770/488-7040, FAX 770/488-7044.

Dated: February 4, 1997.

Carolyn J. Russell,  
Director, Management Analysis and Services  
Office, Centers for Disease Control and  
Prevention (CDC).

[FR Doc. 97-3181 Filed 2-7-97; 8:45 am]

BILLING CODE 4160-18-P

## Health Resources and Services Administration

### Statement of Organization, Functions and Delegations of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA) the authorities to conduct maternal and child health studies under Section 606 (Newborns' and Mothers' Health Protection Act) of Public Law 104-204, the 1997 Veterans Administration—Housing and Urban Development Appropriations Act (the Act), as amended.

I have designated the Advisory Committee on Infant Mortality to carry out the responsibilities of an advisory panel, as required under Section 606(b) of the Act.

This delegation excludes the authority to submit reports to Congress. In addition, I have affirmed and ratified any actions taken by the HRSA Administrator, or his subordinates, that involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: January 28, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97-3174 Filed 2-7-97; 8:45 am]

BILLING CODE 4160-15-M

## Public Health Service

### Health Resources and Services Administration

#### Privacy Act of 1974; Annual Publication of Systems of Records

**AGENCY:** Department of Health and Human Services (DHHS); Public Health Service (PHS); Health Resources and Services Administration (HRSA).

**ACTION:** Publication of minor changes to system-of-records notices.

**SUMMARY:** In accordance with Office of Management and Budget Circular No. A-130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," HRSA is publishing minor changes to its notices of systems of records.

**SUPPLEMENTARY INFORMATION:** HRSA has completed the annual review of its

systems of records and is publishing below those minor changes which affect the public's right or need to know, such as system deletions, title changes, and changes in the system location of records, or the addresses of systems managers.

Dated: January 27, 1997.

James J. Corrigan,

Acting Associate Administrator for  
Management and Program Support.

The following table of contents lists all currently active Privacy Act systems of records maintained by the Health Resources and Services Administration:

- 09-15-0001 Division of Federal Occupational Health Medical and Counseling Records, HHS/HRSA/BPHC.
- 09-15-0002 Record of Patients' Personal Valuables and Monies, HHS/HRSA/BPHC.
- 09-15-0003 Contract Physicians and Consultants, HHS/HRSA/BPHC.
- 09-15-0004 Federal Employee Occupational Health Data System, HHS/HRSA/BPHC.
- 09-15-0007 Patients Medical Records System PHS Hospitals/Clinics, HHS/HRSA/BPHC.
- 09-15-0028 PHS Clinical Affiliation Trainee Records, HHS/HRSA/BPHC.
- 09-15-0037 Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship/Loan Repayment Participant Records Systems, HHS/HRSA/BPHC.
- 09-15-0038 Disability Claims of the Nursing Student Loan Program, HHS/HRSA/BHPr.
- 09-15-0039 Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BHPr.
- 09-15-0042 Physician Shortage Area Scholarship Program, HHS/HRSA/BPHC.
- 09-15-0044 Health Educational Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.
- 09-15-0046 Health Professions Planning and Evaluation, HHS/HRSA/OA.
- 09-15-0054 National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BHPr.
- 09-15-0055 Organ Procurement and Transplantation Network (OPTN) Data System, HHS/HRSA/BHRD.
- 09-15-0056 National Vaccine Injury Compensation Program, HHS/HRSA/BHPr.
- 09-15-0057 Scholarships for the Undergraduate Education of Professional Nurses Grant Programs, HHS/HRSA/BHPr.
- 09-15-0058 Disadvantaged Health Profession Faculty Loan Repayment Program, HHS/HRSA/BHPr.
- 09-15-0059 Health Resources and Services Administration Correspondence Control System, HHS/HRSA/OA.

Changes

09-15-0002

#### System name

Record of Patient's Personal Valuables and Monies, HHS/HRSA/BPHC.

Minor changes have been made to this system-of-records notice. The following categories should be revised:

\* \* \* \* \*

#### System location:

Cashier's Office, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721.

\* \* \* \* \*

#### System manager(s) and address:

Chief, Medical Record Department, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721.

#### Notification Procedure:

Write to the Cashier's Office, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721. Individual must provide positive identification such a driver's license, passport, voter registration card, union card, or a written certification verifying his or her identity. Requesters should also reasonably specify the record contents being sought.

\* \* \* \* \*

09-15-0007

#### System name:

Patients Medical Record Systems PHS Hospitals/Clinics, HHS/HRSA/BPHC.

Minor changes have been made to this system-of-records notice. The following category should be revised:

\* \* \* \* \*

#### System location:

See Appendixes 1 and 2.

Data are also occasionally located at medical laboratories, medical consultants, or computer processing firm sites. A list of sites where individually identifiable data is currently located is available upon request to the System Manager.

#### Appendix 1

- A. Public Health Service Facilities  
Director, Public Health Service Health Data Center, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721.
- B. Successor Organizations  
Director, Johns Hopkins Medical Service, 3100 Wyman Park Drive, Baltimore, Maryland 21211.  
Director, Brighton Marine Public Health Center, 77 Warren Street, Boston, Massachusetts 02135.  
Administrator, Lutheran Medical



Center, 2609 Franklin Boulevard, Cleveland, Ohio 44114. Administrator, Martins Point Health Center, 331 Veranda Street, Portland, Maine 04103. Director, Pacific Medical Center, 1200 12th Avenue South, Seattle, Washington 98144.

Appendix 2—Federal Records Centers

Federal Archives and Records Center, 380 Trapelo Road, Waltham, Massachusetts 02154. Area served: Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

Federal Archives and Records Center, Military Ocean Terminal, Building 22, Bayonne, New Jersey 07002. Area served: New York, New Jersey, Puerto Rico, the Virgin Islands, and the Panama Canal Zone.

Federal Archives and Records Center, 5000 Wissahickon Avenue, Philadelphia, Pennsylvania 19144. Area served: Delaware and Pennsylvania east of Lancaster.

Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409. Area served: District of Columbia, Maryland, Virginia and West Virginia.

Federal Archives and Records Center, GSA, 1557 St. Joseph Avenue, East Point, Georgia 30344. Area served: North Carolina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, Florida, and Kentucky.

Federal Archives and Records Center, GSA, 7358 South Pulaski Road, Chicago, Illinois 60629. Area served: Illinois, Wisconsin, and Minnesota.

Federal Records Center, 3150 Springboro Road, Dayton, Ohio 45439. Area served: Indiana, Michigan, and Ohio.

National Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, Missouri 63118. Area served: Greater St. Louis Area.

Federal Archives and Records Center, Post Office Box 6216, Fort Worth, Texas 76115. Area served: Texas, Oklahoma, Arkansas, Louisiana, and New Mexico.

Federal Archives and Records Center, 1000 Commodore Drive, San Bruno, California 94066. Area served: Nevada (except Clark County), California (except Southern California), and American Samoa.

Federal Archives and Records Center, Post Office Box 6719, Laguna Niguel, California 92677. Area served: Clark County, Nevada; Southern California (Counties of San Luis Obispo, Kern, San Bernadino, Santa Barbara, Ventura, Los Angeles, Riverside, Orange, Imperial, Inyo, and San Diego); and Arizona.

Federal Archives and Records Center, 6125 Sand Point Way, Seattle, Washington 98115. Area served: Washington, Oregon, Idaho, Alaska, Hawaii, and Pacific Ocean Area (except American Samoa).

\* \* \* \* \*

09-15-0044

System name:

Health Education Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.

A minor change has been made to this system-of-records notice. The following category should be revised:

\* \* \* \* \*

System manager(s) and address:

Associate Director, Health Education Assistance Loan Program, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8-37, Rockville, Maryland 20857.

\* \* \* \* \*

09-15-0046

System name:

Health Professions Planning and Evaluation, HHS/HRSA/OA.

A minor change has been made to this system-of-records notice. The following category should be revised:

\* \* \* \* \*

Contesting record procedures:

To correct your record, contact the System Manager and provide (a) suitable identification, (b) a reasonable description of the record, (c) the specific information you want corrected, and (d) a precise description of the correction with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

\* \* \* \* \*

09-15-0055

System name:

Organ Procurement and Transplantation Network (OPTN) Data System, HHS/HRSA/BHRD.

Minor changes have been made to this system-of-records notice. The following categories should be revised:

\* \* \* \* \*

Categories of individuals covered by the system:

Persons from whom organs have been obtained for transplantation, persons who are candidates for organ

transplantation, and persons who have been recipients of transplanted organs.

\* \* \* \* \*

Retrievability:

Individual records are retrievable by claimant's name or Social Security number; donor identification number; and recipient identification number.

\* \* \* \* \*

System manger(s) and address:

Chief, Operations and Analysis Branch, Division of Transplantation, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Room 7-29, Rockville, Maryland 20857.

[FR Doc. 97-3192 Filed 2-7-97; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Subcommittee C—Basic and Preclinical Sciences Subcommittee

Date: April 2-4, 1997

Time: 7:30 pm, April 2; 8:00 am, April 3-4.

Place: Ramada Inn at Congressional Park, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Virginia P. Wray, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd. Room 635, Bethesda, MD 20892, Telephone: 301-496-9236.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 4, 1997.  
LaVerne Y. Stringfield,  
*NIH Committee Management Officer.*  
[FR Doc. 97-3207 Filed 2-7-97; 8:45 am]  
BILLING CODE 4140-01-M

### National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

*Agenda/Purpose:* To review and evaluate grant applications.

*Committee Name:* Subcommittee E—Prevention and Control Subcommittee.

*Date:* April 7-8, 1997.

*Time:* 9 a.m.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

*Contact Person:* Sally A. Mulhern, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd. Room 643G, Bethesda, Md 20892, Telephone: 301-496-7413.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 4, 1997.

LaVerne Y. Stringfield,

*NIH Committee Management Officer.*

[FR Doc. 97-3208 Filed 2-7-97; 8:45 am]

BILLING CODE 4140-01-M

### National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

*Agenda/Purpose:* To review and evaluate grant applications.

*Committee Name:* Subcommittee G—Education Subcommittee.

*Date:* March 4-5, 1997.

*Time:* 8 a.m.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

*Contact Person:* John W. Abrell, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., Room 635B, Bethesda, Md 20892, Telephone: 301-496-9767.

The meeting will be closed in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 4, 1997.

LaVerne Y. Stringfield,

*NIH Committee Management Officer.*

[FR Doc. 97-3211 Filed 2-7-97; 8:45 am]

BILLING CODE 4140-01-M

### National Cancer Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meetings:

*Name of SEP:* Iatrogenic Causes of Cancer.

*Date:* February 18-20, 1997.

*Time:* 7:00 pm—February 18; 8:00 am—February 19 and 20.

*Place:* Sheraton Grande Hotel, 333 Figueroa Street, Los Angeles, California 90071.

*Contact Person:* Ray Bramhall, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 636, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892-7405, Telephone: 301/496-3428.

*Purpose/Agenda:* To Evaluate and review grant applications.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

*Name of SEP:* NCI Cancer Education Grant Program.

*Date:* March 5, 1997.

*Time:* 5:00 pm

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

*Contact Person:* John L. Meyer, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 611C, 6130 Executive Boulevard, MSC

7405, Bethesda, MD 20892-7405, Telephone: 301/496-7721.

*Purpose/Agenda:* To evaluate and review grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 4, 1997.

LaVerne Y. Stringfield,

*NIH Committee Management Officer.*

[FR Doc. 97-3213 Filed 2-7-97; 8:45 am]

BILLING CODE 4140-01-M

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Acute Infection and Early Disease Research.

*Date:* March 4-5, 1997.

*Time:* 8:30 a.m.

*Place:* Bethesda Ramada Hotel, Ambassador 1 Conference Room, 8400 Wisconsin Avenue, Bethesda, MD 20814, (301) 654-1000.

*Contact Person:* Dr. Stanley C. Oaks, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892, (301) 496-7042.

*Purpose/Agenda:* To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: February 4, 1997.  
LaVerne Y. Stringfield,  
*Committee Management Officer, NIH.*  
[FR Doc. 97-3209 Filed 2-7-97; 8:45 am]  
BILLING CODE 4140-01-M

### National Institutes of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

*Agenda/Purpose:* To review and evaluate grant applications.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* February 20, 1997.

*Time:* 2 p.m.

*Place:* Parklawn, Room 9-101, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Donna Ricketts, Parklawn, Room 9-101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-3936.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* February 25, 1997.

*Time:* 1 p.m.

*Place:* Parklawn, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-4668.

*Contact Person:* Phyllis L. Zusman, Parklawn, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-4648.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* February 26, 1997.

*Time:* 2 p.m.

*Place:* Parklawn, Room 9-101, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Donna Ricketts, Parklawn, Room 9-101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-3936.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* March 11, 1997.

*Time:* 2 p.m.

*Place:* Parklawn, Room 9-101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-3936.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* March 19, 1997.

*Time:* 2 p.m.

*Place:* Parklawn, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Phyllis D. Artis, Parklawn, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-6470.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* March 26, 1997.

*Time:* 9 a.m.

*Place:* Parklawn, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Phyllis D. Artis, Parklawn, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-6470.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 4, 1997.

LaVerne Y. Stringfield,

*Committee Management Officer, NIH.*

[FR Doc. 97-3210 Filed 2-7-97; 8:45 am]

BILLING CODE 4140-01-M

### National Institute of Neurological Disorders and Stroke Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

*Date:* February 25, 1997.

*Time:* 11:00 a.m.

*Place:* National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.

*Contact Person:* Dr. Howard Weinstein, Scientific Review Administrator, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496-9223.

*Purpose/Agenda:* To review and evaluate one RFP 96-13 Contract Proposal.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: February 4, 1997.

LaVerne Y. Stringfield,

*NIH Committee Management Officer.*

[FR Doc. 97-3212 Filed 2-7-97; 8:45 am]

BILLING CODE 4140-01-M

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

*Agenda/Purpose:* To review and evaluate grant applications.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* February 11, 1997.

*Time:* 12:30 p.m.

*Place:* Parklawn, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Salvador H. Cuellar, Parklawn, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301-443-4868.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 4, 1997.

LaVerne Y. Stringfield,

*Committee Management Officer, NIH.*

[FR Doc. 97-3214 Filed 2-7-97; 8:45 am]

BILLING CODE 4410-01-M

### Substance Abuse and Mental Health Services Administration

#### Fiscal Year (FY) 1997 Funding Opportunity for Grants for Comprehensive Community Mental Health Services for Children and Their Families

**AGENCY:** Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, HHS.  
**ACTION:** Notice of funding availability.

**SUMMARY:** The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) announces that FY 1997 funds are available for grants for the following activity. This activity is discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available	Estimated Number of awards	Project period
Child MH Initiative .....	04/11/97	\$6-9 million	6-9	5 yrs.

Note: It is anticipated that additional notices of available funding opportunities in FY 1997 will be published by SAMHSA in the coming weeks.

FY 1997 funds for this activity were appropriated by the Congress under Public Law 104-208. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the Federal Register (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Center's activities address issues related to Healthy People 2000 objectives: To promote the physical, social, psychological, and economic well-being of adults with mental disorders and children and adolescents with or at risk for a serious emotional, behavioral, or mental disorder. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone: 202-512-1800).

**GENERAL INSTRUCTIONS:** Applicants must use application form PHS 5161-1 (Rev. 5/96; OMB No. 0937-0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications) and the PHS 5161-1 which includes Standard Form 424 (Face Page). Applications kits may be obtained from the organization specified in Section 4.

The PHS 5161-1 is also available electronically via SAMHSA's World Wide Web Home Page (address: <http://www.samhsa.gov>). Click on SAMHSA Funding Opportunities for instructions. You can also click on the address of the forms distribution Web Page for direct access.

The full text of the activity (i.e., the GFA) described in Section 4 is available electronically via the following:

SAMHSA's World Wide Web Home Page (address: <http://www.samhsa.gov>); SAMHSA's Bulletin Board (800-424-2294 or 301-443-0040; and the CMHS' World Wide Web Home Page (<http://www.mentalhealth.org>); and the CMHS

Knowledge Exchange Network (KEN) Electronic Bulletin Board (800-790-2647).

**APPLICATION SUBMISSION:** Applications must be submitted to: Center for Mental Health Services Programs, Division of Research Grants, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC-7710, Bethesda, MD 20892-7710.

Applicants who wish to use express mail or courier service should change the zip code to 20817.

**APPLICATION DEADLINES:** The deadline for receipt of applications is listed in the table above.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the receipt date or those sent to an address other than the address specified above will be returned to the applicant without review.

**FOR FURTHER INFORMATION CONTACT:** Requests for programmatic, technical, and/or business management information should be directed to the contact persons identified in Section 4.

**SUPPLEMENTARY INFORMATION:** To facilitate the use of this notice of funding availability, information has been organized, as outlined in the Table of Contents below:

Table of Contents

1. Program Background and Objectives
2. Special Concerns
3. Criteria for Review and Funding
  - 3.1 General Review Criteria
  - 3.2 Funding Criteria for Scored Applications
4. Specific FY 1997 Activity
  - Application Deadline
  - Purpose
  - Priorities
  - Eligible Applicants
  - Grants/Amounts
  - Catalog of Federal Domestic Assistance Number
  - Contacts
  - Application Kits
5. Public Health System Reporting Requirements
6. PHS Non-use of Tobacco Policy Statement
7. Executive Order 12372

## 1. Program Background and Objectives

The Center for Mental Health Services (CMHS) has been given a statutory mandate to take a national leadership role in the development and demonstration of improved mental health services. Toward that end, the Center facilitates the application of scientifically established findings and practice-based knowledge to prevent and treat mental disorders, improve access, reduce barriers and promote high quality, effective programs and services for people with, or at risk for, these disorders.

## 2. Special Concerns

None.

## 3. Criteria for Review and Funding

Competing applications requesting funding under the specific project activity in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Applications that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts. Applications will be assigned scores if they are considered to have sufficient merit for program staff to consider as candidates for funding.

### 3.1 General Criteria

As published in the Federal Register on July 2, 1993 (Vol. 58, No. 126), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

### 3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the IRG and the CMHS National Advisory Council review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

### 4. Specific FY 1997 Activity: Comprehensive Community Mental Health Services for Children and Their Families

- *Application Deadline:* April 11, 1997.

- *Purpose:* Under Section 561(a) of the Public Health Service Act grants will be awarded to implement, in one or more communities, a broad array of community-based and family-focused services for children with serious emotional disturbance and their families, including individualized case planning and coordination, and to enable communities to integrate child- and family-serving agencies, including health, mental health, substance abuse treatment, child welfare, education, and juvenile justice into a local comprehensive system of care. The statute requires that an evaluation of the system(s) of care implemented under the program be conducted and that it include, among other things, longitudinal studies of the outcomes of services provided by such systems.

The primary goal of the program is to successfully implement systems of care at the grant sites. A second goal after implementing systems of care, is evaluation of the outcomes of services delivered under the system. This will be accomplished through a national multi-site evaluation conducted under a separate contract and grantees will be required to cooperate with the multi-site evaluation contractor. The final goal of the program is to use the results of both the system development efforts of each service site and the results of the descriptive, process and outcome evaluation to shape future program direction with proven exemplary practices that work best for children and their families.

- *Priorities:* None.

- *Eligible Applicants:* Eligible entities include States (as defined in Section 2 of the PHS Act), political subdivisions of States, and Indian tribes or tribal organizations (as defined in Section 4(b) and Section 4(c) of the Indian Self-Determination and Education

Assistance Act). Applications from all State level, political subdivisions of States (e.g., counties, cities), Tribe or tribal organization child-serving agencies are allowed. In order for an entity to be eligible, a plan must be in place for the development of a system of care for community-based services for children with a serious emotional disturbance approved by the Secretary of the U.S. Department of Health and Human Services per Sec. 564(b) of the PHS Act. For the purposes of this program, an approved State Mental Health Plan for Children and Adolescents with Serious Emotional Disturbance, submitted under Pub. L. 102-321, will be accepted as such a plan.

- *Grants/Amount:* Approximately \$6-9 million will be available to support six (6) to nine (9) awards under this GFA in FY 1997. Actual funding will depend upon the availability of funds at the time of award. These grants are for a period of 5 years; it is anticipated that approximately \$1 million will be available to each grantee in year one; \$1 million in year two; \$2 million in year three, \$1.5 million in year four, and \$1.5 million in five. An applicant must arrange and demonstrate the availability of match of non-Federal funds in mandated ratios.

- *Catalog of Federal Domestic Assistance Number:* 93.104.

- *Program Contact:* For programmatic or technical assistance, contact: Gary DeCarolis, Chief, Child, Adolescent, and Family Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services/SAMHSA, Room 18-49, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1333/FAX (301) 443-3693, Internet: gdecarol@samhsa.gov.

- *Grants Management Contact:* For business management issues, contact: Steve Hudak, Division of Grants Management/OPS/SAMHSA, Room 15C-05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4456/FAX (301) 594-2336, Internet: shudak@samhsa.gov.

- *Application Kits:* For application kits, contact: National Mental Health Services, Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015, Voice: (800) 789-2647, TTY: (301) 443-9006, FAX: (301) 984-8796.

- *CMHS intends to sponsor two technical assistance workshops for potential applicants:* March 12-13 in Washington, DC, and March 17-18 in Denver, Colorado. For more information, contact: Ken Currier, Director, Technical Assistance Operations, National Resource Network

for Child and Family Mental Health Services, Washington Business Group on Health, 777 North Capitol Street, NE., Suite 800, Washington, DC 20002, (202) 408-9320/FAX (202) 408-9332, Internet: currier@wbgh.com.

### 5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

- a. A copy of the face page of the application (Standard form 424).
- b. A summary of the project (PHSIS), not to exceed one page, which provides:
  - (1) A description of the population to be served.
  - (2) A summary of the services to be provided.
  - (3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if the activity described above is/is not subject to the Public Health System Reporting Requirements.

### 6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products. In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

### 7. Executive Order 12372

Applications submitted in response to the FY 1997 activity listed above is

subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health

Services Administration, Parklawn Building, Room 17-89, 5600 Fishers Lane, Rockville, Maryland 20857. The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 4, 1997.  
Richard Kopanda,  
*Executive Officer, SAMHSA.*  
[FR Doc. 97-3193 Filed 2-7-97; 8:45 am]  
BILLING CODE 4162-20-P

**Fiscal Year (FY) 1997 Funding Opportunities for Knowledge Development and Application Grants and Cooperative Agreements**

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice of funding availability.

**SUMMARY:** The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) and Center for Substance Abuse Treatment (CSAT) announce the availability of FY 1997 funds for Knowledge Development and Application grants and cooperative agreements for the following activities. These activities are discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activities; potential applicants must obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available (million)	Estimated number of awards	Project period (years)
Community Action Grants .....	04/11/97	\$1.2	10	1
Criminal Justice Diversion .....	04/11/97	6.0	10-14	3
Adolescent Managed Care .....	04/11/97	3.0	6-7	3

Note: SAMHSA published a notice of available funding opportunities in FY 1997 in the Federal Register (Vol. 62, No. 16) on Friday, January 24, 1997. It anticipates publishing additional notices of available funding opportunities in the coming weeks.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1997 funds for activities discussed in this announcement were appropriated by the Congress under Public Law No. 104-208. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the Federal Register (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone: 202-512-1800).

**GENERAL INSTRUCTIONS:** Applicants must use application form PHS 5161-1 (Rev. 5/96; OMB No. 0937-0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications) and the PHS 5161-1 which includes Standard Form 424 (Face Page). Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161-1 is also available electronically via SAMHSA's World Wide Web Home Page (address: <http://www.samhsa.gov>). Click on SAMHSA Funding Opportunities for instructions. You can also click on the address of the

forms distribution Web Page for direct access.

The full text of each of the activities (i.e., the GFA) described in Section 4 is available electronically via the following:

SAMHSA's World Wide Web Home Page (address: <http://www.samhsa.gov>) and SAMHSA's Bulletin Board (800-424-2294 or 301-443-0040).

**APPLICATION SUBMISSION:** Applications must be submitted to: SAMHSA Programs, Division of Research Grants, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC-7710, Bethesda, Maryland 20892-7710\*

(\* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

**APPLICATION DEADLINES:** The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual activities.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

**FOR FURTHER INFORMATION CONTACT:**

Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 4).

**SUPPLEMENTARY INFORMATION:** To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline
- Purpose
- Priorities
- Eligible Applicants
- Grants/Cooperative Agreements/Amounts
- Catalog of Federal Domestic Assistance Number
- Contacts
- Application Kits

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    - 4.2.1 Cooperative Agreements on Criminal Justice Diversion Interventions for Individuals with Co-Occurring Mental Illness and Substance Abuse Disorders
    - 4.2.2 Cooperative Agreements for Managed Care and Adolescents
5. Public Health System Reporting Requirements
6. PHS Non-use of Tobacco Policy Statement
7. Executive Order 12372

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of

Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA is moving assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

The agency has transformed its demonstration grant programs from service-delivery projects to knowledge acquisition and application. For FY 1997, SAMHSA has developed an agenda of new programs designed to answer specific important policy-relevant questions. These questions, specified in this and subsequent Notices of Funding Availability, are designed to provide critical information to improve the Nation's mental health and substance abuse treatment and prevention services.

The agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1997 programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

2. Special Concerns

SAMHSA's FY 1997 Knowledge Development and Application activities discussed below do not provide funds for mental health and substance abuse treatment and prevention services except for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects will be considered nonresponsive. Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the Federal Register on July 2, 1993 (Vol. 58, No. 126), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council (if applicable) review process.

- Other funding criteria will include:
- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

#### 4. Special FY 1997 Substance Abuse and Mental Health Services Activities

##### 4.1 Grants

##### 4.1.1 Community Action Grants for Service Systems Change

- Application Deadline: April 11, 1997.
- Purpose: The Action Grant Program is intended to stimulate the adoption of exemplary practices through convening partners, building consensus, aiding in eliminating barriers, decision-support and adaptation of service models to meet local needs. Grants will not support direct funding of service delivery.

The Program is designed to encourage communities to identify and build consensus around exemplary service delivery practices that meet their own needs. A Program will be successful if a grantee can develop consensus among key stakeholders on the adaptations of the chosen exemplary practice needed for that community and on a plan for implementing the adapted practice.

The term "exemplary practice" is used instead of "best practice" to avoid the implication that any particular practice is best. The term exemplary practice connotes that the proposed practice has a reliable record of improving outcomes for those receiving the service. A proven outcome-based record of success will be a prerequisite to Federal support for adoption of a proposed exemplary practice.

Exemplary practices are limited to those that involve service delivery or the organization of services or supports and are limited to practices which are consistent with the concept of "systems of care." Grant funds may be used for any activity that is a part of the consensus building and decision-support process.

- Priorities: There are two subgroups in the target population. A project may focus on both of them, but CMHS anticipates that it generally will make sense to limit a project to only one. The subgroups are: (a) Adults with serious mental illness; and (b) children and adolescents with serious emotional disturbances and their families. It is recognized that many individuals who are in these categories suffer from, or are at risk of HIV infection, substance abuse and/or homelessness. Children and adolescents transitioning into adulthood often "fall through the cracks" in service systems, and it is the intent here to include them. In some cases, it may

be appropriate to focus only on those in transition to adulthood.

- Eligible Applicants: Applications for grants will be accepted from public and private entities. Public entities include State and local government agencies, and federally designated Indian tribes and tribal organizations. Private entities include those organized as not-for-profits and those organized as for-profits. Such organizations include, but are not necessarily limited to, those responsible for service delivery policy, those representing consumers and families, those providing services to the target population, and those responsible for training and accrediting service providers. Applicants must demonstrate that they are in a position to engage all the key stakeholders in the proposed consensus building/decision making process. CMHS encourages applications from consumer and family organizations.

- Grants/Amounts: An estimated \$1.2 million is available under the Action Grant Program. Award amounts will range from approximately \$50,000 to not more than \$150,000. These funds will support approximately 10 or more grant awards in FY 1997. Actual funding levels will depend upon the availability of appropriated funds.

- Catalog of Federal Domestic Assistance Number: 93.230
- Program Contact: For programmatic or technical information regarding Adult Serious Mentally Ill Populations, contact: Neal B. Brown or Santo (Buddy) Ruiz, Community Support Programs Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services, SAMHSA, 5600 Fishers Lane, Room 11C-22, Rockville, MD 20857, (301) 443-3653.

For programmatic or technical information regarding Homeless Populations, contact: Jim Morrow, Homeless Program Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services, SAMHSA, 5600 Fishers Lane, Room 11C-05, Rockville, MD 20857, (301) 443-3706.

For programmatic or technical information regarding Children and Adolescents with Serious Emotional Disorders and their Families, contact: William Quinlan, Child, Adolescents and Family Services Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services, SAMHSA, 5600 Fishers Lane, Room 18-49, Rockville, MD 20857, (301) 443-1333.

- Grants Management Contact: For business management assistance contact: LouEllen Rice, Division of

Grants Management, OPS, SAMHSA, Parklawn Building, Room 15C-05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4456.

- Application Kits: Application kits are available from: Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015, Voice: (800) 789-2647, TTY: (301) 443-9006, FAX: (301) 984-8796.

The full text of the GFA only is available electronically via the CMHS' World Wide Web Home Page (<http://www.mentalhealth.org>); and the CMHS KEN Bulletin Board (800-790-2647).

##### 4.2 Cooperative Agreements

Two major activities for SAMHSA cooperative agreement programs are discussed below. Substantive Federal programmatic involvement is required in cooperative agreement programs. Federal involvement will include planning, guidance, coordination, and participating in programmatic activities (e.g., participation in publication of findings and on steering committees). Periodic meetings, conferences and/or communications with the award recipients may be held to review mutually agreed-upon goals and objectives and to assess progress. Additional details on the degree of Federal programmatic involvement will be included in the application guidance materials.

##### 4.2.1 Cooperative Agreements on Criminal Justice Diversion Interventions for Individuals With Co-occurring Mental Illness and Substance Abuse Disorders

- Application deadline: April 11, 1997.
- Purpose: Cooperative agreements will be awarded to support Study Sites and a Coordinating Center to evaluate the relative effectiveness of a variety of pre- and post-booking police diversion and criminal justice intervention models for individuals with co-occurring serious mental illnesses and alcohol or other drug use disorders (hereafter abbreviated as substance use disorders). The primary outcomes to be assessed include, but are not limited to: criminal recidivism, time incarcerated, psychiatric status, functional status, continuity of participation in treatment, homelessness, emergency treatment utilization, and frequency of substance abuse.

The primary goal of this CMHS/CSAT collaborative program is to answer the following questions:

- Are there differences in outcomes for non-diverted individuals compared to diverted individuals?



- What is the relative effectiveness of pre- and post-booking diversion program models for individuals with co-occurring disorders?

Secondary goals of the collaborative program are to document and evaluate established police diversion and criminal justice intervention programs in order to determine:

- To what extent diversion affects public safety as measured by criminal recidivism?
- What is the relative impact of specific components of the various diversion models?
- What are the direct costs of the intervention?
- What individual characteristics are related to intervention effectiveness?
- Priorities: None.
- Eligible Applicants: *For Project Sites*: Public entities, including State and local government agencies, communities, cities, federally designated Indian tribes and Indian organizations, and domestic private nonprofit and for-profit organizations are eligible to apply. Entities that are interested in beginning new programs are not eligible to apply under this announcement. Existing contracts or memoranda of agreement or letters of commitment from each partner agency/provider are also required. Each applicant, if not the criminal justice system itself, must include the criminal justice system as a partner. This partnership will ensure that the entity primarily responsible for the management and disposition of criminal cases will be intimately involved in the project.

*For Coordinating Center*: Applications may be submitted by public organizations, such as units of State, county, or other local governments, and by domestic private nonprofit and for-profit organizations. Public entities include federally designated Indian tribes and tribal organizations. Communities (i.e., cities, towns, counties, boroughs, parishes, or equivalent local governments) are eligible to apply. Private entities include those organized as not-for-profit community-based organizations, colleges, universities and consumer operated organizations.

Applicants may apply for either a Study Site or the Coordinating Center, but not both.

- Cooperative Agreements/Amounts: Approximately \$6 million dollars will be available to support 10–14 project Study Sites and one Coordinating Center in FY 1997. The amount of all awards, including the Coordinating Center, will range from \$350,000 to \$500,000. Actual funding levels will

depend on the availability of appropriated funds.

- Catalog of Federal Domestic Assistance Number: 93.230
- Program Contact: For programmatic or technical assistance contact: Neal B. Brown, M.P.A., Chief, or Mary L. Westcott, Ph.D., Community Support Programs Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services, SAMHSA, 5600 Fishers Lane, Room 11C–22, Rockville, Maryland 20857, 301–443–3653.
- Susan Salasin, Director of Mental Health and Criminal Justice Program, Special Programs Development Branch, Division of Program Development, Special Populations and Projects, Center for Mental Health Services, SAMHSA, 5600 Fishers Lane, Room 18C–05, Rockville, Maryland 20857, (301) 443–7790.
- Patricia Rye, J.D., M.S.W., Systems Integration and Development Branch, Division of Practice and Systems Integration, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 7th floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6256.

- Grants Management Contact: For business management assistance contact: LouEllen Rice, Division of Grants Management, OPS, SAMHSA, Parklawn Building, Room Number 15C–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4456.
- Application Kits: Application Kits are available from: Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015, Voice: (800) 789–2647, TTY: (301) 443–9006, FAX: (301) 984–8796.

The full text of the GFA only is available electronically via the CMHS' World Wide Web Home Page (<http://www.mentalhealth.org>); and the CMHS KEN Bulletin Board (800–790–2647).

#### 4.2.2 Cooperative Agreements for Managed Care and Adolescents

- Application Deadline: April 11, 1997.
- Purpose: This program is to enhance knowledge about how different managed care models in the public sector affect the provision of substance abuse (alcohol and other drugs) treatment services for adolescents, ages 12–18. This is a re-issuance of a previous Guidance for Applicants (GFA) that focused on managed care for adults who are substance abusers, individuals with severe mental illness, and categorically-eligible women and children. This new GFA includes adolescent substance abusers who in addition may be involved with the

juvenile justice system and/or may be receiving services in the mental health system.

The purpose of this cooperative agreement program is to generate knowledge on:

- The types of substance abuse treatment services that are provided in managed care environments for adolescents who are eligible for treatment in a publicly-funded adolescent substance abuse treatment program; and
  - The effects of managed care on the use, cost, and outcomes of substance abuse treatment services for high-priority, publicly-funded (in the Welfare system, Medicaid, etc.) adolescents.
- Applications are being solicited for Study Sites to conduct an investigation on a single well-defined approach to managed care for the provision of substance abuse treatment services and to collaborate with other program participants within this population and across populations in developing generalized findings across sites.

An application is also being solicited from the Human Services Research Institute (HSRI) to serve as the Coordinating Center for this program.

The following types of questions should be considered by applicants:

- What is the impact of managed care on utilization, outcomes and costs for substance abuse treatment of adolescents? Does the impact vary for important subgroups within the target population (e.g., racial/ethnic minority populations, adolescents involved with the juvenile justice system, dually diagnosed adolescents, adolescents with physical and/or mental disabilities)?
- What is the experience of providers, families, and adolescent consumers with managed care plans, e.g., how satisfied are they with their managed care plans?

- Are there different patterns of services provided to adolescent enrollees under managed care arrangements than in fee-for-service plans? For example, are there differences in the early intervention, rehabilitation, or wrap around services being provided to adolescents?
- Are there differences in contacts with the juvenile justice system and use of mental health services for adolescent enrollees under managed care arrangements than in fee-for-service plans?

These questions should all be addressed relative to the experiences of some comparison group.

Across Study Sites, additional questions should be considered.

- Priorities: The managed care plan to be studied must already be in place and

in full operation for the selected target population. That is, applicants must be engaged in, or have a binding agreement with, an operational, fully funded managed care program. CSAT is interested in examining whether some strategies for organizing providers are better than others. At a minimum, applicants must document access (either directly or through a formal written agreement) to a comparison group of publicly-funded adolescent clients receiving substance abuse treatment services in a non-managed care environment.

- **Eligible Applicants:** Applications for Study Sites may be submitted by organizations, such as units of State, county or local governments, and by domestic private nonprofit and for-profit organizations such as community-based organizations, universities, colleges and hospitals.

Eligibility for the Coordinating Center has been limited to Human Services Research Institute (HSRI). HSRI is in a unique position to operate the Coordinating Center described in this announcement. As the current Coordinating Center for SAMHSA's Managed Care for Vulnerable Populations study, HSRI has worked collaboratively with current grantees on design issues and common protocols within and across populations, developed a managed care typology, developed data collection and verification processes that ensure the quality of data, assisted grantees in redesigning plans as necessary, and has in place a structure for data analysis and report writing. HSRI will integrate the new adolescent Study Sites into this ongoing process.

It is critical to CSAT and SAMHSA that the new projects for managed care and adolescent substance abusing populations be integrated into the existing study in a short period of time. In order for cross-site analyses to benefit from the data and information developed by the new projects, grantees will need to receive guidance and technical assistance in developing study designs, sampling plans, and data collection and verification processes that mirror the existing study. A typology for the characterization of the managed care interventions at each site has been under formulation by HSRI and the existing grantees. The new adolescent projects will be at a significant disadvantage if they are not able to utilize the framework and methodologies that have already been developed. Because of the crucial short timeframe involved, and because HSRI has been central in the development of the current Managed Care for

Vulnerable Populations study, they are the only organization that can meet the requirements for integrating the new adolescent projects into the already ongoing process.

- **Cooperative Agreements/Amounts:** It is estimated that approximately \$3 million will be available to support 5–6 Study Site awards and one Coordinating Center in FY 1997. Each Study Site cooperative agreement is estimated to be approximately \$450,000 per year in total costs. The Coordinating Center award is estimated to be approximately \$300,000 per year in total costs. Actual funding levels will depend on the availability of appropriated funds.

- **Catalog of Federal Domestic Assistance Number:** 93.230
- **Program Contact:** For programmatic or technical assistance contact: Janice Berger, ACSW, MPH, Program Analyst, Office of Managed Care Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 7th Floor, (301) 443–6534; or Mady Chalk, Ph.D., Director, Office of Managed Care, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 6th Floor, (301) 443–8796

- **Grants Management Contact:** For business management assistance contact: Ms. Peggy Jones, Division of Grants Management, OPS, SAMHSA, Rockwall II, 6th Floor, (301) 443–9360.

The mailing address for all of the above individuals is 5600 Fishers Lane, Rockville, Maryland 20857

- **Application Kits:** Application kits are available from: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, MD 20847–2345, (800) 729–6686.

#### 5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

- a. A copy of the face page of the application (Standard form 424).
- b. A summary of the project (PHSIS), not to exceed one page, which provides:

- (1) A description of the population to be served.

- (2) A summary of the services to be provided.

- (3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1997 activity described above is/is not subject to the Public Health System Reporting Requirements.

#### 6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Specific application guidance materials may include more detailed guidance as to how a Center will implement SAMHSA's policy on promoting the non-use of tobacco.

#### 7. Executive Order 12372

Applications submitted in response to all FY 1997 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn

Building, Room 17-89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 4, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97-3194 Filed 2-7-97; 8:45 am]

BILLING CODE 4162-20-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Endangered and Threatened Species Permit Applications**

**AGENCY:** Fish and Wildlife, Interior.

**ACTION:** Notice of permits issued.

**SUMMARY:** Notice is hereby given that between January 1 and December 31, 1996, Region 1 of the U.S. Fish and Wildlife Service issued the following permits pursuant to section 10(a)(1)(A)

of the Endangered Species Act of 1973, as amended (Act) for take or interstate commerce of endangered species for scientific purposes or to enhance the propagation or survival of the affected species. Each permit was issued only after it was determined that the application was submitted in good faith, and was consistent with the Act and applicable regulations.

Name	Permit No.	Issuance date
Gibson & Skordal Wetlands Consultants	795935	1/30/96
Dr. Rudolph Mattoni	685022	2/9/96
Mary V. Price	802453	3/6/96
Dr. Sonja I. Yoerg	803610	3/7/96
Tierra Madre Consultants	785108	4/29/96
Hydrozoology	796280	5/20/96
Daniel E. Varland	790136	5/20/96
Clifford M. Anderson	793646	5/24/96
Pacific Southwest Biological Services	778100	5/28/96
Assistant Regional Director-Ecological Services, Region, U.S. Fish and Wildlife Service	702631	6/17/96
Idaho Power Company	799558	6/19/96
Mark A. Holmgren	814216	7/3/96
Richard D. Friesen	775869	7/10/96
William Haas	779910	7/16/96
Dr. Phillip Brylski	787041	7/16/96
Resource Management International, Inc	677215	7/17/96
Harmsworth Associates	810768	7/17/96
Dr. Philip Behrends	756268	7/17/96
Scott Tremor	787716	7/17/96
Elaine K. Harding-Smith	802445	7/25/96
Robin Church	812206	7/25/96
Michael W. Skenfield	798015	7/25/96
Dr. Leroy McClenaghan	809230	7/31/96
Kimberly Miller	802447	8/2/96
Franklin Gress	766018	8/2/96
Robert Hamilton	799557	8/6/96
Chris Wilcox	797259	8/9/96
California Department of Transportation	783010	8/9/96
Thomas Leslie	781384	8/9/96
Kern River Research Center	801821	8/9/96
Peter Famolaro	813431	8/9/96
Michelle Caruana	810193	8/12/96
Peter H. Bloom	787376	8/14/96
H. T. Harvey and Associates	797267	8/14/96
Resource Conservation District of the Santa Monica Mountains	811188	8/19/96
Ingri Quon	812740	8/19/96
William J. Vanherweg	787644	8/21/96
Kootenai Tribe of Idaho	798744	8/23/96
Anita Hayworth	781084	8/29/96
Brock Ortega	813545	8/29/96
Harold Wier	813548	8/29/96
Jeffrey Wells	780565	8/30/96
Lisa Embree	780692	8/30/96
Julie Vanderwier	812792	8/30/96
Sonoma County Water Agency	808241	9/6/96
Bureau of Land Management, Las Vegas District	811081	9/6/96
Michael Dole Bumgardner	785564	9/6/96
Scott Cameron	808242	9/20/96
Pruett, Lawrence, & Associates	745284	9/26/96
Rosemary Ann Thompson	815144	10/4/96
Mark Webb	794783	10/7/96
Peregrine Fund, Incorporated	686387	10/7/96
Santa Barbara Museum of Natural History	799679	10/7/96
Dr. Douglas Kelt	816204	10/10/96
Dr. Clifford Morden	811049	10/21/96
Kathleen Keane	787484	10/21/96

Name	Permit No.	Issuance date
Philip Unitt .....	813775	10/21/96
Claude Edwards .....	814215	10/21/96
Dr. Rudolf Mattoni .....	685022	10/21/96
Cynthia Jones .....	811615	11/1/96
Michael Brandman Associates .....	782274	11/8/96
Dr. Camm C. Swift .....	793644	11/15/96
East Bay Regional Park District .....	817400	11/15/96
BIO/West, Incorporated .....	809232	11/15/96
Center for Marine Biotechnology .....	782701	11/20/96
Paul Scheerer .....	818627	11/20/96
Amy Leverett .....	818321	12/9/96
Nancy Rena Siepel .....	817991	12/12/96
David Germano .....	749872	12/12/96
Center for Conservation Biology .....	810376	12/16/96
James Greaves .....	769931	12/16/96
Charles J. Striplen .....	795288	12/17/96
California Desert Studies Consortium .....	798025	12/17/96
Pismo Dunes State Vehicular Recreation Area .....	815214	12/17/96

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Frie, U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (Telephone: 503-231-2063; FAX: 503-231-6243).

Dated: February 3, 1997.

Thomas J. Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97-3182 Filed 2-7-97; 8:45 am]

BILLING CODE 4310-55-P

PRT-824727

*Applicant:* Dr. Oscar Pung, Georgia Southern University, Statesboro, Georgia

The applicant requests a permit to take (harass specimens captured by previously authorized permittees in order to sample blood for endoparasites, and harass in order to collect ectoparasites from nest cavities after the young have fledged) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range at Fort Stewart, Chatham, Liberty, Long, Bryan, Tattnall, and Evans Counties, Georgia for the purpose of enhancement of survival of the species.

PRT-824729

*Applicant:* D. Patrick Ferral, Ferral Environmental Services Inc., Camden, South Carolina

The applicant requests a permit to take (capture and harass for banding, translocation, and nest cavity augmentation) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range in North Carolina, South Carolina, Georgia, Florida, Alabama, Texas, and Louisiana for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by March 12, 1997.

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: January 31, 1997.

C. Monty Halcomb,

Acting Regional Director, Region 4, Atlanta, Georgia.

[FR Doc. 97-3183 Filed 2-7-97; 8:45 am]

BILLING CODE 4310-55-P

**Bureau of Land Management**

[NV-931-1430-01; N-23262, N-23274, N-23275, N-23276]

**Termination of Desert Land Entry Classification; Nevada**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action terminates the desert land classification dated July 23, 1987, for N-23262, N-23274, N-23275, and N-23276. The land will be opened to the operation of the public land laws, including location and entry under the mining laws.

**EFFECTIVE DATE:** March 12, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-785-6532.

**SUPPLEMENTARY INFORMATION:** The desert land classification for N-23262, N-23274, N-23275, and N-23276 was made on July 23, 1987, pursuant to Section 7 of the Taylor Grazing Act (43 U.S.C., et. seq.). When entry to the land was allowed, the land became segregated from all other forms of appropriation under the public land laws, including location and entry

**Notice of Receipt of Application for Endangered Species 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-824723

*Applicant:* Dr. Reed Bowman, Archbold Biological Station, Lake Placid, Florida

The applicant requests a permit to take (capture, band, conduct population surveys, translocate, and augment cavity trees) the endangered red-cockaded woodpecker, *Picoides borealis*, and to take (capture, band, and temporarily retain for metabolic research) the threatened Florida scrub jay, *Aphelocoma coerulescens coerulescens*, throughout the species' ranges at Avon Park Air Force Range, Polk and Highland Counties, Florida, and in Brevard County, Florida for the purpose of enhancement of survival of these species.

under the mining laws. All four entries failed to file the first year annual proof as required and the entries were canceled by decision dated August 7, 1996.

Pursuant to Section 7 of the Taylor Grazing Act (43 U.S.C., et. seq.), the desert land classification for N-23262, N-23274, N-23275, and N-23276, that was made on July 23, 1987, is hereby terminated for the following described land:

Mount Diablo Meridian, Nevada

T. 29 N., R. 55 E.,

Sec. 11, N $\frac{1}{2}$  (N-23276);

Sec. 11, S $\frac{1}{2}$  (N-23262);

Sec. 12, N $\frac{1}{2}$  (N-23275);

Sec. 12, S $\frac{1}{2}$  (N-23274).

The area described contains 1,280 acres in Elko County.

1. At 9 a.m. on March 12, 1997, the land described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 12, 1997, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. At 9 a.m. on March 12, 1997, the land described above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: January 22, 1997.

William K. Stowers,

*Lands Team Lead.*

[FR Doc. 97-3145 Filed 2-7-97; 8:45 am]

BILLING CODE 4310-HC-P

[IDI-29331]

**Notice of Action; Amendment of the Little Lost-Birch Creek Management Framework Plan (MFP)/Notice of Realty Action (NORA), Direct Sale of Public Land in Butte County, ID**

**AGENCY:** Bureau of Land Management, Interior.

**NOTICE:** Notice is hereby given that the BLM has amended the Idaho Falls District's Little Lost-Birch Creek MFP to allow for direct sale of 60 acres of public land to Butte County.

**SUMMARY:** The following described lands have been examined and through the public supported land use planning process have been determined to be suitable for direct sale to Butte County pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1716).

T. 5 N., R. 29 E., BM

Sec. 4, N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ,

N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Sec. 5, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ ;

The purpose of this land sale is to allow Butte County the opportunity to acquire public land in the vicinity of the county's Howe Landfill including Butte County's current landfill operation. Sale of the land would serve important public objectives for Butte County.

The land patent, when issued, would contain a reservation to the United States for ditches and canals.

**SUPPLEMENTARY INFORMATION:** Detailed information concerning the conditions of the direct sale can be obtained by contacting Bruce Bash, Realty Specialist, at (208) 524-7521. Upon publication of this notice in the Federal Register, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA.

**Planning Protest**

Any party who participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the Director (480), Bureau of Land Management, Resources Planning Team, 1849 "C" Street, N.W., Washington, D.C., 20240, within 30 days of publication of this notice.

**Land Sale Comments**

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the land

sale to Joe Kraayenbrink, Acting Area Manager, Bureau of Land Management, Big Butte Resource Area, 1405 Hollipark Dr., Idaho Falls, Idaho 83401.

Objections will be reviewed by the BLM Idaho Falls District Manager who may sustain, vacate, or modify this realty action. In the absence of any planning protests or objections regarding the land sale, this realty action will become the final determination of the Department of the Interior and the planning amendment will be in effect.

Dated: January 27, 1997.

Joe Kraayenbrink,

*Acting Area Manager, Big Butte Resource Area.*

[FR Doc. 97-3201 Filed 2-7-97; 8:45 am]

BILLING CODE 4310-GG-P

[CA-010-1220-00]

**Meeting of the Central California Resource Advisory Council**

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Meeting of the Central California Resource Advisory Council.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Resource Advisory Council for central California will meet in Bakersfield, California.

**DATES:** February 21-22, 1997.

**ADDRESSES:** Four Points Sheraton Hotel, 5101 California Street, Bakersfield.

**SUPPLEMENTARY INFORMATION:**

The 12 member Central California Resource Advisory Council is appointed by the Secretary of the Interior to advise the Bureau of Land Management on public land issues. The Council will meet on Friday and Saturday, February 21 and 22, 1997 beginning at 8:00 a.m. both days to discuss the BLM recreation program. There will be a field trip to Keysville on the Kern River on Friday afternoon, February 21, and a public comment period beginning at 1 p.m. Saturday, February 22. The public may discuss any public land issue during the public comment period, and written comments will be accepted during the meeting or at the address below. The entire meeting is open to the public. Anyone wishing to take part in the field trip must provide their own transportation.

**FOR FURTHER INFORMATION CONTACT:**

Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 805-391-6010.

Dated: January 31, 1997.

Ron Fellows,

*District Manager.*

[FR Doc. 97-3202 Filed 2-7-97; 8:45 am]

BILLING CODE 4310-40-M

[ID-957-1430-00]

### Idaho: Filing of Plats of Survey; Idaho

The plat, in 5 sheets, of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. January 29, 1997.

The plat, in 5 sheets, representing the dependent resurvey of portions of the subdivisional lines, certain segregation and mineral surveys in sections 17, 18, 19, 20, 21, and 29, and the subdivision of section 20, the subdivision of section 19, and correcting geographic coordinate values for certain corners as shown in the field notes approved July 18, 1995, T. 48 N., R. 2 E., Boise Meridian, Idaho, Group No. 859, was accepted January 29, 1997.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquires concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709-1657.

Dated: January 29, 1997.

Duane E. Olsen,

*Chief, Cadastral Surveyor for Idaho.*

[FR Doc. 97-3203 Filed 2-7-97; 8:45 am]

BILLING CODE 4310-GG-M

### Bureau of Reclamation

#### Quarterly Status Report of Water Service and Repayment Contract Negotiations

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of proposed contractual actions pending through December 31, 1996, and contract actions that have been completed or discontinued since the last publication of this notice on October 28, 1996. From the date of this publication, future quarterly notices during this calendar year will be limited to modified, new, completed or discontinued contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for

capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the Federal Register and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

**ADDRESSES:** The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

**FOR FURTHER INFORMATION CONTACT:** Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225-0007; telephone 303-236-1061 extension 224.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1997. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances,

congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

#### Acronym Definitions Used Herein

(BCP) Boulder Canyon Project  
 (CAP) Central Arizona Project  
 (CUP) Central Utah Project  
 (CVP) Central Valley Project  
 (CRSP) Colorado River Storage Project  
 (D&MC) Drainage and Minor Construction  
 (FR) Federal Register

(IDD) Irrigation and Drainage District  
 (ID) Irrigation District  
 (M&I) Municipal and Industrial  
 (O&M) Operation and Maintenance  
 (P-SMBP) Pick-Sloan Missouri Basin Program  
 (R&B) Rehabilitation and Betterment  
 (PPR) Present Perfected Right  
 (RRA) Reclamation Reform Act  
 (NEPA) National Environmental Policy Act  
 (SRPA) Small Reclamation Projects Act  
 (WCUA) Water Conservation and Utilization Act  
 (WD) Water District

*Pacific Northwest Region:* Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706-1234, telephone 208-378-5346.

1. Irrigation, M&I, and Miscellaneous Water Users; Columbia Basin, Crooked River, Deschutes, Minidoka, Rathdrum Prairie, Rogue River Basin, and Umatilla Projects; Idaho, Oregon, and Washington: Temporary or interim repayment and water service contracts for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; \$8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; \$8 per acre-foot per annum.

4. Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Parsons Ditch Company, Poplar ID, Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat ID, Wapinitia Project, Oregon; Roza ID, Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

5. Bridgeport ID, Chief Joseph Dam Project, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

6. Ochoco ID and Various Individual Spaceholders, Crooked River Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Arthur R. Bowman Dam.

7. Sidney Irrigation Cooperative, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 2,300 acre-feet.

8. Douglas County, Milltown Hill Project, Oregon: SRPA loan repayment

contract; proposed combination loan and grant obligation of approximately \$31 million.

9. Palmer Creek Water District Improvement Company, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 13,000 acre-feet.

10. U.S. Fish and Wildlife Service, Boise Project, Idaho: Irrigation water service contract for the use of approximately 200 acre-feet of storage space annually in Anderson Ranch Reservoir. Water to be used on crops for wildlife mitigation purposes.

11. North Unit ID, Deschutes Project, Oregon: Long-term municipal water service contract for provision of approximately 125 acre-feet annually from the project water supply to the city of Madras.

12. Willamette Basin water users, Willamette Basin Project, Oregon: Two water service contracts for the exchange of up to 225 acre-feet of water for diversion above project reservoirs.

13. Lewiston Orchards ID, Lewiston Orchards Project, Idaho: Repayment contract for reimbursable cost of dam safety repairs to Reservoir "A."

14. North Unit ID, Deschutes Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Wickiup Dam.

15. Stanfield and Westland IDs and 69 individual contractors, Umatilla Project, Oregon: Repayment contracts for reimbursable cost of dam safety repairs to McKay Dam.

16. North Unit ID, Deschutes Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to convey nonproject water.

17. South Boise Mutual Irrigation Company, Ltd., and United Water Idaho, Boise Project, Idaho: Agreement amending contracts to approve the acquisition and municipal use of Anderson Ranch Reservoir water by United Water Idaho, and the transfer of Luck Peak Reservoir water to the United States.

18. Baker Valley ID, Baker Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to store nonproject water.

19. Okanogan ID, Okanogan Project, Washington: Safety of dams contract to repay districts' share of cost to install an Early Warning System.

20. Rogue River Valley and Medford IDs, Rogue River Basin Project, Oregon: Safety of dams contract to repay each districts' share of cost to repair Fish Lake Dam.

21. Hermiston, Stanfield, Westland, and West Extension IDs, Umatilla

Project, Oregon: Temporary contracts to provide water service for 1997 to lands lying outside of their boundaries.

22. Burley ID, Minidoka Project, Idaho: Warren Act contract with cost of service charge to allow for use of project facilities to convey nonproject water.

23. JELD-WEN, Inc., Yakima Project, Washington: Long-term water exchange contract for assignment of Teanaway River water rights to Reclamation for instream flow use in exchange for annual use of up to 1,840 acre-feet of water from Cle Elum Reservoir for a proposed resort development.

24. J. R. Simplot Company, Boise Project, Idaho: Long-term contract for 3,000 acre-feet of Anderson Ranch Reservoir storage for M&I use.

25. Eagle Island Water Users Association, Inc., Boise Project, Idaho: Amendment and partial rescission of water service contract to reduce the Association's spaceholding in Lucky Peak Reservoir by up to 5,300 acre-feet, thereby allowing use of this space by Reclamation for flow augmentation.

26. Milner ID, Minidoka-Palisades Projects, Idaho: Amendment and partial rescission of storage contracts to reduce the districts' spaceholding in Palisades Reservoir by up to 5,162 acre-feet, thereby allowing use of this space by Reclamation for flow augmentation.

*Mid-Pacific Region:* Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825-1898, telephone 916-979-2401.

1. Tuolumne Utility District (formerly Tuolumne Regional WD), CVP, California: Water service contract for up to 9,000 acre-feet from New Melones Reservoir.

2. Irrigation Water Districts, Individual Irrigators, M&I and Miscellaneous Water Users, Mid-Pacific Region Projects other than CVP: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet annually. *Note.* Copies of the standard forms of temporary water service contracts for the various types of service are available upon written request from the Regional Director at the address shown above.

3. Contractors from the American River Division, Buchanan Division, Cross Valley Canal, Delta Division, Friant Division, Hidden Division, Sacramento River Division, Shasta Division, and Trinity River Division, CVP, California: Renewal of existing

long-term water service contracts with contractors whose contracts expire between 1997 and 1998; water quantities for these contracts total in excess of 1.7M acre-feet. These contract actions will be accomplished through interim renewal contracts pursuant to Pub. L. 102-575.

4. Redwood Valley County WD, SRPA, California: District is considering restructuring the repayment schedule pursuant to Public Law 100-516 or initiating new legislation to prepay the loan at a discounted rate. Prepayment option under Public Law 102-575 has expired.

5. Truckee Carson ID, Newlands Project, Nevada: New contract for the O&M of Newlands Project facilities. The United States terminated the original contract, and this was upheld by the U.S. District Court in Nevada on August 17, 1983.

6. Sacramento River Water Rights Contractors, CVP, California: Contract amendment for assignment under voluntary land ownership transfers to provide for the current CVP water rates and update standard contract articles.

7. Naval Air Station and Truckee Carson ID, Newlands Project, Nevada: Amend water service agreement No. 14-06-400-1024 for the use of project water on Naval Air Station land.

8. El Dorado County Water Agency, San Juan WD, and Sacramento County Water Agency, CVP, California: M&I water service contract to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan WD, and 22,000 acre-feet for Sacramento County Water Agency, authorized by Pub. L. 101-514.

9. U.S. Fish and Wildlife Service, California Department of Fish and Game, Grassland WD, CVP, California: Water service contracts to provide water supplies for refuges and private wetlands within the CVP pursuant to Federal Reclamation Laws; exchange agreements and wheeling contracts to deliver some of the increased refuge water supplies; quantity to be contracted for is approximately 450,000 acre-feet.

10. Mountain Gate Community Services District, CVP, California: Amendment of existing long-term water service contract to include right to renew. This amendment will also conform the contract to current Reclamation law, including Pub. L. 102-575.

11. Santa Barbara County Water Agency: Repayment contract for safety of dams work on Bradbury Dam.

12. Central Valley Project Service Area, California: Temporary water

purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by the Central Valley Project Improvement Act for terms of up to 3 years.

13. Napa County Flood Control and Water Conservation District, Solano Project, California: Amend water service contract to decrease quantity.

14. City of Roseville, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water provided from the Placer County Water Agency. This contract will allow CVP facilities to be used to deliver nonproject water to the City of Roseville for use within their service area.

15. Sacramento Municipal Utility District, CVP, California: Amendment of existing water service contract to allow for additional points of diversion, and assignment of up to 15,000 acre-feet of project water to the Sacramento County Water Agency. The amended contract will conform to current Reclamation law.

16. Solano County Water Agency and Solano ID, Solano Project, California: Contract to transfer responsibility for O&M of Monticello Dam, Putah Diversion Dam, Headworks of Putah South Canal, and Parshall Flume at Milepost 0.18 of Putah South Canal to Solano ID and provide that the Solano County Water Agency shall provide the funds necessary for O&M of the facilities.

17. Mercy Springs WD, CVP, California: Assignment of Mercy Springs WD's water service contract to Pajaro Valley Water Management Agency. The assignment will provide for delivery of up to 13,300 acre-feet annually of water to the Agency from the CVP for agricultural purposes.

18. Santa Clara Valley WD, CVP, California: Agreement for the conditional reallocation of a portion of Santa Clara Valley WD's annual CVP contract water supply to San Luis and Delta-Mendota Water Authority members. The purpose of the conditional reallocation is to improve overall management and establishment of more reliable water supplies without imposing additional demands or operation changes upon the CVP.

19. Central Coast Water Authority, Cachuma Project, California: Amendment to the Warren Act contract to change the definition of contract year. This amendment will make the Warren Act contract consistent with the contract year in the Santa Barbara County Water Agency's renewed water service contract.

20. Santa Barbara County Water Agency, Cachuma Project, California:

Contract to transfer responsibility for O&M and funding of certain Cachuma Project facilities to the member units.

21. Black Butte Dam and Lake, Sacramento River Diversion, CVP, California: A proposed amendment of Stony Creek WD's water service contract, No. 2-07-20-W0261, to allow the contractor to change from paying for all Project water, whether used or not, to paying only for Project water scheduled or delivered.

22. Sacramento River Water Rights Contractors, CVP, California: A proposed exchange agreement with M&T, Inc., to take its Butte Creek water rights from the Sacramento River.

The following contract actions have been completed in the Mid-Pacific Region since this notice was last published on October 28, 1996.

1. (5) Truckee Carson ID, Newlands Project, Nevada: New contract for the O&M of Newlands Project facilities. The United States terminated the original contract, and this was upheld by the U.S. District Court in Nevada on August 17, 1983. Action: Contract No. 7-07-20-X0348 executed on November 25, 1996.

2. (20) Solano County Water Agency and Solano ID, Solano Project, California: Contract to transfer responsibility for O&M of Monticello Dam, Putah Diversion Dam, Headworks of Putah South Canal, and Parshall Flume at Milepost 0.18 of Putah South Canal to Solano ID and provide that the Solano County Water Agency shall provide the funds necessary for O&M of the facilities. Action: Contract No. 7-07-20-X0347 executed on November 20, 1996.

*Lower Colorado Region:* Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006-1470, telephone 702-293-8536.

1. Milton and Jean Phillips, Kenneth or Ann Easterday, Robert E. Harp, Cameron Brothers Construction Co., Ogram Farms, Bruce Church, Inc., Sturges Farms, Inc., Sunkist Growers, Inc., Clayton Farms, BCP, Arizona: Water service contracts, as recommended by Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to an additional 15,557 acre-feet per year total.

2. Arizona State Land Department, State of Arizona, BCP, Arizona: Contract for 6,607 acre-feet per year of Colorado River water for agricultural use and related purposes on State-owned land. This contract action reflects an increase in a prior contract recommendation in the amount of 6,292 acre-feet per year.

3. Armon Curtis, Arlin Dulin, Jacy Rayner, Glen Curtis, Jamar Produce



Corporation, and Ansel T. Hall, BCP, Arizona: Water service contracts; purpose is to amend their contracts to exempt them from the Reclamation Reform Act of 1982.

4. Cibola Valley IDD, BCP, Arizona: Cibola Valley IDD is looking at the possibility of transferring, leasing, selling, or banking its entitlement of 22,560 acre-feet, for use in Arizona, California, or Nevada.

5. Brooke Water Co., Havasu Water Co., City of Quartzsite, McAllister Subdivision, City of Parker, and Arizona State Land Department, BCP, Arizona: Contracts for additional M&I allocations of Colorado River water to entities located along the Colorado River in Arizona for up to 3,759 acre-feet per year as recommended by the Arizona Department of Water Resources.

6. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in *Arizona v. California*, and BCP in Arizona and Nevada: Memorandum of Understanding for delivery of Colorado River water for the National Park Service's Federal Establishment PPR of 500 acre-feet of diversions annually, and the National Park Service's Federal Establishment perfected right pursuant to Executive Order No. 5125 (April 25, 1930).

7. Mohave Valley ID, BCP, Arizona: Amendment of current contract for additional Colorado River water, change in service areas, diversion points, and RRA exemption.

8. Miscellaneous PPR Entitlement Holders, BCP, Arizona and California: New contracts for entitlements to Colorado River water as decreed by the U.S. Supreme Court in *Arizona v. California*, as supplemented or amended, and as required by section 5 of the Boulder Canyon Project Act. Miscellaneous PPR holders are listed in the *Arizona v. California* settlement. Also, conversion of PPR entitlements for irrigation water to M&I water entitlements.

9. Julia Soto Zozaya and Steve M. Zozaya, Mohave County, BCP, Arizona: Miscellaneous PPR contract for 720 acre-feet of irrigation water.

10. Holpal Miscellaneous Perfected Right, BCP, Arizona: Assign a portion of the PPR to Mr. McNutly.

11. Atchison, Topeka and Santa Fe Railway Company, BCP, California: The company intends to transfer its miscellaneous PPR for the diversion of 1,260 acre-feet and consumptive use of 273 acre-feet of Colorado River water to the City of Needles.

12. Federal Establishment PPR Entitlement Holders, BCP: Individual contracts for administration of Colorado

River water entitlements of the Colorado River, Fort Mojave, Quechan, Chemehuevi, and Cocopah Indian Tribes.

13. United States facilities, BCP, Arizona, California, and Nevada: Reservation of Colorado River Water for use at Federal facilities and lands administered by Reclamation.

14. Windsor Beach State Park, Lake Havasu City, BCP, Arizona: Contract for 90 acre-feet entitlement to Colorado River domestic water.

15. Crystal Beach Water Conservation District, BCP, Arizona: Contract for delivery of 132 acre-feet per year of Colorado River water for domestic use, as recommended by the Arizona Department of Water Resources.

16. Bureau of Land Management, BCP, Arizona: Contract for 1,176 acre-feet per year, for irrigation use, of Arizona's Colorado River water that is not used by higher priority Arizona entitlement holders.

17. Curtis Family Trust et al., BCP, Arizona: Contract for 2,100 acre-feet per year of Colorado River water for agricultural water.

18. Beattie Farms SW, BCP, Arizona: Contract for 1,890 acre-feet per year of unused Arizona entitlement for agricultural use.

19. Section 10 Backwater, BCP, Arizona: Contract for 250 acre-feet per year of unused Arizona entitlement for environmental use until a permanent water supply can be obtained.

20. U.S. Fish and Wildlife Service, Lower Colorado River Refuge Complex, BCP, Arizona: Proposed agreement to pool existing Arizona refuge water rights, resolve water rights coordination issues, and to provide for nonconsumptive use flow through water.

21. Yuma Mesa IDD, Gila Project, Arizona: Amendment to provide for increase in domestic water allocation (from 10,000 to 20,000 acre-feet) within its overall use in the district.

22. Hilander C ID, Colorado River Basin Salinity Control Project, Arizona: Water delivery contract for 4,500 acre-feet.

23. Maricopa-Stanfield IDD, CAP, Arizona: District has requested the United States to defer payments and restructure its \$78 million distribution system repayment obligation.

24. Agricultural and M&I Water Users, CAP, Arizona: Water service subcontracts for percentages of available supply reallocated in 1992 for irrigation entities and up to 640,000 acre-feet per year allocated in 1983 for M&I use.

25. Indian and Non-Indian Agricultural and M&I Water Users, CAP, Arizona: New and amendatory contracts

for repayment of Federal expenditures for construction of distribution systems.

26. Gila River Indian Community, CAP, Arizona: Master repayment/O&M contract for CAP funded distribution system to serve up to approximately 77,000 acres of existing land.

27. McMicken ID/Avondale, CAP, Arizona: Amend McMicken's CAP subcontract to reduce its entitlement by 647 acre-feet and amend Avondale's CAP water service subcontract to increase its entitlement by 647 acre-feet of CAP water.

28. City of Scottsdale and Other M&I Water Subcontractors, CAP, Arizona: Subcontract amendments associated with assignment of M&I water service subcontracts from Camp Verde Water System, Inc., Cottonwood Water Works, Inc., Mayer Domestic Water Improvement District, City of Nogales, Rio and Rico Utilities', Inc., to provide the City of Scottsdale with an additional 17,823 acre-feet of CAP water.

29. Tohono O'dham Nation, SRPA, Arizona: Repayment contract for a \$7.3 million loan for the Schuk Toak District.

30. San Tan ID, CAP, Arizona: Amend distribution system repayment contract No. 6-07-30-W0120 to increase the repayment obligation approximately \$168,000.

31. Chandler Heights Citrus ID, CAP, Arizona: Amend distribution system repayment contract No. 6-07-30-W0119 to increase the repayment obligation approximately \$114,000.

32. Central Arizona IDD, CAP, Arizona: Amend distribution system repayment contract No. 4-07-30-W0048 to reschedule repayment terms pursuant to U.S. Bankruptcy Court, District of Arizona.

33. Arizona Sierra Utility Company, CAP, Arizona: Assignment to the Town of Florence of 407 acre-feet of CAP M&I water allocation under subcontract from Central Arizona Water Conservation District.

34. San Diego County Water Authority, California, San Diego Project: Title transfer to the San Diego Aqueduct composed of over 70 miles of pipeline 4.5 to 8 feet in diameter and related facilities and rights of way.

35. City of Needles/Bureau of Land Management and/or Nonagriculture Water Users in California Adjacent to the Colorado River, Lower Colorado Water Supply Project, California: Either amend contract No. 2-07-30-W0280 with the City of Needles for up to 5,000 acre-feet with subcontracting authority extended to the Counties of Imperial and Riverside, or enter into water service contract and repayment contracts with BLM and nonagriculture water users in California adjacent to the

Colorado River for an aggregate annual consumptive use of the project's well field capacity in exchange for an equivalent amount of water to be pumped into the All-American Canal from the project well field.

36. Imperial ID/Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve All-American Canal seepage water in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988.

37. Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve seepage water from the Coachella Branch of the All-American Canal in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988.

38. United States Navy, BCP, California: Contract for 23 acre-feet of surplus Colorado River water for domestic use delivered through the Coachella Canal.

39. Southern Nevada Water Authority, BCP, Nevada: Contract to use Federal facilities and land to divert water from Lake Mead at non-Federal expense.

40. Colorado River Commission of Nevada, Robert B. Griffith Water Project, BCP, Nevada: Amend the repayment contract to provide for funding of additional facilities by Southern Nevada Water Authority to divert, treat, and convey water out of Lake Mead.

41. Salt River Pima Maricopa Indian Community, CAP, Arizona: O&M contract for its CAP water distribution system.

42. Salt River Project, Inc., Salt River Project, Arizona: Funding agreement for safety of dams construction activities at Horse Mesa and Mormon Flat Dams.

43. McMicken ID/Goodyear, CAP, Arizona: Amend McMicken's CAP subcontract to reduce its entitlement by 507 acre-feet and Goodyear's water/service subcontract to increase its entitlement by 507 acre-feet.

44. Community Water Company of Green Valley/New Pueblo Water Co., CAP, Arizona: Execute an assignment assigning 237 acre-feet of New Pueblos CAP water entitlement to Community. Amend Community's CAP subcontract to increase its entitlement by 237 acre-feet and upon execution of the assignment from New Pueblo to Community, New Pueblos CAP water service subcontract terminates.

45. Arizona State Land Department/City of Scottsdale, CAP, Arizona: Amend Arizona State Department

agreement to decrease CAP water entitlement by 530 acre-feet.

46. Brooke Water Co., LLC, CAP Arizona: Assignment of subcontract for M&I water service to City of Apache Junction.

47. Canada Hills Water Co., CAP Arizona: Assignment of subcontract for M&I water service to Town of Oro Valley.

48. Bullhead City, BCP, Arizona: Assignment of 1,800 acre-feet of water and associated service area from Mohave County Water Conservation District to Bullhead City, Arizona.

49. Santa Ana Project Water Shed Authority, SRPA, California: Amend current contract with United States to shorten repayment schedule from 30 to 20 years.

50. Elsinore Valley Municipal WD, SRPA, California: Amend current contract with United States to transfer certain project facilities and certain O&M responsibilities from District to City of Lake Elsinore.

51. Mr. Robert H. Chesney, BCP, Arizona: Proposed amendatory contract to amend contract No. 5-07-30-W0321, to increase the cubic feet per second and install a lowlift pump.

52. U.S. Army Proving Ground, BCP, Arizona: Proposed permanent allocation of 1,883 acre-feet of Colorado River water.

53. Arizona Public Service, BCP, Arizona: Colorado River water diversion contract for 1,500 acre-feet for domestic use at Yucca Power Plant near Yuma, Arizona.

54. Arizona State Lands, BCP, Arizona: Approval of assignment of water delivery contract with Lakeview City for 400 acre-feet of Colorado River water for domestic use.

55. Murphy Broadcasting, Inc., BCP, California: Change of use and assignment of the Schroeder's PPR entitlement for 12.0068 acre-feet.

56. City of Yuma, BCP, Arizona: Proposed supplemental and amendatory water delivery contract to amend the city's 50,000 acre-feet of Colorado River water diversion entitlement to a 50,000 acre-feet consumptive use entitlement.

The following contract actions have been completed in the Lower Colorado Region since this notice was last published on October 28, 1996.

1. (23) Yuma County Water Users' Association, Yuma Project, Arizona: Supplementary contract to convert irrigation use water to domestic use water within the Valley Division of the Yuma Project. Action: Executed.

2. (32) McMicken ID/City of Surprise, Arizona: Amend McMicken's CAP subcontract to reduce its entitlement by 4,500 acre-feet and execute a CAP water

service subcontract with the City of Surprise for 4,500 acre-feet of CAP water. Action: Executed.

3. (41) Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural water users in California adjacent to the Colorado River for an aggregate consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal. Action: Modification.

4. (42) The Southern California Gas Company, BCP, California: Short-term water delivery contract for 125 acre-feet of surplus Colorado River water for domestic and industrial water use near the City of Needles, California. Action: Executed.

5. (49) Pacific Gas and Electric Company, BCP, California: Short-term delivery contract for surplus and/or unused apportionment Colorado River water for domestic and industrial use at the Topock Compressor Station California. Action: Executed.

6. (43) County of San Bernardino, San Sevine Creek Water Project, SRPA, California: Project and loan repayment contracts are under reformulation. Action: Executed.

*Upper Colorado Region:* Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138-1102, telephone 801-524-4419.

1. Individual irrigators, M&I, and miscellaneous water users, Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) Castle Mountain Ranches L.L.C., Wayne N. Aspinall Unit, CRSP, Colorado: Contract for 30 acre-feet of M&I water from Blue Mesa Reservoir for domestic, municipal, and irrigation (including irrigation of laws and golf courses).

(b) VanDeHey, Vernon and Linda, Wayne N. Aspinall Unit, CRSP, Colorado: Contract for 1 acre-foot for augmentation plan to replace the consumptive use of water for domestic and industrial use only.

2. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two; contract terms to be consistent with binding cost-sharing

agreement and water rights settlement agreement.

3. Ute Mountain Ute Tribe, Animas-Law Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico; contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

4. Pine River ID, Pine River Project, Colorado: Contract to allow the District to convert up to 3,000 acre-feet of project irrigation water to municipal, domestic, and industrial uses.

5. San Juan-Chama Project, New Mexico: San Juan Pueblo—Repayment contract for up to 2,000 of project water for irrigation purposes. Taos area—The Taos area Acecias, the Town and County of Taos are forming a joint powers agreement to form an organization to enter into a repayment contract for up to 2,990 acre-feet of project water to be used for irrigation and M&I in the Taos, New Mexico area.

6. City of El Paso, Rio Grande Project, Texas and New Mexico: Amendment to the 1941 and 1962 contracts to expand acreage owned by the City to 3,000 acres; extend terms of water rights assignments; and allow assignments outside City limits under authority of the Public Service Board.

7. The National Park Service, Colorado Water Conservation Board, Wayne N. Aspinall Unit, CRSP, Colorado: Contract to provide specific river flow patterns in the Gunnison River through the Black Canyon of the Gunnison National Monument.

8. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Long-term water service contract for municipal, domestic, and irrigation use.

9. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Substitute supply plan for the administration of the Gunnison River.

10. Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, Colorado River Water Conservation District, Uncompahgre Project, Colorado: Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

11. Southern Ute Indian Tribe, Florida Project, Colorado: Supplement to contract No. 14-06-400-3038, dated May 7, 1963, for an additional 181 acre-feet of project water, plus 563 acre-feet of water pursuant to the 1986 Colorado

Ute Indian Water Rights Final Settlement Agreement.

12. Salt Lake County Water Conservancy District and Central Utah Water Conservancy District, CUP, Utah: Contract to provide the Bureau of Reclamation with perpetual use of 7,900 acre-feet of water annually for storage in the Jordanelle Reservoir.

13. Grand Valley Water Users Association, Orchard Mesa ID, and Public Service Company of Colorado, Grand Valley Project, Colorado: Water service contract for the utilization of project water for cooling purposes for a steam electric generation plant.

14. Public Service Company of New Mexico, CRSP, Navajo Unit, New Mexico: Amendatory water service contract for diversion of 20,200 acre-feet, not to exceed a depletion of 16,200 acre-feet of project water for cooling purposes for a steam electric generation plant.

15. Provo Reservoir Water Users Company, Wasatch Irrigation Company, Timpanogas Irrigation Company, Exchange Irrigation Company, Washington Irrigation Company, and the City of Provo; CUP, Utah: Water exchange contracts, water rights in several mountain lakes and reservoirs are being exchanged for equivalent contract water rights in Jordanelle Reservoir.

16. Sanpete County Water Conservancy District, Narrows Project, Utah: Application for a SRPA loan and grant to construct a dam, reservoir, and pipeline to annually supply approximately 5,000 acre-feet of water through a transmountain diversion from Upper Gooseberry Creek in the Price River Drainage (Colorado River Basin) to the San Pitch—Sever River (Great Basin).

17. Highland Conservation District, Provo River Project, Utah: Water transfer agreement between District and Highland City involving change of use from irrigation to M&I.

18. Strawberry Water Users Association, Strawberry Valley Project, Utah: Contract to authorize the conversion of up to 71,000 acre-feet of irrigation water to M&I use, the replacement of some project facilities, and participation in construction of the Spanish Fork System with the Central Utah Water Conservancy District.

19. Department of Energy, San Juan-Chama Project, New Mexico: Reassignment of rights under contract No. 7-07-51-X0883 from the Department of Energy to the County of Los Alamos for 1,200 acre-feet of San Juan-Chama Project water to be used for municipal, commercial, residential, and scientific purposes.

20. City of Albuquerque, San Juan-Chama Project, New Mexico: Amend water storage contract No. 3-CS-53-01510 to exempt the City of Albuquerque for acreage limitation and reporting provisions.

*Great Plains Region:* Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107-6900, telephone 406-247-7730.

1. Individual Irrigators, M&I, and Miscellaneous Water Users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Temporary (interim) water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

3. Ruedi Reservoir, Fryingspan-Arkansas Project, Colorado: Repayment contracts; second round contract negotiations for municipal, domestic, and industrial water from the regulatory capacity of Ruedi Reservoir.

4. Garrison Diversion Unit, P-SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Garrison Diversion Unit Reformulation Act of 1986; negotiation of repayment contracts with irrigators and M&I users.

5. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Pursuant to section 501 of Public Law 101-434, negotiate amendatory contract to increase irrigable acreage within the project. Also negotiate contract amendment with the District to defer its annual 1997 construction installment.

6. Lakeview ID, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir. Pursuant to section 9(e) of the Reclamation Project Act of 1939 and Public Law 100-516.

7. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P-SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

8. North Platte Project, Pathfinder ID, Nebraska: Negotiation of contract regarding Safety of Dams Program modification of Lake Alice Dam No. 1.

9. Northern Cheyenne Indian Reservation, Montana: In accordance with section 9 of the Northern Cheyenne Reserved Water Rights Settlement Act of 1992, the United States and the Northern Cheyenne Indian Tribe are proposing to contract for 30,000 acre-feet per year of stored water from Bighorn Reservoir, Yellowtail Unit, Lower Bighorn Division, P-SMBP, Montana. The Tribe will pay the United States both capital and O&M costs associated with each acre-foot of water the Tribe sells from this storage for M&I purposes.

10. Mid-Dakota Rural Water System, Inc., South Dakota: Pursuant to the Reclamation Projects Authorization and Adjustment Act of 1992, the Secretary of the Interior is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a nonprofit corporation for the planning and construction of a rural water supply system.

11. Angostura ID, Angostura Unit, P-SMBP, South Dakota: The District's current contract for water service expired on December 31, 1995. An interim 3-year contract provides for the District to operate and maintain the dam and reservoir. The proposed long-term contract would provide a continued water supply for the District and the District's continued O&M of the facility.

12. Enders Dam, Frenchman-Cambridge Division, Frenchman Unit, Nebraska: Repayment contract for proposed Safety of Dams modifications to Enders Dam for repair of seeping drainage features. Estimated cost of the repairs is \$632,000.

13. Cities of Loveland and Berthoud, Colorado, Colorado-Big Thompson Project, Colorado: Long-term contracts for conveyance of nonproject M&I water through Colorado-Big Thompson Project facilities pursuant to the Town Sites and Power Development Act of 1906.

14. P-SMBP, Kansas and Nebraska: Initiate negotiations for renewal of long-term water supply contracts with Kansas-Bostwick, Nebraska-Bostwick, Frenchman Valley, and Frenchman-Cambridge IDs.

15. Northwest Area Water Supply, North Dakota: Long-term contract for water supply from Garrison Diversion Unit facilities.

16. Fort Shaw and Greenfields IDs, Sun River Project, Montana: Contract for Safety of Dams cost for repairs to Willow Creek Dam.

17. Canyon Ferry Unit, P-SMBP, Montana: Water service contract with Montana Tunnels Mining, Inc., expires

June 1997. Working with area office to develop criteria for NEPA compliance and basis of negotiation. Renewal of existing contract for an additional 5 years.

18. P-SMBP, Kansas: Water service contracts with the Kirwin and Webster IDs in the Solomon River Basin in Kansas will be extended for a period of 4 years in accordance with Pub. L. 104-326 enacted October 19, 1996.

19. P-SMBP, Nebraska: Water service contracts with the Loup Basin Reclamation District for the Sargent and Farwell IDs in the Middle Loup River Basin in Nebraska will be extended for a period of 4 years in accordance with Public Law 104-326 enacted October 19, 1996.

20. City of Cheyenne, Kendrick Project, Wyoming: Negotiation of contract to renew for an additional term of 5 years. Contract for up to 10,000 acre feet of storage space for replacement water on a yearly basis in Seminole Reservoir.

21. Highland-Hanover ID, P-SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction costs.

22. Upper Bluff ID, P-SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction costs.

23. Fort Clark ID, P-SMBP, North Dakota: Negotiate an interim water service contract to continue delivery of project water pending renewal of a long-term water service-repayment contract.

24. Canadian River Project, Texas: Recalculate existing contract repayment schedule to conform with the provisions of the Emergency Drought Relief Act of 1996. The revised schedule is to reflect a consideration for project land transferred to the National Park Service, and a 3-year deferment of payments.

25. Nueces River Project, Texas: Recalculate existing contract repayment schedule to conform with the provisions of the Emergency Drought Relief Act of 1996. The revised schedule is to reflect a 5-year deferment of payments.

26. Western Heart River ID, P-SMBP, Heart Butte Unit, North Dakota: Negotiation of water service contract to continue delivery of project water the District.

Dated: January 31, 1997.

J. Austin Burke,

*Director, Program Analysis Office.*

[FR Doc. 97-3142 Filed 2-7-97; 8:45 am]

BILLING CODE 4310-94-P

## DEPARTMENT OF JUSTICE

### Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; making officer redeployment effective progress reports.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and Allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments until March 12, 1997. This process is conducted in accordance with 5 CFR Part 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530.

Additionally, comments may be submitted to OMB via facsimile to 202-396-7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202-514-1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### Overview of This Information Collection

(1) Type of information collection. New collection.

(2) The title of the form/collection. Making Officer Redeployment Effective (MORE) Progress Report.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: 017/01. Office of Community Oriented Policing Services, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State, Local or Tribal Governments. Other: None.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 1,600 respondents at 2 hours per response. The information will be collected twice per year from each respondent. Thus, there will be approximately 3,200 total yearly responses at 2 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection. 6,400 annual burden hours. Public comment on this proposed information collection is strongly encouraged.

Dated: February 4, 1997.

Robert B. Briggs,

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 97-3154 Filed 2-7-97; 8:45 am]

BILLING CODE 4410-21-M

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on January 17, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, RMC Lonestar, Pleasanton, CA has become a member of PCA.

No other changes have been made in either the membership or planned activity of PCA.

On January 7, 1985, PCA filed its original notification pursuant to Section

6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015). The last notification was filed with the Department on August 16, 1996. A notice was published in the Federal Register on September 12, 1996 (61 FR 48169).

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 97-3143 Filed 2-7-97; 8:45 am]

BILLING CODE 4410-11-M

### Drug Enforcement Administration

#### Agency Information Collection Activities: New Collection; Comment Request

**ACTION:** Notice of information collection under review; Report of mail order transactions.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 11, 1997.

We are requesting written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Mr. James A. Pacella, 202-307-7297, Chief, Policy Unit, Liaison & Policy Section, Office of Diversion Control, Drug Enforcement Administration Washington, DC 20537. If you have additional comments,

suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. James A. Pacella.

Additionally, comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530. Additional comments may be submitted to DOJ via facsimile at 202-514-1590. Overview of this information collection:

1. Type of Information Collection: New Collection.  
2. Title of the Form/Collection: Report of Mail Order Transactions.  
3. Agency form number: None;  
Applicable component of the Department of Justice sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

4. Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. Other: None.

The Comprehensive Methamphetamine Control Act of 1996 (Pub. L. 104-237) requires that each regulated person who engages in a transaction with a non-regulated person which involves ephedrine, pseudoephedrine or phenylpropanolamine and uses the Postal Service or any private or commercial carrier shall, on a monthly basis, submit a report of each such transaction, conducted during the previous month to the Attorney General.

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,500 respondents at 6 times per year at 1 hour per response.

6. An estimate of the total public burden (in hours) associated with the collection: 9,000 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: February 4, 1997.

Robert B. Briggs,

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 97-3155 Filed 2-7-97; 8:45 am]

BILLING CODE 4410-18-M

### [DEA #153C]

#### Controlled Substances: Established Initial 1997 Aggregate Production Quotas: Corrections

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of corrections.

**SUMMARY:** This notice corrects the notice establishing initial 1997 aggregate production quotas which was published Tuesday, December 17, 1996 (61 FR 66311).

**EFFECTIVE DATE:** This order is effective upon December 17, 1996.

**FOR FURTHER INFORMATION CONTACT:** Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307-7183.

**SUPPLEMENTARY INFORMATION:** In notice document 96-31889 beginning on page 66311, three lines were inadvertently omitted, therefore the following corrections are being made. In the table on page 66312, the following three lines should be inserted immediately before 2,5-Dimethoxy-4-ethylamphetamine (DOET).

Basic class	Established initial 1997 quotas
Schedule I: 2,5-Dimethoxyamphetamine	15,200,100

\* \* \* \* \*

Dated: January 31, 1997.

James S. Milford,

*Acting Deputy Administrator.*

[FR Doc. 97-3134 Filed 2-7-97; 8:45 am]

**BILLING CODE 4410-09-M**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97-012)]

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Johnson Space Center. Claims are deleted from the patent applications to avoid premature disclosure.

**DATES:** February 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ed Fein, Patent Counsel, Lyndon B. Johnson Space Center, Mail Code HA, Houston, TX 77058; telephone (281) 483-0837.

NASA Case No. MSC-22325:  
Misalignment Accommodating Connector Assembly;

NASA Case No. MSC-22797-1:  
Actuator for Flexing a Resilient Covering;

Dated: January 30, 1997.

Edward A. Frankle,

*General Counsel.*

[FR Doc. 97-3133 Filed 2-7-97; 8:45 am]

**BILLING CODE 7510-01-M**

[Notice (97-011)]

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent licenses.

**SUMMARY:** NASA hereby gives notice that DuPont Advanced Composites, P.O. Box 6108, Newark, DE 19714; Fiberite, Inc., 4300 Jackson Street, Greenville, TX 75401; Imitec, Inc., 990 Maxon Road, Schenectady, NY 12308; Toray Composites (America), Inc., 19002 50th Avenue East, Tacoma, WA 98446; and CYTEC Engineered Materials, Inc., 1300 Revolution Street, Havre de Grace, MD 21078, have each applied for partially exclusive licenses to practice the inventions described in NASA Case No. LAR-15208-1, entitled "A UNIQUE COPOLYIMIDE BACKBONE FOR IMIDE OLIGOMERS WITH TERMINAL REACTIVE GROUPS" AND NASA Case No. LAR-15412-1, entitled "IMIDE OLIGOMERS AND CO-OLIGOMERS CONTAINING PENDENT PHENYLETHYL GROUPS AND POLYMERS THEREFROM," for which U.S. Patent Applications have been filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

**DATES:** Responses to this notice must be received by April 11, 1997.

#### FOR FURTHER INFORMATION CONTACT:

Mr. George F. Helfrich, Patent Counsel, Langley Research Center, Mail Stop 212, Hampton, VA 23681-0001; telephone (757) 864-9260; fax (757) 864-9190.

Dated: January 28, 1997.

Edward A. Frankle,

*General Counsel.*

[FR Doc. 97-3132 Filed 2-7-97; 8:45 am]

**BILLING CODE 7510-01-M**

[Notice (97-010)]

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that Estee Lauder Companies of Melville, New York 11747, has applied for a partially exclusive license to practice the invention described in NASA Case No. LAR-15555-1, entitled "MOLECULAR LEVEL COATING OF METAL OXIDE PARTICLES," for which a U.S. Patent Application was filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

**DATES:** Responses to this notice must be received by April 11, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin W. Edwards, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681-0001; telephone (757) 864-3230; fax (757) 864-9190.

Dated: January 28, 1997.

Edward A. Frankle,

*General Counsel.*

[FR Doc. 97-3131 Filed 2-7-97; 8:45 am]

**BILLING CODE 7510-01-M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463 as amended), the National Science Foundation announces the following meeting:

*Name and Committee Code:* Special Emphasis Panel in Materials Research #1203.

*Date and Time:* February 25 & February 26, 1997, 2:00 pm-9:00 pm & 8:00 am-5:00 pm.

*Place:* Michigan State University, East Lansing, MI.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Ulrich Strom, Program Director, Division of Materials Research, National Science Foundation, 4201 Wilson Boulevard, Room 1065, Arlington, VA 22230, Telephone (703) 306-1832.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Program.

*Reason for Closing:* The proposals being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as

salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Linda Allen-Benton,

*Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.*

[FR Doc. 97-3185 Filed 2-7-97; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 040-08724]

### Finding of No Significant Impact Related to Amendment of Materials License No. SUB-1357, Chemetron Corporation, Inc., Newburgh Heights, OH

The U.S. Nuclear Regulatory Commission is considering issuing an amendment of Materials License No. SUB-1357, held by Chemetron Corporation, Inc., to authorize the remediation of the Bert Avenue site located on Bert Avenue in Newburgh Heights, Ohio.

#### Summary of Environmental Assessment

##### *Background*

By the letter of March 24, 1994, Chemetron Corporation, Inc., (Chemetron) requested that NRC amend its license to authorize it to perform the remediation of the Harvard Avenue and Bert Avenue sites in accordance with its remediation plan entitled, "Site Remediation Plan, Chemetron Remediation Project, Harvard and Bert Avenue Sites, Chemetron Corporation, Inc., Newburgh Heights, Ohio," Revision 1, dated February 25, 1995 (Reference 1). This remediation plan also included Chemetron's plans for remediating buildings, adjacent to the Harvard Avenue site, owned by the McGean-Rohco, Inc., that are contaminated with radioactive material.

Following the review of the portions of the Chemetron Final Remediation Plan for Harvard Avenue and Bert Avenue sites that addressed the McGean-Rohco building remediation, NRC staff published, in the Federal Register, on August 5, 1994, a Finding of No Significant Impact and an environmental assessment for the McGean-Rohco complex remediation (Reference 2). On August 9, 1994, NRC staff issued Amendment 4 to the Chemetron license authorizing Chemetron to conduct the McGean-Rohco building remediation. On August 9, 1994, NRC staff also issued a Safety

Evaluation Report for the proposed remediation of the McGean-Rohco complex. On June 6, 1996, NRC staff published in the Federal Register a Finding of No Significant Impact and an environmental assessment for the Harvard Avenue site remediation (Reference 3). On June 7, 1996, NRC staff issued Amendment 5 to the Chemetron license authorizing Chemetron to remediate the Harvard Avenue site and a Safety Evaluation Report for the remediation.

The environmental assessment for the Bert Avenue remediation is available for inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, and at the Local Public Document Room at the Garfield Heights Branch Library, 5409 Turney Road, Garfield Heights, Ohio (Docket Number 040-08724).

##### *Proposed Action*

In this action, Chemetron is proposing to utilize onsite disposal, under 10 CFR 20.2002, at the Bert Avenue facility, for wastes, from the remediation of the Bert Avenue site, with concentrations up to the Option 2 limit in the NRC's Branch Technical Position on "Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations" (1981 BTP) (Reference 4). Wastes, that exceed the Option 2 concentration limits in the 1981 BTP, will be shipped offsite, to a licensed low-level waste disposal site.

##### *Need for Proposed Action*

The purpose of the proposed action is to decommission the Bert Avenue site, by removing depleted uranium contamination in soils and building rubble, so that the site can be released for unrestricted use. Remediating the site will allow Chemetron to release the site for unrestricted use and to remove the site from Chemetron's NRC license.

##### *Environmental Assessment*

The NRC staff reviewed the levels of contamination, the proposed remediation methods, and the radiological and environmental controls that will be used during the remediation. These controls include worker dosimetry, the As Low As Is Reasonably Achievable (ALARA) program, air monitoring, routine surveys, a bioassay program for workers, and routine monitoring of both airborne and liquid effluent releases to meet 10 CFR part 20 radiation protection requirements. Worker and public doses will be limited so that exposures will not exceed 10 CFR part 20 requirements.

Chemetron proposed to remediate the Bert Avenue site in accordance with "Guidelines for Decontamination of

Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, and Special Nuclear Materials," dated August 1987 (Reference 5). They also proposed to dispose of depleted uranium wastes onsite in accordance with the 1981 BTP (Reference 4). Based on uranium solubility testing of the Bert Avenue wastes, the maximum depleted uranium concentration that is acceptable for disposal in the disposal cell is 5.98 Bq/gm (161 pCi/gm) total uranium.

The staff also analyzed the radiological impacts to the public from the disposal of depleted uranium contaminated soils and building rubble in the proposed onsite disposal cell. Radiological impacts to members of the public may result from inhalation and ingestion of releases of radioactivity in air and in water during the remediation operations and direct exposure to radiation from radioactive materials at the site during remediation operations. The public may also be exposed to radiation as a result of the onsite disposals. Decommissioning workers may receive doses primarily by inhalation and direct exposure during the remediation activities. In addition to impacts from routine operations, the potential radiological consequences of accidents were considered.

The licensee provided an estimate of the dose to the public from airborne effluents to be generated during the excavation activities associated with the decommissioning of Bert Avenue site. The maximum public dose from airborne effluents is 0.04 mSv (4 mrem) for the Bert Avenue site. The staff performed a conservative, independent analysis of the potential for public exposure from airborne effluents. The staff estimated the dose to the nearest resident during excavation of soil at the Chemetron Bert Avenue site to be approximately 0.24 mSv (24 mrem).

The NRC staff performed dose assessments for the Bert Avenue disposal cell using the RESRAD computer code, Version 5.61 (Reference 6) and the NEFTRAN II computer code (Reference 7). The RESRAD code calculates dose impacts assuming a resident-farmer scenario, where an individual would construct a residence, live there, grow food, and consume all drinking water from a conservatively located groundwater well. Over a 1000 year period, the peak radiation doses were calculated to be 0.28 mSv/yr (28 mrem/yr) at 1000 years after construction of the disposal cell. These predicted doses are less than NRC's limit of 1 mSv/yr (100 mrem/yr) for radiation doses to the public in 10 CFR

Part 20. These doses reflect the worst case scenario with the proposed cover over the disposal cell assumed to have been removed.

NRC staff computed groundwater doses for time periods after 1000 years using the NEFTRAN II code. The peak groundwater dose at a hypothetical well 150 m (500 ft) from the Bert Avenue site at a depth of about 8 m (25 ft) below the base of the disposal cell would be 0.22 mSv/yr (22 mrem/yr) at 8000 years. The peak groundwater dose at a well 1500 m (5000 ft) from the Bert Avenue site at a depth of 76 m (250 ft) below the base of the disposal cell would be 0.02 mSv/yr (2 mrem/yr) at 65,000 years. The latter well location represents a realistic location for a groundwater well based on the regional geohydrological conditions. NRC staff also calculated groundwater doses assuming the groundwater table rises to the natural level of the filled-in ravine. The resulting dose is  $1.0E-5$  mSv/yr (0.001 mrem/yr) at 1000 years and  $2.0E-4$  mSv/yr (0.02 mrem/yr) at 10,000 years. The above doses estimated for the public are substantially less than the 1 mSv/yr (100 mrem/yr) limit for exposures to the public in 10 CFR part 20.

During the remediation of the contaminated materials, workers will receive doses from direct exposure and from the inhalation of dusts containing depleted uranium. From direct exposure, assuming the maximum measured background radiation levels at the Bert Avenue site of 0.4 mSv/yr (40 mrem/yr) and a 2000 hr exposure, Chemetron computed the direct exposure dose to be 0.091 mSv (9.1 mrem). Chemetron computed the inhalation dose to be 0.12 mSv (12 mrem). The above doses are substantially below the 10 CFR part 20 limit of 0.05 Sv/yr (5 Rem/yr) for routine occupational exposure.

Based on the above evaluations, radiation exposures of persons living or traveling near the site due to onsite operations will be well within limits contained in NRC regulations and will be small in comparison to natural background radiation. The licensee has a radiation protection program that will maintain radiation exposures and effluent releases within the limits of 10 CFR part 20 and should maintain exposures as low as is reasonably achievable.

Chemetron and the NRC staff also evaluated the radiological impacts from hypothetical accidents. The licensee evaluated two worst case accident scenarios—a truck tipping over releasing its contents and a truck fire causing radioactivity to be dispersed

into the air. The scenarios assumed the maximum total uranium concentration of 507 Bq/gm (13,700 pCi/gm) total uranium found at the Bert Avenue site in Chemetron's site characterization. Receptors 10 m (33 ft) away would receive a dose of  $4.3E-4$  mSv ( $4.3E-2$  mrem) from the truck spill accident and 0.04 mSv (4 mrem) from the truck fire accident. These postulated accidents do not have the potential for onsite or offsite radiation doses that exceed the minimum Protective Action Guide level of 0.01 Sv (1 Rem), recommended by the U.S. Environmental Protection Agency (Reference 8), or above 10 CFR part 20 limit of 0.05 Sv (5 Rem/yr) for routine occupational exposure.

Chemetron estimated that 15,000 m<sup>3</sup> of wastes exceeding the Option 2 limits in the 1981 BTP are expected at the Bert Avenue site. These wastes will be shipped offsite to a licensed low-level waste disposal site. Wastes will be packaged and shipped in containers or covered railcars or trucks in accordance with NRC and Department of Transportation requirements. Wastes will be disposed of in accordance with disposal site license requirements. Therefore, there are no significant impacts from the transportation or offsite disposal of radioactive materials.

The NRC staff also considered nonradiological impacts and concluded that all such impacts are negligible.

Chemetron has identified at the Bert Avenue site solid wastes, but no hazardous wastes, as defined under the Resource, Conservation, and Recovery Act (RCRA), that will need to be managed in accordance with the requirements of the Ohio Environmental Protection Agency (OEPA). Solid wastes have been considered in OEPA's approval of Chemetron's "Final Site Closure/Post-Closure Plan, Bert Avenue" (Reference 9). If hazardous wastes are encountered, these wastes will be managed in accordance with OEPA requirements. Any impacts for handling RCRA solid and hazardous wastes, if identified, are expected to be small.

Based on the very low minority populations in Newburgh Heights, Ohio, and Cuyahoga Heights, Ohio, and income statistics that show no significant low-income populations compared with those in Cuyahoga County and in the State of Ohio, there will be no significant impacts to minorities and low-income households from the proposed activities in Newburgh Heights and Cuyahoga Heights.

### Conclusions

The proposed remediation of the Bert Avenue site will enable Chemetron to release the site for unrestricted use. On the basis of the NRC staff's evaluation of Chemetron's proposed remediation approach for the Bert Avenue site, and analysis of the environmental impacts of the proposed action, the staff concludes that the proposed remediation activities will not result in any significant environmental or radiological impact.

### Alternatives to the Proposed Action

Alternatives analyzed in the EA included (1) leaving the depleted uranium in place; (2) delayed remediation; (3) disposal of contaminated material at an offsite low-level radioactive waste disposal site; (4) waste processing to reduce the volume of waste to be disposed at an offsite low-level waste disposal site; and (5) onsite disposal.

Leaving the depleted uranium in place would result in the necessity of maintaining radiological controls and training requirements. Without remediation of the contamination, the site could not be released for unrestricted use.

Delaying remediation would result in higher costs for site controls and higher future costs for remediation. Because of the long half-life of uranium, there will be no significant decay.

Disposing of wastes at an offsite low-level waste disposal site would cost between \$15,000,000 and \$20,000,000. An additional \$2,300,000 is estimated to be required to close the site to meet OEPA solid waste requirements. No significant radiological nor non-radiological impacts would be expected in this alternative.

Treating contaminated soils and rubble to remove depleted uranium and reduce the volume of wastes required to be disposed at an offsite low-level radioactive waste disposal facility is estimated to cost between \$9,000,000 and \$12,000,000. An additional \$2,300,000 is estimated to be required to close the site to meet OEPA solid waste requirements. No significant radiological nor non-radiological impacts would be expected in this alternative.

Onsite disposal as proposed by the licensee would cost approximately \$5,300,000 and would address OEPA solid waste issues. No significant radiological nor non-radiological impacts would be expected in this alternative.

The NRC staff concludes that there are no reasonably available alternatives to the licensee's proposed plan that are obviously superior.



### Alternative Use of Resources

The activities leading to the proposed action would result in the irreversible use of energy resources in the conduct of the proposed Bert Avenue remediation. There are no reasonable alternatives to these resource uses, and the proposed activities do not involve any unresolved conflicts concerning uses of available resources.

### Agencies and Persons Consulted, and Sources Used

The environmental assessment on which the finding of no significant impact is based was prepared by NRC staff in the Office of Nuclear Material Safety and Safeguards, Rockville, MD, and Region III, Lisle, IL. During the review of Chemetron's Final Site Remediation Plan, NRC requested comments from the Ohio Department of Health (ODH), OEPA, and the Cuyahoga County Board of Health (CCBH).

NRC received formal comments from ODH and CCBH, and informal comments from OEPA. The principal comments received from ODH and OEPA were that NRC should require post-closure controls and monitoring, for the radiologic components in the waste, after completion of the onsite disposal cells. These controls would be consistent with the post-closure controls required by OEPA for solid waste landfills. NRC staff indicated that under the conditions of onsite disposal under the Option 2 limits of the 1981 BTP (Reference 4) the Bert Avenue site could be released for unrestricted use, and doses to hypothetical intruders who might construct homes and consume groundwater and foodstuffs grown in the wastes would be acceptable. Chemetron has agreed to perform analyses for gross alpha, gross beta, and total uranium in the groundwater sampling program to be conducted as part of OEPA post-closure monitoring program.

The principal comments made by CCBH were technical comments related to the design of the proposed Bert Avenue disposal cell.

A draft environmental assessment was provided to ODH, OEPA, CCBH, and the Mayor of Newburgh Heights for comment. Other than ODH, there were no comments received. The ODH staff indicated that the State of Ohio does not wish to have a number of small low-level waste sites across the site, and they suggested that environmental monitoring be required when the project is completed. Chemetron has agreed to perform analyses for gross alpha, gross beta, and total uranium in the groundwater sampling program to be

conducted as part of OEPA post-closure monitoring program.

No other sources of information were used beyond those which are referenced in the report.

### Finding of No Significant Impact

The NRC staff has prepared an EA evaluating the environmental impacts related to the license amendment requested from Chemetron Corporation, Inc., to authorize the remediation of the Bert Avenue site in accordance with their remediation plan. The EA examines the radiological impacts associated with these proposed activities. As indicated above, the EA did not identify any significant environmental impact associated with these proposed licensed amendment actions. The NRC staff concluded that a Finding of No Significant Impact (FONSI) is justified and appropriate.

### Opportunity for a Hearing

On April 11, 1994, the NRC published in the Federal Register a notice of Consideration of Amendment to Chemetron Corporation License and Opportunity for Hearing. In response to that notice, the Earth Day Coalition submitted a petition for hearing. On July 7, 1994, the Presiding Officer granted a three week period for Earth Day Coalition to supplement a deficient hearing request. The Coalition's petition failed to demonstrate the NRC's standing requirements were met and that its concerns were germane to the subject matter of the proceeding. Because the Coalition did not file the supplemental information, on September 1, 1994, the Presiding Officer dismissed the proceeding.

### References

1. Chemetron Corporation, "Site Remediation Plan, Chemetron Remediation Project, Harvard Avenue and Bert Avenue Sites," Revision 1, February 28, 1995.
2. Nuclear Regulatory Commission, Environmental Assessment Finding of No Significant Impact Related to Amendment of Materials License No. SUB-1357, Chemetron Corporation, Inc., Cuyahoga Heights, OH, Federal Register, Vol. 59, No. 150, August 5, 1994, p. 40057.
3. Nuclear Regulatory Commission, Environmental Assessment Finding of No Significant Impact Related to Amendment of Materials License No. SUB-1357, Chemetron Corporation, Inc., Cuyahoga Heights, OH, Federal Register, Vol. 61, No. 110, June 6, 1996, p. 28906.
4. U.S. Nuclear Regulatory Commission, Branch Technical

Position, "Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations," Federal Register, Vol 46, No. 205, October 23, 1981, p. 52061.

5. U.S. Nuclear Regulatory Commission, "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of License for Byproduct, Source or Special Nuclear Material," August 1987.

6. Argonne National Laboratory, "Manual for Implementing Residual Radioactive Material Guidelines Using RESRAD, Version 5.0," ANL/EAD/LD-2, September 1993.

7. Olague, N.E., "User's Manual for the NEFTRAN II Computer Code," NUREG/CR-5618, Sandia National Laboratories, February 1991.

8. U.S. Environmental Protection Agency, "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents," EPA 400-R-92-001, Revised 1991.

9. Chemetron Corporation, "Final Site Closure/Post-Closure Plan, Bert Avenue," December 5, 1994.

Dated at Rockville, Maryland, this 4th day of February 1997.

For the Nuclear Regulatory Commission.  
John W.N. Hickey,  
Chief, Low-Level Waste and Decommissioning  
Projects Branch, Division of Waste  
Management, Office of Nuclear Material  
Safety and Safeguards.

[FR Doc. 97-3177 Filed 2-7-97; 8:45 am]

BILLING CODE 7590-01-P

[Docket Nos. STN 50-454, STN 50-455, STN 50-456 and STN 50-457]

### Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of amendments to Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77, issued to Commonwealth Edison Company (ComEd, the licensee) for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendments would revise the technical specifications (TS) to allow ComEd to take credit, on a temporary basis, for soluble boron in the spent fuel storage water in maintaining an acceptable margin of subcriticality.

Before issuance of the proposed license amendments, the Commission will have made findings required by the

Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 12, 1997, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at: for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition

should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated November 5, 1996, 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 rooms located at: for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 4th day of February 1997.

For the Nuclear Regulatory Commission.  
Robert A. Capra,  
*Director, Project Directorate III-2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 97-3180 Filed 2-7-97; 8:45 am]

BILLING CODE 7590-01-P

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### **Changes in the Operator Licensing Program; Issued**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of issuance.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has issued Generic Letter 95-06, Supplement 1 to (1) inform all licensees of nuclear power reactors (except those licensees of permanently shutdown reactors who are no longer required to utilize licensed operators) about the results of the pilot program described in Generic Letter 95-

06 and (2) notify addressees of NRC's decision to change the operator licensing process so that facility licensees may voluntarily prepare the operating tests and prepare, administer, and grade the written examinations that the NRC will review, approve, and use to determine the competence of operator license applicants at power reactor facilities. This generic letter requests that addressees who are scheduled for initial operator licensing examinations and are interested in voluntarily preparing the examinations as described in the generic letter supplement to contact their NRC Regional Office to make the necessary arrangements. This generic letter supplement is available in the NRC Public Document Room under accession number 9701310141.

**DATES:** The generic letter was issued on January 31, 1997.

**ADDRESSEES:** Not applicable.

**FOR FURTHER INFORMATION CONTACT:** Stuart Richards at (301) 415-1031.

**SUPPLEMENTARY INFORMATION:** The actions requested in this generic letter are considered voluntary.

Dated at Rockville, Maryland, this 4th day of February, 1997.

For the Nuclear Regulatory Commission.

David B. Matthews,

*Acting Deputy Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 97-3178 Filed 2-7-97; 8:45 am]

BILLING CODE 7590-01-P

### Regulatory Analysis Technical Evaluation Handbook; Availability

The Nuclear Regulatory Commission (NRC) announces the availability of "Regulatory Analysis Technical Evaluation Handbook", (NUREG/BR-0184). This document is a Handbook to be used by the NRC and its contractors in the preparation of regulatory analyses to aid NRC decision-makers in deciding whether a proposed new regulatory requirement should be imposed. In addition, it is anticipated that the Handbook will be useful to the Agreement States in their assessment of new regulatory requirements. The Handbook is an updated and revised version of an earlier document, "A Handbook for Value-Impact Assessment" (NUREG/CR-3568), issued by the NRC in 1983.

The 1983 document is being updated in this Handbook to accomplish the following objectives:

- To reflect the content of NRC's Regulatory Analysis Guidelines, NUREG/BR-0058, Rev. 2, issued in November 1995.

- To expand the scope of the Handbook to include the entire regulatory analysis process and to address facilities other than power reactors.

- To reflect NRC experience and improvements in data and methodology since the 1983 Handbook was issued.

- To reflect the guidance in the 1996 document "Economic Analysis of Federal Regulations Under Executive Order 12866". This document was prepared by a Federal interagency regulatory working group convened by the Office of Management and Budget.

NRC obtained peer review comments on the draft Handbook from the following organizations: Westinghouse Savannah River Co., Brookhaven National Laboratory, Argonne National Laboratory, and Science and Engineering Associates, Inc. The comments of these organizations are reflected in the Handbook. The draft version of the Handbook has also been used by NRC staff members since September 1993 and staff comments have been incorporated. A draft version of the Handbook was made available to the public in September 1993 (58 FR 47160) but comments were not specifically requested.

The Handbook is being issued in loose-leaf format to facilitate future revisions. NRC intends to periodically revise the Handbook as new and improved guidance, data, and methods become available. Comments on the Handbook from users and the public are welcome at any time. In particular, the NRC is requesting comments from the Agreement States on the Handbook's value in preparing regulatory documents for state rulemaking actions. Comments should be submitted to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Mail Stop T-6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Copies of NUREG/BR-0184 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20037.

Dated at Rockville, Maryland, this 30th day of December, 1996.

For the Nuclear Regulatory Commission.

Frank A. Costanzi,

*Deputy Director, Division of Regulatory Applications.*

[FR Doc. 97-3179 Filed 2-7-97; 8:45 am]

BILLING CODE 7590-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38235; International Series Release No. 1048]

#### List of Foreign Issuers Which Have Submitted Information Required by the Exemption Relating to Certain Foreign Securities

February 4, 1997.

Foreign private issuers with total assets in excess of \$10,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more shareholders reside in the United States, are subject to registration under Section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* (the "Act").<sup>1</sup>

Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) provides an exemption from registration under Section 12(g) of the Act with respect to a foreign private issuer that submits on a current basis material specified in the Rule to the Commission. Such required material includes that information about which investors ought reasonably to be informed with respect to the issuer and its subsidiaries and which the issuer (1) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (2) has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange and/or (3) has distributed or is required to distribute to its security holders.

On October 6, 1983, the Commission revised Rule 12g3-2(b) by terminating the availability of the exemptive rule for certain foreign issuers with securities quoted on an automated inter-dealer quotation system (which includes the NASDAQ stock market).<sup>2</sup> The Commission grandfathered indefinitely securities of non-Canadian issuers in compliance with the information-supplying exemption as of October 6, 1983 and quoted in NASDAQ on that

<sup>1</sup> Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements by reason of having registered securities under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*

<sup>2</sup> Exchange Act Release No. 20264 (Oct. 6, 1983).

date.<sup>3</sup> The Commission extended the exemption to Canadian securities only until January, 1986.

When it adopted Rule 12g3-2 and other rules relating to foreign securities,<sup>4</sup> the Commission indicated that from time to time it would issue lists showing those foreign issuers that have claimed exemptions from the registration provisions of Section 12(g) of the Act.<sup>5</sup> The purpose of the present release is to call to the attention of brokers, dealers, and investors that some form of relatively current information concerning the foreign issuers included on the following list is available in the

public files of the Commission.<sup>6</sup> The Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.<sup>7</sup> The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending these securities to their customers.<sup>8</sup>

Any questions regarding Rule 12g3-2 or the list included herein should be directed to Andrea R. Biller, Office of

International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549 ((202) 942-2990). Requests for copies of the documents in the files should be directed to the Public Reference Room, Securities and Exchange Commission, Washington, D.C. 20549 ((202) 942-8090).

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

Company	Country	File No.
A&B Geoscience Corp	Canada	82-4254
A.C.T. Industrial Corp	Canada	82-1071
AAPC Ltd	Australia	82-3688
ABB AG	Switzerland	82-2871
ABN AMRO Holding N.V	Netherlands	82-3246
ACB Neftechimbank	Russia	82-4497
AGC Americas Gold Corp	Canada	82-2622
AO Mosenergo	Russia	82-4475
AO Rostelecom	Russia	82-4249
AO Surgutneftgaz	Russia	82-4302
AO TD GUM	Russia	82-4132
APAC Telecommunications Corp	Canada	82-4157
AVL Information Systems Inc	Canada	82-4010
AVVA Technologies Inc	Canada	82-3922
Abaddon Resources Inc	Canada	82-3025
Abitibi Mining Corp	Canada	82-4321
Adamas Reso	Canada	82-4355
Adex Mining	Canada	82-2796
Adidas Aktiengesellschaft	Germany	82-4278
Adikann Goldfields Ltd	Canada	82-4192
Advance International Inc	Canada	82-4137
Advent Communications Corp	Canada	82-3675
Aerovias de Mexico, S.A	Mexico	82-3195
Afrikander Lease, Ltd.	South Africa	82-245
Agate Bay Resources Ltd	Canada	82-4284
Agen Ltd	Australia	82-2330
Airboss Ltd	Australia	82-3104
Akademia Enterprises Inc	Canada	82-4035
Akash Ventures Inc	Canada	82-695
Alantra Venture Corp	Canada	82-3307
Alarko Sanayi Ve Ticaret A.S	Turkey	82-4008
Albert Fisher Group PLC	United Kingdom	82-1020
All Nippon Airways Co	Japan	82-1569
Allan Resources Ltd	Canada	82-3403
Allegheny Mines Corporation	Canada	82-3340
Allied Colloids Group plc	United Kingdom	82-4038
Allied Domecq plc	United Kingdom	82-878
Alpargatas, S.A.I.C	Argentina	82-3122
Alpha Airports Group PLC	United Kingdom	82-3694
Alpha Credit Bank A.E.	Greece	82-3399
Alpine Exploration Corp	Canada	82-1856
Altai Resources, Inc	Canada	82-2950
Altair International Gold Inc	Canada	82-1770
Altarch Energy Inc	Canada	82-4348
Altmark Energy Inc	Canada	82-3473
AmSteel Corp Berhad	Malaysia	82-3318

<sup>3</sup> If, however, the securities are delisted from an automated inter-dealer quotation system or the issuer fails to maintain or otherwise meet the requirements of the exemption, the grandfather provision will cease to apply.

<sup>4</sup> Exchange Act Release No. 8066 (Apr. 28, 1967).

<sup>5</sup> Exchange Act Release No. 36200 (Sept. 7, 1995) contained the last such list.

<sup>6</sup> Inclusion of an issuer on the following list is not an affirmation by the Commission that the issuer has complied or is complying with all the conditions of the exemption provided by Rule 12g3-2(b). The list does identify those issuers that both have claimed the exemption and have submitted relatively current information to the Commission as of January 23, 1997.

<sup>7</sup> Paragraph (a)(4) of Rule 15c2-11 [17 CFR 240.15c2-11] requires a broker-dealer initiating a

quotation for securities of a foreign private issuer to maintain in its files, and to make reasonably available upon request, the information furnished to the Commission pursuant to Rule 12g3-2(b) since the beginning of the issuer's last fiscal year.

<sup>8</sup> See, e.g., *Hanly v. SEC*, 415 F.2d 589 (2nd Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

Company	Country	File No.
Amar Ventures Inc	Canada	82-3071
Amcorp Industries Inc	Canada	82-2991
Amer Group Ltd	Finland	82-1544
Amera Industries Corp	Canada	82-3263
America West Capital Corp	Canada	82-3435
American Comstock Exploration Ltd	Canada	82-3283
American Manor Corp	Canada	82-4158
American Mineral Fields Inc	Canada	82-1840
Amoy Properties Ltd	Hong Kong	82-3410
Ampolex Ltd	Australia	82-3078
Anderson Exploration Ltd	Canada	82-4169
Andhra Valley Power Supply Co	India	82-3732
Angkasa Marketing Berhad	Malaysia	82-3319
Anglo American Corp of S. Africa	South Africa	82-97
Anglo American Gold Investment Co	South Africa	82-146
Annova Business Group Inc	Canada	82-2384
Antares Mining and Exploration Inc	Canada	82-3858
Anthian Resources Corp	Canada	82-4096
Anvil Resources Ltd	Canada	82-1244
Apasco, S.A. de C.V	Mexico	82-3103
Applied Inventions Management Inc	Canada	82-3763
Aquaterre Mineral Development Ltd	Canada	82-3945
Aquiline Resources Inc	Canada	82-2857
Archon Minerals Ltd	Canada	82-4171
Arequipa Resources Ltd	Canada	82-4150
Argenta Systems, Inc	Canada	82-1320
Arjo Wiggins Appleton	United Kingdom	82-4185
Arling Resources Ltd	Canada	82-4097
Armada Gold Corp	Canada	82-3965
Arnoldo Mondadori Editori S.p.A	Italy	82-3996
Arvind Mills Ltd (The)	India	82-3708
Ashton Mining Ltd	Australia	82-3577
Asia Fiber plc	Thailand	82-2842
Asia Minerals Corp	Canada	82-4429
Assurances Generales de France	France	82-4517
Astra Compania Argentina de Petroleo	Argentina	82-3930
Astris Energi Inc	Canada	82-4325
Athabaska Gold Res. Ltd	Canada	82-1906
Atlas Copco AB	Sweden	82-812
Atna Resources Ltd	Canada	82-1556
Auridiam Consolidated N.L	Australia	82-3452
Australian Hydrocarbons	Australia	82-856
Australian National Industries Ltd	Australia	82-3351
Autoliv AB	Sweden	82-3810
Avalon Ventures Ltd	Canada	82-4427
Avgold Limited	South Africa	82-4482
Avmin Limited		82-4519
Axime	France	82-4323
B.A.T. Industries	United Kingdom	82-33
B.Y.G. Natural Resources Inc	Canada	82-2038
BAA plc	United Kingdom	82-3372
BC Gas Inc	Canada	82-3909
BHF Bank	Germany	82-3404
BMR Gold Corp	Canada	82-2246
BPI Industries Inc	Canada	82-3089
BRO-X Minerals Ltd	South Africa	82-4489
BT Industries AB	Sweden	82-4212
BTR plc	United Kingdom	82-898
BWI Resources Ltd	Canada	82-2914
BY & G Ventures Corp	Canada	82-1342
Baco Venezolano de Credito	Venezuela	82-4422
Banca Commerciale Italiana	Italy	82-3707
Banco Amazanos S.A	Ecuador	82-4116
Banco Espanol de Credito, S.A	Spain	82-2814
Banco Industrial SA	Bolivia	82-4183
Banco La Previsora S.A	Equador	82-4133
Banco Mercantil C.A. S.A. C.A	Venezuela	82-4378
Banco Mercantil S.A	Bolivia	82-4296
Banco Mexicano	Mexico	82-3508
Banco Nacional de Bolivia	Bolivia	82-4301
Banco Santa Cruz S.A	Bolivia	82-4370
Banco del Sud S.A	Argentina	82-3830
Band Ore Resources Ltd	Canada	82-4233
Bandai Co	Japan	82-3919

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Bank Vozrozhdeniye .....	Russia .....	82-4257
Bank of East Asia Ltd .....	Hong Kong .....	82-3443
Bank of Nova Scotia .....	Canada .....	82-132
Bank of Scotland .....	United Kingdom .....	82-3240
BankInter, S.A. ....	Spain .....	82-2972
Banque Marocaine du Commerce Extérieur .....	Morocco .....	82-4309
Basic Petroleum and Minerals Inc .....	Philippines .....	82-4215
Bayer AG .....	Germany .....	82-3948
Bayerische Hypotheken-und Wechsel-Bank .....	Germany .....	82-3777
Beatrix Mines Ltd .....	South Africa .....	82-1054
Benicia Ports PLC .....	United Kingdom .....	82-4182
Benson Petroleum Ltd .....	Canada .....	82-4273
Benz Gold Equities Ltd .....	Canada .....	82-2491
Bergesen oy A/S .....	Norway .....	82-1697
Berjaya Group Berhad .....	Malaysia .....	82-2677
Berjaya Industrial Berhad .....	Malaysia .....	82-2580
Bespak plc .....	United Kingdom .....	82-3349
Big Valley Resources Inc .....	Canada .....	82-1600
Biota Holdings Ltd .....	Australia .....	82-3570
Bishop Capital Corp .....	Canada .....	82-4373
Blackstone Resources Inc .....	Canada .....	82-4520
Blenheim Group PLC .....	United Kingdom .....	82-2780
Blue Circle Industries PLC .....	United Kingdom .....	82-927
Blue Desert Mining Inc .....	Canada .....	82-4386
Blue Power Energy Corp .....	Canada .....	82-2213
Blue Range Resource Corp .....	Canada .....	82-3302
Body Shop International PLC .....	United Kingdom .....	82-3534
Bohler Uddeholm AG .....	Austria .....	82-4089
Bomax Resources Corp .....	Canada .....	82-1562
Bombardier Inc .....	Canada .....	82-3123
Bombril S.A. ....	Brazil .....	82-3651
Bompreco S.A. Supermercados do Nordeste .....	Brazil .....	82-4467
Borealis Exploration Ltd .....	Canada .....	82-1656
Boswell International Technologies .....	Canada .....	82-863
Boulder Gold N.L. ....	Australia .....	82-1650
Bracken Mines Ltd .....	South Africa .....	82-219
Bradbury International Equities Ltd .....	Canada .....	82-2273
Braddick Resources Ltd .....	Canada .....	82-4414
Braiden Resources Ltd .....	Canada .....	82-2121
Brandseilite International Corp .....	Canada .....	82-4042
Brazil Realty S.A. ....	Brazil .....	82-4454
Breckenridge Resources Ltd .....	Canada .....	82-1647
Bren Mar Resources Ltd .....	Canada .....	82-2143
Bresea Resources Ltd .....	Canada .....	82-1377
Briana Bio-Tech Inc .....	Canada .....	82-3073
Bridgestone Corp .....	Japan .....	82-1264
British Energy .....	United Kingdom .....	82-4426
Brocker Investments Ltd .....	Canada .....	82-4186
Burmah Castrol PLC .....	United Kingdom .....	82-5
Burns Philip & Company Ltd .....	Australia .....	82-1565
Burwill Holdings Ltd .....	Bermuda .....	82-4266
C.A. Venezolana de Pulpa y Papel SACA .....	Venezuela .....	82-3202
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CML Microsystems PLC .....	United Kingdom .....	82-3176
COFAP Cia Fabricadora de Pecos .....	Brazil .....	82-4274
CS Holding .....	Switzerland .....	82-3477
CSK Corp .....	Japan .....	82-781
CSL Limited .....	Australia .....	82-3785
CT&T Telecommunications Inc .....	Canada .....	82-3947
CTM Citras S.A. ....	Brazil .....	82-3555
Cadre Resources Ltd .....	Canada .....	82-2911
Calais Resources, Inc .....	Canada .....	82-3525
Calco Resources Inc .....	Canada .....	82-1914
Camelot Industries, Inc .....	Canada .....	82-3288
Canadian Airlines Corp .....	Canada .....	82-3203
Canadian Imperial Bank of Commerce .....	Canada .....	82-103
Canadian Mountain Minerals Ltd .....	Canada .....	82-4523
Canadian States Gas Ltd .....	Canada .....	82-4196
Canadian Western Bank .....	Canada .....	82-4478
Capilano International Inc .....	Canada .....	82-3094
Captive Air International, Inc .....	Canada .....	82-2367
Carbite Gold Inc .....	Canada .....	82-4305
Cardo AB .....	Sweden .....	82-4020

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Caribbean Cement Company	Jamaica	82-3715
Caribgold Resources Inc	Canada	82-4104
Carlin Resources Corp	Canada	82-4111
Casamiro Resources Corp	Canada	82-1431
Cash Canada Pawn Corp	Canada	82-2728
Cash Resources Ltd	Canada	82-4106
Castello Casino Corp	Canada	82-1918
Castle Rock Exploration Corp	Canada	82-2472
Cathay Pacific Airlines Ltd	Hong Kong	82-1390
Cathedral Gold Corp	Canada	82-1990
Celanese Canada Inc	Canada	82-171
Cementos Lima S.A	Peru	82-3911
Cemex, S.A de C.V	Mexico	82-2744
Centaur Mining & Exploration Ltd	Australia	82-4313
Central Costanera S.A	Argentina	82-3868
Central Pacific Minerals N.L	Australia	82-354
Centrica PLC	United Kingdom	82-4518
Ceska Sporitelna A.S	United Kingdom	82-4384
Challenger Minerals Ltd	Canada	82-3666
Champion Gold Resources	Canada	82-4485
Champion Resources Inc	Canada	82-4286
Chapleau Resources Ltd	British Columbia	82-4418
Charters Towers Gold Mines	Australia	82-4493
Chauvco Resources Ltd	Canada	82-3316
Chen Hsong Holding Ltd	Bermuda	82-3953
Chernogorneft	Russia	82-4175
Cheung Kong (Holdings) Ltd	Hong Kong	82-4138
Chevalier (OA) International Limited	Hong Kong	82-4201
Chevalier Development Int'l Ltd	Hong Kong	82-4202
Chevalier International Holdings Ltd	Hong Kong	82-4203
China Overseas Land & Investment Ltd	Hong Kong	82-3987
China Pharmaceutical Enter. & Inv. Co	Hong Kong	82-4135
China Resources Enterprise Ltd	Hong Kong	82-4177
China Strategic Holdings Ltd	Hong Kong	82-3596
Chinese Estates Holdings Ltd	Bermuda	82-3954
Cho Hung Bank	Korea	82-4506
Christiana Bank OG Kredithasso	Norway	82-3018
Christies International PLC	United Kingdom	82-1180
Churchill Resources Ltd	Philippines	82-3927
Ciboney Group Limited	Jamaica	82-3504
Ciments Francais	France	82-3336
Cimtek Integrated Manufacturing Tech	Canada	82-1680
Ciquine Comphania Petroquimica	Brazil	82-4283
City Developments Ltd	Singapore	82-3672
Clarins	France	82-2960
Claude Resources Inc	Canada	82-1742
Climax International Co	Bermuda	82-4062
Coca-Cola Amatil Ltd	Australia	82-2994
Colony Pacific Explorations Ltd	Canada	82-1115
Columbia Fuels Inc	Canada	82-3365
Columbia Gold Mines Ltd	Canada	82-2521
Columbia Yukon Resources Ltd	Canada	82-4290
Comac Food Group Inc	Canada	82-2456
Commerzbank AG	Germany	82-2523
Commonwealth Bank of Australia	Australia	82-3612
Compagnie Financiere Richemont AG	Switzerland	82-4102
Compagnie Generale des Eaux	France	82-3814
Compagnie Generale des Est. Michelin	France	82-3354
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Companhia Brasileira de Distribuicao	Brazil	82-4189
Companhia Cervejaria Brahma SA	Brazil	82-4352
Companhia Energetica Minas Gerais	Brazil	82-3465
Companhia Energetica de Sao Paulo	Brazil	82-3691
Companhia Siderurgica de Tubarao	Brazil	82-3842
Companhia Suzano De Papel E Celulose	Brazil	82-3550
Compania Minera Autlan S.A de C.V	Mexico	82-4368
Compania Naviera Perez Companc	Argentina	82-3295
Companion Building Material (Holding)	Hong Kong	82-3982
Compass Group plc	United Kingdom	82-4445
Con-Space Communications Ltd	Canada	82-3378
Concept Industries Inc	Canada	82-4003
Concert Industries Ltd	Canada	82-1003
Cong Industries Inc	Canada	82-2445
Connecticut Development Corp	Canada	82-3238

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Conpanhia Acos Especiais Itabira .....	Brazil .....	82-3769
Consolidated Cyn Tech Ventures Ltd .....	Canada .....	82-2675
Consolidated Eurocan Ventures Ltd .....	Canada .....	82-2948
Consolidated Magna Ventures Ltd .....	Canada .....	82-1370
Consolidated Pine Channel Gold Corp .....	Canada .....	82-2583
Consolidated Samarkand Resources Inc .....	Canada .....	82-4126
Consolidated Silver Tusk Mines Ltd .....	Canada .....	82-723
Consortio ARA S.A de C.V .....	Mexico .....	82-4380
Consortio Inversionista Mercantil .....	Venezuela .....	82-4377
Continental AG .....	Germany .....	82-1357
Continental Precious Minerals Inc .....	Canada .....	82-3358
Continental Waste Conversion Inc .....	Canada .....	82-4064
Controladora Comercial Mexicana .....	Mexico .....	82-3177
Copene Petroquimica do Nordeste S.A .....	Brazil .....	82-3367
Corporacion Financiera Nacional S.A .....	Colombia .....	82-3989
Corporacion Financiera del Valle S.A .....	Colombia .....	82-3437
Corporacion Geo S.A de C.V .....	Mexico .....	82-3870
Corporacion Industrial Sanluis S.A .....	Mexico .....	82-2867
Corriente Resources Inc .....	Canada .....	82-3775
Cosco Investment (Singapore) Ltd .....	Singapore .....	82-4033
Credit Lyonnais .....	France .....	82-3662
Crestar Energy Inc .....	Canada .....	82-3641
Crisplant Industries A/S .....	Sweden .....	82-4219
Cross Lake Minerals Ltd .....	Canada .....	82-2636
Crown Limited .....	Australia .....	82-4498
Cultor Ltd .....	Finland .....	82-1643
Curion Venture Corp .....	Canada .....	82-3602
Curlew Lake Resources Inc .....	Canada .....	82-1978
DBA Telecom Corp .....	Canada .....	82-3736
DBS Land Limited .....	Singapore .....	82-4507
DMCI Holdings Inc .....	Philippines .....	82-4234
DSM, N.V .....	Netherlands .....	82-3120
Da Capo Resources Ltd .....	Canada .....	82-3931
Dah Sing Financial Holdings Ltd .....	Hong Kong .....	82-4272
Dai'ei Inc .....	Japan .....	82-230
Daibiru Corp .....	Japan .....	82-3455
Dairy Farm International Holdings Ltd .....	Hong Kong .....	82-2962
Daiwa Associate Holding Limited .....	Bermuda .....	82-4402
David Jones Limited .....	Australia .....	82-4230
De Beers Centenary AG .....	Switzerland .....	82-3069
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Delphi Group Public Ltd. Co .....	United Kingdom .....	82-4424
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Desert Sun Mining Corp .....	Canada .....	82-1349
Deutsche Bank AG .....	Germany .....	82-334
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Devine Entertainment Corp .....	Canada .....	82-4118
Diagem International Resources Corp .....	Canada .....	82-2124
Diffusion Internationale des Vins .....	France .....	82-4383
Digicall Group Limited .....	United Kingdom .....	82-4213
Direct Choice T.V. Inc .....	Canada .....	82-4136
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Dixons Group PLC .....	United Kingdom .....	82-3331
Dobrana Resources Ltd .....	Canada .....	82-3944
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Dominguez & Cia Caracas S.A .....	Venezuela .....	82-3429
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Dorel Industries Inc .....	Canada .....	82-2800
Dresdner Bank AG .....	Germany .....	82-229
Driefontein Consolidated Ltd .....	South Africa .....	82-124
Du-Apex Energy Corp .....	British Columbia .....	82-4425
Dupont Canada Inc .....	Canada .....	82-19
Durga Resources Ltd .....	Canada .....	82-2467
Dynamic Ventures Ltd .....	Canada .....	82-4080
E.C.A. Technology Ltd .....	Canada .....	82-4342
E.D.&F. Man Group PLC .....	United Kingdom .....	82-4214
E.R.G. Australia Ltd .....	Australia .....	82-2372
EI Environmental Engineering Concepts .....	Canada .....	82-1598
EMI Group Ltd .....	United Kingdom .....	82-373



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ERI Ventures Ltd .....	Canada .....	82-4430
Eaglecrest Explorations Ltd .....	Canada .....	82-603
East Daggafontein Mines Ltd .....	South Africa .....	82-42
East India Hotels Ltd .....	India .....	82-3921
East Midlands Electricity PLC .....	United Kingdom .....	82-3029
East Rand Gold & Uranium Co .....	South Africa .....	82-289
East Rand Proprietary Mines, Ltd .....	United Kingdom .....	82-239
East West Resources Corp .....	Canada .....	82-787
Eastern Electricity PLC .....	United Kingdom .....	82-3040
Eastfield Resources Ltd .....	Canada .....	82-1929
Eastman Resources Inc .....	Canada .....	82-4421
Econ Ventures Ltd .....	Canada .....	82-4229
Ecuadorean Copperfields Inc .....	Ecuador .....	82-966
Egana International Holdings Ltd .....	Cayman Islands .....	82-4268
Eisai Co. Ltd .....	Japan .....	82-4015
El Bravo Gold Mining Ltd .....	Canada .....	82-1888
El Callao Mining Corp .....	Canada .....	82-4308
Elandsrand Gold Mining Co .....	South Africa .....	82-266
Eldon Resources Ltd .....	Canada .....	82-3191
Eldorado Gold Corp .....	Bermuda .....	82-3578
Elevadores Atlas S.A .....	Brazil .....	82-4409
Elite Industries Ltd .....	Israel .....	82-2958
Email Limited .....	Australia .....	82-2951
Emerald Isle Resources Inc .....	Canada .....	82-1456
Emperor (China Concepts) Inv. Ltd .....	Bermuda .....	82-3886
Emperor Mines Ltd .....	Australia .....	82-969
Empire Alliance Properties Inc .....	Canada .....	82-2215
Energy Africa Limited .....	South Africa .....	82-4306
Engil Sociedade Gestora .....	Protugal .....	82-4246
Enterprise Solutions Asia Pacific .....	Australia .....	82-4474
Enterra Holdings Ltd .....	Canada .....	82-4335
Equivest International Financial Corp .....	Canada .....	82-1066
Equus Petroleum Corp .....	Canada .....	82-1302
Erin Ventures Inc .....	Canada .....	82-4432
Espirit Asia Holdings Ltd .....	Bermuda .....	82-4188
Essex Resource Corp .....	Canada .....	82-4410
Eucatex S.A. Industria y Comercio .....	Brazil .....	82-3618
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Exall Resources Ltd .....	Canada .....	82-3535
Exploration Brex Inc .....	Canada .....	82-4269
F.H. Faulding & Company Ltd .....	Australia .....	82-2882
FCA International Ltd .....	Canada .....	82-1310
Faber Group Berhad .....	Malaysia .....	82-3505
Fairfield Minerals Ltd .....	Canada .....	82-1784
Fairyong Holdings Ltd .....	Hong Kong .....	82-4236
Falcon Point Resources Ltd .....	Canada .....	82-1713
Falcon Ventures International Corp .....	Canada .....	82-1748
Fancamp Resources Ltd .....	Canada .....	82-3929
Far-Ben S.A de C.V .....	Mexico .....	82-3600
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Findore Minerals Inc .....	Canada .....	82-4163
First Australian Resources N.L .....	Australia .....	82-3494
First Pacific Co. Ltd .....	Hong Kong .....	82-836
First Quantum Minerals .....	Canada .....	82-4461
First Silver Reserve Inc .....	Canada .....	82-3449
Fletcher Challenge Canada Ltd .....	Canada .....	82-668
Flughafen Wien AG .....	Austria .....	82-3907
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Footmaxx Holdings Inc .....	Canada .....	82-4079
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Ford Motor Co .....	Canada .....	82-20
Formation Capital Corp .....	Canada .....	82-2783
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Foschini Ltd .....	South Africa .....	82-4044
Foster's Brewing Co .....	United Kingdom .....	82-1711
Fotex Elso Amerikai Magyar Fotosz .....	Hungary .....	82-3286

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Fountain House Holdings Corp .....	Canada .....	82-3811
Franc Or Resources Corp .....	Canada .....	82-4164
Francisco Gold Corp .....	Canada .....	82-3752
Frankie Dominion International Ltd .....	Bermuda .....	82-3649
Franz Capital Corp .....	Canada .....	82-2574
Fraserfund Financial Corp .....	Canada .....	82-3588
Free State Consolidated Gold Mines .....	South Africa .....	82-44
Freeport Resources Inc .....	Canada .....	82-1131
Frontline AB .....	Sweden .....	82-3792
Frutarom Industries 1995 Ltd .....	Israel .....	82-4357
Fuji Bank Limited .....	Japan .....	82-4492
Fuji Photo Film Co, Ltd .....	Japan .....	82-78
Future Media Technologies Corp .....	Canada .....	82-2406
G.B. Holdings Ltd .....	Singapore .....	82-2192
GKN PLC .....	United Kingdom .....	82-1042
GLS Global Assets Ltd .....	Canada .....	82-1644
GMD Resources Corp .....	Canada .....	82-4071
Gala-Bari International Inc .....	Canada .....	82-2511
Gallery Resources Ltd .....	Canada .....	82-2877
Garden Lake Resources Ltd .....	Canada .....	82-3489
Genbel Investments Ltd .....	South Africa .....	82-235
Gencor Ltd .....	South Africa .....	82-311
Genetronics Biomedical Ltd .....	Canada .....	82-4060
Geo 2 Limited .....	Australia .....	82-4499
Gerle Gold Ltd .....	Canada .....	82-1209
Gesham Resources Inc .....	Canada .....	82-3625
Getinge Industrier AB .....	Sweden .....	82-4293
Giordano Holdings Ltd .....	Hong Kong .....	82-3780
Giteness Exploration Inc .....	Canada .....	82-4170
Glencairn Explorations Ltd .....	Canada .....	82-2640
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Globex Mining Enterprises Inc .....	Canada .....	82-4025
Globex Utilidades SA .....	Brazil .....	82-4486
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Gold Peak Industries (Holdings) Ltd .....	Canada .....	82-3604
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Goldcliff Resources Corp .....	Canada .....	82-2748
Golden Arch Resources Ltd .....	Canada .....	82-659
Golden Hill Mining Corp .....	Canada .....	82-4261
Golden Knight Resources Inc .....	Canada .....	82-811
Golden Kootenay Resources Inc .....	Canada .....	82-2546
Golden Resources Development Int'l Ltd .....	Bermuda .....	82-4026
Golden Trend Petroleum Ltd .....	Canada .....	82-4250
Goldhill Industries Inc .....	Canada .....	82-4162
Goldnev Resources .....	Canada .....	82-1080
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Grand Hotel Holdings Ltd .....	Hong Kong .....	82-3408
Grand National Resources Inc .....	Canada .....	82-1100
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Granduc Mines Ltd .....	Canada .....	82-3124
Grasim Industries Ltd .....	India .....	82-3322
Great Eagle Holdings Ltd .....	Bermuda .....	82-3940
Greenfields Coal Co. Ltd .....	Australia .....	82-4227
Groupe Danone .....	France .....	82-3001
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Gruma S.A. de C.V .....	Mexico .....	82-3434
Grupo Carso Telecom S.A. de C.V .....	Mexico .....	82-4379
Grupo Carso, S.A de C.V .....	Mexico .....	82-3175
Grupo Continental SA .....	Mexico .....	82-4211
Grupo Fernandez Editores .....	Mexico .....	82-4465
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Grupo Financiero Bancomer SA de CV	Mexico	82-3273
Grupo Financiero Inbursa SA de CV	Mexico	82-4243
Grupo Financiero Invermexico SA de CV	Mexico	82-3447
Grupo Gigante, SA de CV	Mexico	82-3142
Grupo Herdez, SA de CV	Mexico	82-3818
Grupo Minsa SA de CV	Mexico	82-4453
Grupo Prof. Planeacion Y Proyectos	Mexico	82-4204
Guandong Kelon Electrical Holdings Co	China	82-4374
Guangzhou Investment Co Ltd	Hong Kong	82-4247
Guardian Enterprises Ltd	Canada	82-857
Guinness PLC	United Kingdom	82-1478
Guongdong Investments Ltd	Hong Kong	82-3772
Gwalia Consolidated Ltd	Australia	82-2126
H.J. Forest Products Inc	Canada	82-4141
HB International Holdings Ltd	Bermuda	82-3949
HCO Energy Ltd	Canada	82-4366
HSBC Holdings PLC	United Kingdom	82-683
Hafslund ASA	Norway	82-4344
Hai Sun Hup Group Ltd	Singapore	82-3575
Hall Train Entertainment	Canada	82-1690
Hana Microelectronics Co. Ltd	Thailand	82-3633
Hang Lung Development Co. Ltd	Hong Kong	82-1439
Hang Seng Bank Ltd	Hong Kong	82-1747
Hanny Magnetics Holdings Ltd	Bermuda	82-3638
Hansol Paper Co	Korea	82-3451
Harbour Petroleum Company Ltd	Canada	82-3427
Hardman Resources N.L.	Australia	82-3472
Harlow Ventures Inc	Canada	82-4500
Harmac Pacific Inc	Canada	82-4122
Hars Systems, Inc	Canada	82-1870
Hartstone Group PLC	United Kingdom	82-3022
Havas S.A	France	82-2879
Hec Hitech Entertainment Corp	Canada	82-3844
Henderson Investment Ltd	Hong Kong	82-3964
Henderson Land Development Co	Hong Kong	82-1561
Hendricks Minerals Canada Ltd	Canada	82-3938
Henkel KGAA	Germany	82-4437
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Hino Motors Ltd	Japan	82-1388
Hixon Gold Resources Ltd	Canada	82-4221
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Hokuriku Bank Ltd	Japan	82-1045
Hol-Lac Gold Mines Ltd	Canada	82-3529
Holderbank Financiere Glaris Ltd	Switzerland	82-4093
Home Venture Ltd	Canada	82-1669
Hong Kong & China Gas Co	Hong Kong	82-1543
Hong Kong Daily News Holding Ltd	Bermuda	82-3887
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Hopewell Holdings Ltd	Hong Kong	82-1547
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Hylsamex, S.A. de C.V.	Mexico	82-4252
Hymex Diamond Corp	Canada	82-2090
Hysan Development Co	Hong Kong	82-1617
Hyundai Engineering & Construction Co	Korea	82-4326
Hyundai Motor Company	Korea	82-3423
I.T.C. Limited	India	82-3470
IBI Corp	Canada	82-2135
ICM Ventures Inc	Canada	82-3054
Iberdrola, S.A	Spain	82-3382
Image Processing Systems Inc	Canada	82-4244

Company	Country	File No.
Imasco Ltd	United Kingdom	82-118
Impala Platinum Holdings Ltd	South Africa	82-359
Imperial Holdings Ltd	South Africa	82-4087
Imperial Metals Corp	Canada	82-1032
Imperial Tobacco Group	United Kingdom	82-4440
Inca Pacific Resources Inc	Canada	82-1665
Indo Pacific Energy Ltd	Canada	82-4066
Indo Pacific Resources Ltd	Canada	82-4262
Indomin Resources Ltd	Canada	82-4298
Indstrial Credit & Investement Corp India	India	82-3716
Industrias Klabin De Papel E Celulose	Brazil	82-3797
Iner-citic Envirotec Inc	Canada	82-2345
Inmet Mining Corp	Canada	82-3481
Insular Explorations Ltd	Canada	82-1827
Insulpro Industries Inc	Canada	82-3281
Integrated Media Communications Inc	Canada	82-2263
Integrated Paving Concepts Inc	Canada	82-3956
Inter West Energy Corp	Canada	82-4510
Interfirst Resources Inc	Canada	82-2302
Interlock Consolidated Enterprises	Canada	82-3359
Intermune Life Sciences Inc	Canada	82-4294
International Annax Ventures Inc	Canada	82-4464
International Bioremediation Svs. Inc	Canada	82-3828
International Chargold Resources Ltd	Canada	82-4385
International Conquest Exploration	Canada	82-4470
International Container Terminal Serv	Philippines	82-3453
International Curator Resources Ltd	Canada	82-1540
International Enexco Ltd	Canada	82-4392
International Eros Holdings Inc	Canada	82-2306
International Homestead Resources Inc	Canada	82-3822
International Mahogany Corp	Canada	82-2375
International Nederlanden Groep N.V	Netherlands	82-3458
International Onword Learning Sys. Inc	Canada	82-2930
International PBX Ventures Ltd	Canada	82-2635
International Panorama Resource Corp	Canada	82-1965
International Parkside Prod. Inc	Canada	82-2794
International Pipe Ltd	Hong Kong	82-3850
International Road Dynamics Inc	Canada	82-3899
International Roraima Gold Corp	Canada	82-3988
International Sales Information Systems	Canada	82-4404
International Skyline Gold Corp	Canada	82-1449
International Topaz Bus. Devlp. Corp	Canada	82-2276
International Tower Hill Mines Ltd	Canada	82-3248
International Wayside Gold Mines Ltd	Canada	82-1606
Interpump Group S.p.A	Italy	82-4511
Interstar Mining Group Inc	Canada	82-3759
Irish Life plc	Ireland	82-3134
Iscor Limited	South Africa	82-3826
Isras Investment Company Ltd	Israel	82-3243
Italian-Thai Development P.L.C	Thailand	82-4299
Ivory Oils & Minerals Inc	Canada	82-4390
J. Sainsbury PLC	United Kingdom	82-913
JD Group Limited	South Africa	82-4401
JD Wetherspoon plc	England	82-4416
JG Summit Holdings Inc	Philippines	82-3572
JSC Irkutskenergo	Russia	82-4458
Jackson Hole Holding Corp	Canada	82-1998
Jamaica Broilers Group Ltd	Jamaica	82-3720
Japan Airlines Company Ltd	Japan	82-122
Japan Telecom Co	Japan	82-3943
Japan Tobacco Inc	Japan	82-4362
Jardine Matheson Holdings	Hong Kong	82-2963
Jardine Strategic Holdings Ltd	Bermuda	82-3085
Jarvis Resources Ltd	Canada	82-962
Jason Mining Ltd	Australia	82-1257
Jentan Resources Ltd	Canada	82-4017
Jetcom Inc	Canada	82-4291
Jilbey Exploration Ltd	Canada	82-1629
Jinhui Holdings Co	Hong Kong	82-3765
Jinhui Shipping and Transportation Ltd	Bermuda	82-4054
John Keells Holdings Ltd	Sri Lanka	82-3854
Johnson Electric Holdings Ltd	Canada	82-2416
Jordex Resources Inc	Canada	82-3200
Joutel Resources Ltd	Canada	82-502

Company	Country	File No.
Jupiter Petroleum Inc .....	Canada .....	82-4197
K. Wah International Holdings Ltd .....	Bermuda .....	82-3853
KCI Konecranes International Corp .....	Finland .....	82-4297
Kap Resources Ltd .....	Canada .....	82-2319
Kaufhof AG .....	Germany .....	82-3592
Kawasaki Heavy Industries Ltd .....	Japan .....	82-4389
Kawasaki Steel Corp .....	Japan .....	82-3389
Kelsey's International Inc .....	Canada .....	82-4013
Kelso Technologies Inc .....	Canada .....	82-2441
Kemira OY .....	Finland .....	82-4145
Keppel Corporation Ltd .....	Singapore .....	82-2564
Kettle River Resources Ltd .....	Canada .....	82-666
Key Anacon Mines Ltd .....	Canada .....	82-23
Key Capital Group Inc .....	Canada .....	82-4468
Keylock Resources Inc .....	Canada .....	82-3271
Kia Motors Corp .....	Korea .....	82-3205
Kidston Gold Mines Ltd .....	Australia .....	82-2351
Kilo Gold Mines Ltd .....	Canada .....	82-4172
Kimberly Clark De Mexico .....	Mexico .....	82-3308
Kingboard Chemical Holdings Ltd .....	Caymen Islands .....	82-4082
Kingfisher PLC .....	United Kingdom .....	82-968
Kingston Resources Ltd .....	Canada .....	82-1969
Kinross Mines Ltd .....	South Africa .....	82-220
Kirin Brewery Co .....	Japan .....	82-188
Klondike Gold Corp .....	Canada .....	82-3017
Kloof Gold Mining Co., Ltd .....	South Africa .....	82-205
Knomex Resources Inc .....	Canada .....	82-4347
Kobe Steel Ltd .....	Japan .....	82-3371
Kolosus Holdings Limited .....	South Africa .....	82-4210
Kolvox Communications Inc .....	Canada .....	82-3829
Komerčni Banka A.S .....	Czech Republic .....	82-4154
Koninklijke Wessanen N.V .....	Netherlands .....	82-1306
Kookaburra Resources Ltd .....	Canada .....	82-2740
Kookmin Bank .....	Korea .....	82-4447
Korea Long Term Credit .....	Korea .....	82-4480
Krones AG .....	Germany .....	82-3871
Kumagai Gumi (H.K.) Ltd .....	Hong Kong .....	82-4029
LG Chemical Ltd .....	Korea .....	82-4191
La Rock Mining Corp .....	Canada .....	82-1496
Ladbroke Group PLC .....	United Kingdom .....	82-1571
Lafarge Coppee .....	France .....	82-3369
Lai Sun Development Company .....	Hong Kong .....	82-3878
Laura Ashley Holdings PLC .....	United Kingdom .....	82-1356
Leeward Capital Corp .....	Canada .....	82-3640
Legal and General Group PLC .....	United Kingdom .....	82-3664
Legend Holding Ltd .....	Hong Kong .....	82-3950
Lem Holding SA .....	Switzerland .....	82-4174
Lend Lease Corporation Ltd .....	Australia .....	82-3498
Lenzing AG .....	Austria .....	82-3207
Leslie Gold Mines Ltd .....	South Africa .....	82-223
Levelland Energy and Resources Ltd .....	Canada .....	82-3590
Licefa International Inc .....	Canada .....	82-3255
Lifestart Multimedia Corp .....	Canada .....	82-4156
Lion Land Berhad .....	Malaysia .....	82-3342
Lojas Arapua S.A .....	Brazil .....	82-4512
Loki Gold Corporation .....	Canada .....	82-4125
London Electricity PLC .....	United Kingdom .....	82-3037
Lonrho PLC .....	United Kingdom .....	82-191
Louis Dreyfus Citrus .....	France .....	82-4505
Lucas Gold Resources Corp .....	Canada .....	82-2297
Lucero Resource Corp .....	Canada .....	82-1756
Lukoil Co .....	Russia .....	82-4006
Lumina Investment Corp .....	Canada .....	82-4004
Luxmatic Technologies N.V .....	Netherlands .....	82-3903
Lydenburg Platinum Ltd .....	South Africa .....	82-312
MCB Investments Corp .....	Canada .....	82-3512
MIM Holdings Ltd .....	Australia .....	82-173
Magician Industries Holdings Inc .....	Bermuda .....	82-4358
Mahindra & Mahindra .....	India .....	82-4479
Makro Atacadista S.A .....	Brazil .....	82-4095
Malbak Ltd .....	South Africa .....	82-3751
Mandarin Oriental International Ltd .....	Hong Kong .....	82-2955
Mannesmann Aktiengesellschaft .....	Germany .....	82-4232
Manufacturas De Papel C.A .....	Venezuela .....	82-4240

Company	Country	File No.
Marcopolo S.A	Brazil	82-4310
Mark Resources Inc	Canada	82-4069
Marks and Spencer PLC	United Kingdom	82-1961
Marubeni Corp	Japan	82-616
Matrix Energy	Canada	82-1214
Mattan Corporations	Canada	82-4318
Maxwell Energy Corp	Canada	82-3061
Mayr-Meinhof Karton AG	Austria	82-4052
Menatep Bank	Russia	82-4155
Menora Resources Inc	Canada	82-4289
Meranto Technology Ltd	Canada	82-4452
Merck KGaA	Germany	82-4178
Meridian Resources Inc	Canada	82-4415
Merita Ltd	Finland	82-4365
Metro Cash and Carry Limited	South Africa	82-4279
Metrowerks, Inc	Canada	82-4049
Metsa Serla OY	Finland	82-3696
Micrex Development Corp	Canada	82-4281
Mill City Gold Mining Corp	Canada	82-3076
Millennium & Copthorne Hotels PLC	United Kingdom	82-4361
Minco Mining & Metals Corp	Canada	82-4160
Minefinders Corp Ltd	Canada	82-2227
Minera Rayrock Inc	Canada	82-3471
Minmet PLC	Ireland	82-4444
Minto Explorations Ltd	Canada	82-4119
Mishibishu Gold Corp	Canada	82-2682
Mitsubishi Chemical Corp	Japan	82-1191
Mitsubishi Corp	Japan	82-3784
Mol Rt	Hungary	82-4224
Molson Companies Ltd	Canada	82-2954
Montoro Resources Inc	Canada	82-3999
Moulin International Holding Ltd	Bermuda	82-3970
Mount Burgess Gold Mining Co	Australia	82-1235
Mountain West Resources Inc	Canada	82-1201
Mt. Leyshon Gold Mines Ltd	Canada	82-1753
Multibanco BG—Banco de Guayaquil SA	Ecuador	82-4131
Multivision Communications Corp	Canada	82-2260
NDU Resources Ltd	Canada	82-2292
NHP Natural Health Ltd	Canada	82-4450
NTS Computer Systems Ltd	Canada	82-4354
NV Verenigd Bezit VNU	Netherlands	82-2876
Nampak Limited	South Africa	82-3714
Nan Ya Plastics Corp	China	82-3980
Naneco Minerals Ltd	Canada	82-2618
National Bank of Canada	Canada	82-3764
National Challenge Systems Inc	Canada	82-4222
National Grid Holding PLC	United Kingdom	82-4207
National Mutual Holdings Ltd	Australia	82-4438
National & Provincial Building Society	United Kingdom	82-3753
Nedcor Limited	South Africa	82-3893
Nestle S.A	Switzerland	82-1252
Netcom Systems AB	Sweden	82-4367
Network One Holding Corp	Canada	82-3787
New Concept Technologies International	Canada	82-3786
New Oji Paper Co., Ltd	Japan	82-4112
New World Developments Co	Hong Kong	82-2971
New World Infrastructure	Hong Kong	82-4218
NewCoast Silver Mines Ltd	Canada	82-4123
Newera Capital Corp	Canada	82-2993
Newstar Resources Inc	Canada	82-4400
Ngai Hing Hong Co Ltd	Bermuda	82-4413
Nikos Explorations Ltd	Canada	82-2459
Nissan Motor Co	Japan	82-207
Noble House Communications	Canada	82-4442
Nomura Securities Co, Ltd	Japan	82-3872
Nora Exploration Inc	Canada	82-3329
Norcan Resources Ltd	Canada	82-3934
Nordbanken AB	Sweden	82-4184
Norilsk Nickel	Russia	82-4270
Normandy Mining Ltd	Australia	82-1975
Noront Resources Ltd	Canada	82-2304
North Ltd	Australia	82-2531
North West Water Group PLC	United Kingdom	82-2813
Northern Electric PLC	United Kingdom	82-3039

Company	Country	File No.
Northern Gaming Inc .....	Canada .....	82-3621
Novacor Chemicals Ltd .....	Canada .....	82-4223
Novartis AG .....	Switzerland .....	82-4412
Novartis AG .....	Switzerland .....	82-4412
Nuinsco Resources Ltd .....	Canada .....	82-1846
OPP Petroquimica S.A .....	Brazil .....	82-4287
Ocean Diamond Mining Holdings .....	South Africa .....	82-4046
Octagon Industries, Inc .....	Canada .....	82-3310
Odessa Industries Inc .....	Canada .....	82-4002
Olympic Resources Ltd .....	Canada .....	82-4055
Olympus Optical Co .....	Japan .....	82-3326
Omron Corp .....	Japan .....	82-1170
Onfem Holdings Ltd .....	Bermuda .....	82-3735
Opawica Explorations .....	Canada .....	82-4509
Orbit Oil and Gas Ltd .....	Canada .....	82-3107
Orient Telecom and Technology Holding .....	Bermuda .....	82-3946
Orkla A.S .....	Norway .....	82-3998
Orleans Resources Inc .....	Canada .....	82-4061
Osito Ventures Ltd .....	Canada .....	82-2238
Otis J. Explorations Corp .....	Canada .....	82-3587
Outokumpu OY .....	Finland .....	82-3680
Oxiteno S.A .....	Brazil .....	82-4148
P.T. Jakarta Int'l Hotels & Dev .....	Indonesia .....	82-4397
PLM AB .....	Sweden .....	82-4455
Pacific Andes Int'l Holdings Ltd .....	Bermuda .....	82-4031
Pacific Capital Limited .....	Australia .....	82-4159
Pacific Concord Holding Ltd .....	Hong Kong .....	82-3819
Pacific Falcon Resources Corp .....	Canada .....	82-2204
Pacific Galleon Mining Ltd .....	Canada .....	82-3258
Pacific Rim Mining .....	Canada .....	82-3611
Pacific Vangold Mines Ltd .....	Canada .....	82-2891
Pacific Vista Industries Inc .....	Canada .....	82-2829
Pact Resources N.L. .....	Australia .....	82-1386
Pactech Ventures Ltd .....	Canada .....	82-3058
Palmer Industries Ltd .....	Canada .....	82-1882
PanGlobal Enterprises, Inc .....	Canada .....	82-3223
Pangea Goldfields Inc .....	Canada .....	82-3917
Panterra Minerals Inc .....	Canada .....	82-3597
Paramount Ventures & Finance Inc .....	Canada .....	82-2207
Parkcrest Explorations Ltd .....	Canada .....	82-4090
Paul Y ITC Construction Holdings Ltd .....	Hong Kong .....	82-4217
Pearl Oriental Holdings Ltd .....	Bermuda .....	82-4350
Pearson PLC .....	United Kingdom .....	82-4019
Pelorus Navigation Systems Inc .....	Canada .....	82-4393
Pender Capital Corp .....	Canada .....	82-4405
Peninsular and Oriental Steam Nav. Co .....	United Kingdom .....	82-2083
Penn-Gold Resources Inc .....	Canada .....	82-4151
Pentland Industries PLC .....	United Kingdom .....	82-1219
Pepkor Ltd .....	South Africa .....	82-3925
Perdigao S.A Comercio e Industria .....	Brazil .....	82-4431
Perfect Fry Corp .....	Canada .....	82-1609
Peru Real Estate S.A .....	Peru .....	82-4107
Petrobras Distribuidora S.A .....	Brazil .....	82-4153
Petroleum Brasileiro S.A-Petrobras .....	Brazil .....	82-4448
Philipino Telephone Corp .....	Philippines .....	82-4387
Phoenix Canada Oil Co Ltd .....	Canada .....	82-3936
Phoenix Gold Resources Ltd .....	British Columbia .....	82-4419
Pinnacle Resources Ltd .....	Canada .....	82-4398
Pioneer International Ltd .....	Australia .....	82-2701
Pittencrief Resources PLC .....	United Kingdom .....	82-3985
Placer Pacific Ltd .....	Australia .....	82-1952
Pokphand C.P. Co Ltd .....	Bermuda .....	82-3260
Polialden Petroquimica S.A .....	Brazil .....	82-4275
Polyair Tires Inc .....	Canada .....	82-3756
Poplar Resources Ltd .....	Canada .....	82-1489
Power Corp. of Canada .....	Canada .....	82-137
Power Financial Corp .....	Canada .....	82-1716
Premier Group Ltd .....	South Africa .....	82-3892
Premier Oil PLC .....	United Kingdom .....	82-2617
President Enterprises Co .....	Taiwan .....	82-3424
Prime Resources Group, Inc .....	Canada .....	82-1503
Princeton Mining Corp .....	Canada .....	82-1243
ProAm Explorations Corp .....	Canada .....	82-4446
Promatek Industries Ltd .....	Canada .....	82-1351

Company	Country	File No.
Proprietary Energy Industries Inc .....	Canada .....	82-4140
Proteus International PLC .....	United Kingdom .....	82-3895
Prudential Corporation PLC .....	United Kingdom .....	82-1477
Puma AG Rudolf Dassler Sport .....	Germany .....	82-4369
Purneftegaz .....	Russia .....	82-4237
Q Media Software Corp .....	Canada .....	82-3761
QNI Limited .....	Australia .....	82-3834
RAO Unified Energy Systems .....	Russia .....	82-4077
RBS Participacoes S.A .....	Brazil .....	82-4338
RBS RV de Florianopolis S.A .....	Brazil .....	82-4340
RFM Corporation .....	Philippines .....	82-4117
RJK Explorations Ltd .....	Canada .....	82-2629
RWE AG .....	Germany .....	82-4018
Radical Advanced Technologies Corp .....	Canada .....	82-3251
Radio Gaucha S.A .....	Brazil .....	82-4341
Railtrack Group PLC .....	United Kingdom .....	82-4282
Rainbow Petroleum Corp .....	Canada .....	82-4423
Raks Elektronik Sanayi Ve Ticaret AS .....	Turkey .....	82-4216
Ranbaxy Laboratories Ltd .....	India .....	82-3870
Rand Mines Ltd .....	South Africa .....	82-304
Randfontein Estates Gold Mining .....	South Africa .....	82-267
Randgold Finance (BVI) Ltd .....	South Africa .....	82-4463
Rayrock Yellowknife Resources Inc .....	Canada .....	82-378
Raytec Capital Corp .....	Canada .....	82-3553
Rebrandt Gold Mines Ltd .....	Canada .....	82-1762
Redell Mining Corp .....	Canada .....	82-1286
Redux Energy Corporation .....	Canada .....	82-4280
Redwood Energy Ltd .....	Canada .....	82-4349
Reed Lake Exploration Limited .....	Canada .....	82-2254
Refrigeracao Parana S.A .....	Brazil .....	82-3794
Regeena Resources Inc .....	Canada .....	82-3560
Reliance Industries Ltd .....	India .....	82-3300
Rembrandt Group Ltd .....	South Africa .....	82-3760
Renong Berhad .....	Malaysia .....	82-4166
Rentokil Group PLC .....	United Kingdom .....	82-3806
Resorts World Berhad .....	Malaysia .....	82-3229
Response Biomedical Corp .....	Canada .....	82-1365
Rexam plc .....	United Kingdom .....	82-3
Rhodia-Ster S.A .....	Argentina .....	82-3942
Rich Minerals Corp .....	Canada .....	82-2832
Riley Resources .....	Canada .....	82-2159
Riva Petroleum Inc .....	Canada .....	82-2945
Roche Holdings Ltd .....	Switzerland .....	82-3315
Rock Resources Inc .....	Canada .....	82-4504
Rolls-Royce PLC .....	United Kingdom .....	82-2821
Roly International Holdings Ltd .....	Bermuda .....	82-4364
Romarco Minerals Inc .....	Canada .....	82-4259
Root Industries .....	Canada .....	82-4457
Roper Resources Inc .....	Canada .....	82-2020
Rosenthal AG .....	Germany .....	82-1648
Royal Nedlloyd Group NV .....	Netherlands .....	82-1056
Royledge Resources Inc .....	Canada .....	82-4388
Roycefield Resources Ltd .....	Canada .....	82-4149
Rustenburg Platinum Holdings Ltd .....	South Africa .....	82-241
SAP AG .....	Germany .....	82-4045
SLN Ventures Corp .....	Canada .....	82-3856
ST Systems Corporation .....	Canada .....	82-4094
Sage Group Limited .....	South Africa .....	82-4241
Sakura Bank Ltd .....	Japan .....	82-3055
Salhus Resource Corp .....	Canada .....	82-842
Samsung Electronics Co Ltd .....	Korea .....	82-3109
Samsung Heavy Industries Co Ltd .....	Korea .....	82-4091
San Miguel Corp .....	Philippines .....	82-306
Sancor Cooperatives Unidas .....	.....	82-4476
Sandoz Ltd .....	Switzerland .....	82-3156
Sandvik AB .....	Sweden .....	82-1463
Santos Ltd .....	Australia .....	82-34
Sanyo Electric Co .....	Japan .....	82-264
Sanyo Securities Co .....	Japan .....	82-1857
Sao Paulo Alparagas S.A .....	Brazil .....	82-3692
Sasol Ltd .....	South Africa .....	82-631
Sawako Corporation .....	Japan .....	82-4255
Scandinavian Mobility International .....	Sweden .....	82-4231
Schwarz Pharma AG .....	Germany .....	82-4406



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Scimitar Hydrocarbons Corporation	Canada	82-4238
Scottish Hydro-Electric PLC	United Kingdom	82-3099
Scottish Power PLC	United Kingdom	82-3100
Seaperfect PLC	United Kingdom	82-4220
Sechura Inc	Canada	82-1278
Sedwick Group PLC	United Kingdom	82-1529
Seine River Resources, Inc	Canada	82-2942
Sembawang Corporation	Singapore	82-4303
Senetek PLC	United Kingdom	82-875
Sentrachem Ltd	South Africa	82-3914
Sequros "Illimani" S.A	Bolivia	82-4449
Servgro International Ltd	South Africa	82-3898
Seversky Tube Works	Russia	82-4101
Shandwick International plc	United Kingdom	82-2760
Shanghai Diesel Engine Co. Ltd	China	82-4382
Shanghai Hai Xing Shipping Co. Ltd	China	82-4037
Shanghai Jinqiao Export Pr. Zone Dev.	China	82-4146
Shanghai Lujiazui Finan. & Trade Zone	China	82-4190
Shanghai Refrigerator Compressor	China	82-4459
Sharp Corp	Japan	82-1116
Shenzhen Special E.Z. Real Estate Grp	China	82-3783
Shiseido Company Ltd	Japan	82-3311
Shomega Limited	Australia	82-3815
Shun Tak Holdings	Hong Kong	82-3357
Siam Commercial Bank Public Co Ltd	Thailand	82-4345
Sidel	France	82-4396
Siderar S.A.I.C.	Argentina	82-4328
Siebe plc	United Kingdom	82-2142
Siemens AG	Germany	82-73
Sierra Nevada Gold Ltd	Canada	82-894
Sikaman Gold Resources Ltd	Canada	82-1651
Silverspar Minerals Inc	Canada	82-478
Simsmetal Ltd	Australia	82-3838
Singapore Telecommunications Ltd	Singapore	82-3622
Sino Pacific Development		82-1979
Siu Fung Ceramics Holdings Ltd	Hong Kong	82-3918
Skibsaksjeselskapet Storli	Norway	82-3848
Slovnaft, A.S	Russia	82-3721
Smedvig A.S	Norway	82-3551
Snowcap Waters Ltd	Canada	82-4051
Societe Generale	France	82-3501
Societe Nationale des Chemins de Fer	Belgium	82-4161
Sol Petroleo S.A	Argentina	82-3448
Sons of Gwalia N.L	Australia	82-1039
Soranzo International Spirits Inc	Canada	82-4408
South African Breweries Ltd	South Africa	82-303
South African Land & Exploration Co	South Africa	82-59
South China Morning Post	Hong Kong	82-3327
South Wales Electricity PLC	United Kingdom	82-3031
Southcorp Holdings Ltd	Australia	82-2692
Southern Era Resources Ltd	Canada	82-3658
Southern Pacific Petroleum N.L	Australia	82-353
Southern Water PLC	United Kingdom	82-2797
Southvaal Holdings Ltd	South Africa	82-197
Southward Energy Ltd	Canada	82-3005
Spectra Inc	Canada	82-4312
Spectrum Games Corp	Canada	82-3599
Spokane Resources Ltd	Canada	82-4391
Sportsmate International Inc	Canada	82-4356
St. Barbara Mines Ltd	Australia	82-3747
St. George Bank Ltd	Australia	82-3809
St. Jude Resources Ltd	Canada	82-4014
St. Laurent Paperboard Inc	Canada	82-3896
Stackpal International Corp	Canada	82-4264
Stadshypotek AB	Sweden	82-3933
Stalexport SA	Poland	82-4200
Stampede Oils Inc	Canada	82-3605
Star Group Newspaper Networks Inc	Canada	82-4167
Star Paging International Holding Ltd	Bermuda	82-3654
Starlight International Holdings Ltd	Bermuda	82-3594
Starrex Mining Corp	Canada	82-3755
Statoil	Norway	82-3444
Steel Authority of India Ltd	India	82-4300
Stef International Corp	Canada	82-4070

Company	Country	File No.
Stilfontein Gold Mining Co	South Africa	82-301
Stina Resources Ltd	Canada	82-2062
Stirrup Creek Gold Ltd	Canada	82-4464
Stralak Resources Ltd	Canada	82-976
Stratabound Minerals Corp	Canada	82-3284
Strike Energy Inc	Canada	82-2659
Striker Resources N.L.	Australia	82-3585
Structed Biologicals Inc	Canada	82-2295
Stryker Resources Ltd	Canada	82-883
Sudamtex de Venezuela, C.A. de C.V.	Venezuela	82-3653
Sumitomo Bank Ltd	Japan	82-4395
Sumitomo Metal Industries Ltd	Japan	82-3507
Summit Resources Ltd	Canada	82-2922
Sun Hung Kai Properties Ltd	Hong Kong	82-1755
Super Twins Resources Ltd	Canada	82-3164
Svedala Industri A.B.	Sweden	82-3593
Svenska Cellulosa Aktiebolaget SCA	Sweden	82-763
Swedbank	Sweden	82-4092
Swift Security Inc	Canada	82-4495
Swire Pacific Ltd	Hong Kong	82-2184
Swiss Bank Corp	Switzerland	82-3567
Swiss Reinsurance Company	Switzerland	82-4248
Synex International Inc	Canada	82-862
T.K.O. Resources Inc	Canada	82-4351
TPI Polene Public Company Ltd	Thailand	82-4407
TSB Group PLC	United Kingdom	82-4235
Tabcorp Holdings Ltd	Australia	82-3841
Tai Cheung Holdings Ltd	Bermuda	82-3528
Talisman Energy Inc	Canada	82-3710
Tan Range Exploration Corp	Canada	82-3446
Tapajos Gold Inc	Canada	82-4496
Tappit Resources Ltd	Canada	82-3813
Tata Enginnering & Locomotive Co Ltd	India	82-3768
Tata Hydro-Electric Power Supply Co	India	82-3704
Tata Power Company	India	82-3733
Tate & Lyle PLC	United Kingdom	82-905
Tatneft JSC	Russia	82-4226
Technip	France	82-3959
Techtronic Industries Co	Hong Kong	82-3648
Teijin Ltd	Japan	82-1266
Teijin Seiki Co	Japan	82-1493
Teka Tecelagem Kuerrichg S.A.	Brazil	82-3620
Televisao Gaucha S.A.	Brazil	82-4339
Television Broadcasts Ltd	Hong Kong	82-1072
Telstra Corporation	Australia	82-3562
Tenaga Nasional Berhad	Malaysia	82-3677
Teollisuuden Voima Oy	Finland	82-2973
Terrawest Industries Inc	Canada	82-2298
Tesco PLC	United Kingdom	82-3277
Teuton Resources Corp	Canada	82-1394
Thai Petrochemical Industry	Thailand	82-4108
Thai Telephone and Telecommunications	Thailand	82-3744
The Premier Group Limited	South Africa	82-3892
Theme International Holdings	Bermuda	82-4441
Tiberon Minerals Ltd	Canada	82-4488
Tiomin Resources Inc	Canada	82-3430
Titan Pacific Resources Ltd	Canada	82-4462
Toba Gold Resources	Canada	82-2966
Tofas Turk Otomobil	Turkey	82-3699
Tombstone Explorations Co	Canada	82-3624
Tomorrow International Holdings Ltd	Bermuda	82-4256
Tomra Systems A/S	Norway	82-3334
Topaz Resources International	Canada	82-1285
Topper Gold Corp	Canada	82-2694
Toscana Resources Ltd	Canada	82-4434
Total Access Mining PLC	Thailand	82-4314
Totem Sciences Inc	Canada	82-4417
Toyobo Co	Japan	82-1172
Toyota Motor Co, Ltd	Japan	82-208
Trade Wind Resources Ltd	Canada	82-2595
Trans Atlantic Enterprises	Canada	82-1692
Trans Hex Group Ltd	South Africa	82-4011
Transportadora de Gas del Norte S.A.	Argentina	82-3845
Tremingo Resources Ltd	Canada	82-1384

Company	Country	File No.
Tri-Vision International Ltd	Canada	82-4501
Trimin Resources Inc	Canada	82-1833
Trinity International Holdings PLC	United Kingdom	82-3043
Trio Gold Corp	Canada	82-2127
Triquanta Investments Limited	Canada	82-3511
Trooper Technologies Inc	Canada	82-4265
Trove Investment Corp	Canada	82-2476
Troymin Resources Ltd	Canada	82-3503
Truly International Holdings	Cayman Islands	82-3700
Trust Company of Australia Ltd	Australia	82-1443
Tsingtao Brewery Company Ltd	China	82-4021
Tung Fong Hung Holdings Limited	Cayman Islands	82-4152
Tusk Energy Inc	Canada	82-3297
Tyler Resources Inc	Canada	82-3881
UDL Holdings Limited	Hong Kong	82-4260
UPM Kymmene Corporation	Finland	82-4333
USA Video Corporation	Canada	82-1601
Ungava Minerals Corp		82-4436
Unibanco Uniao de Bancos Brasileiros	Brazil	82-3353
Union Bank of Switzerland	Switzerland	82-3804
Unisel Gold Mines Ltd	South Africa	82-236
United Biscuits PLC	United Kingdom	82-3079
United Engineers (Malaysia)	Malaysia	82-3816
United Film & Video Holdings Ltd	Canada	82-3859
United Overseas Land Ltd	Singapore	82-2180
United Paragon Mining Corp	Philippines	82-4180
United Reef Limited	Canada	82-4331
Univa Inc	Canada	82-2570
Universal Gun Loc Industries Ltd	Canada	82-828
Universal S.A	Poland	82-4502
Upland Global Corp	Canada	82-4346
Upton Resources Inc	Canada	82-3290
Urban Resource Technologies	Canada	82-4198
Usinas Siderurgicas de Minas Gerais SA	Brazil	82-3902
Utility Cable PLC	United Kingdom	82-3952
VA Technologie AG	Austria	82-3910
Vaal Reefs Exploration & Mining Co	South Africa	82-56
Vanguard Petroleum Ltd	Australia	82-3478
Vannessa Ventures Ltd	Canada	82-4473
Variatronix International Ltd	Bermuda	82-3820
Vasogen Inc	Canada	82-4372
Vedron Gold Inc	Canada	82-816
Velcro Industries, N.V	Neth. Ant.	82-145
Verbund	Austria	82-4381
Vescan Equities Inc		82-4516
Viag Ag	Germany	82-4343
Viceroy Resource Corporation	Canada	82-1193
Vickers PLC	United Kingdom	82-1359
Virginia Gold Mines Inc	Canada	82-4176
Voice-It Technologies Inc	Canada	82-1743
Volkswagen AG	Germany	82-2188
Vortex Energy & Minerals Ltd	Canada	82-3462
Vtech Holdings Ltd	Bermuda	82-3565
Wace Group PLC	United Kingdom	82-2369
Waite Dufault Mines Ltd	Canada	82-4324
War Eagle Mining Co	Canada	82-2008
Wayburn Oil and Natural Gas	Canada	82-3740
Webco Europe S.A	Luxembourg	82-3975
West Rand Consolidated Mines Ltd	South Africa	82-314
Western Areas Gold Mining Co	South Africa	82-268
Western Canadian Land Corp	Canada	82-1446
Western Deep Levels, Ltd	South Africa	82-58
Western Garnet Company	Canada	82-2637
Westley Technologies	Canada	82-1088
Westpine Metals Ltd	Canada	82-3116
Wex Technologies Inc	Canada	82-3304
Whisky Creek Resources, Inc	Canada	82-3875
White Knight Resources Ltd	Canada	82-2850
White Swan Resources	Canada	82-4460
Wienerberger Baustoffindustrie AG	Austria	82-4316
Williams Creek Explorations Ltd	Canada	82-3146
Willow Resources Ltd	Canada	82-3843
Windarra Minerals Ltd	Canada	82-561
Winkelhaak Mines Ltd	South Africa	82-221

Company	Country	File No.
Winzen International Inc .....	Canada .....	82-1173
Wolfford AG .....	Austria .....	82-4403
Wolters Kluwer N.V. ....	Netherlands .....	82-2683
Woolworths Limited .....	Australia .....	82-3544
Wrightson Ltd .....	New Zealand .....	82-3646
X-Cal Resources Ltd .....	Canada .....	82-1655
XYQuest Venture Corp .....	Canada .....	82-4376
Yaletown Entertainment Corp .....	Canada .....	82-4336
Yeebo (International Holdings) Ltd .....	Bermuda .....	82-3869
Yellowjack Resources Ltd .....	Canada .....	82-1765
Yiu Wing International Holdings Ltd .....	Bermuda .....	82-3655
Yorkshire Electricity Group PLC .....	United Kingdom .....	82-3034
Yorkshire Food Group PLC .....	United Kingdom .....	82-4242
Young-Shannon Gold Mines Ltd .....	Canada .....	82-2928
Yukon Revenue Mines Limited .....	Canada .....	82-3779
Yukong Limited .....	Korea .....	82-3901
Yukos .....	Russia .....	82-4209
Zanex N.L. ....	Australia .....	82-932
Zero Hora-Editora Jornalística S.A .....	Brazil .....	82-4337

[FR Doc. 97-3204 Filed 2-7-97; 8:45 am]

BILLING CODE 8010-01-P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Meeting of the Industry Sector Advisory Committee for Retailing and Wholesaling (ISAC 17)

**AGENCY:** Office of the United States  
Trade Representative.

**ACTION:** Notice of meeting.

**SUMMARY:** The Industry Sector Advisory  
Committee for Retailing and  
Wholesaling (ISAC 17) will hold a  
meeting on February 25, 1997 from  
10:00 a.m. to 3:00 p.m. The meeting will  
be open to the public from 1:00 p.m. to  
3:00 p.m.

**DATES:** The meeting is scheduled for  
February 25, 1997, unless otherwise  
notified.

**ADDRESSES:** The meeting will be held at  
the Department of Commerce in Room  
1869, located at 14th Street and  
Constitution Avenue, N.W.,  
Washington, D.C., unless otherwise  
notified.

**FOR FURTHER INFORMATION CONTACT:**  
Aaron Schavey, Department of  
Commerce, 14th St. and Constitution  
Ave., N.W., Washington, D.C. 20230,  
(202) 482-4117 or Suzanna Kang, Office  
of the United States Trade  
Representative, 600 17th St. N.W.,  
Washington, D.C. 20508, (202) 395-  
6120.

**SUPPLEMENTARY INFORMATION:** The ISAC  
17 will hold a meeting on February 25,  
1997 from 10:00 a.m. to 3:00 p.m. The  
meeting will include a review and  
discussion of current issues which  
influence U.S. trade policy. Pursuant to  
Section 2155(f)(2) of Title 19 of the

United States Code and Executive Order  
11846 of March 27, 1975, the Office of  
the U.S. Trade Representative has  
determined that part of this meeting will  
be concerned with matters the  
disclosure of which would seriously  
compromise the development by the  
United States Government of trade  
policy, priorities, negotiating objectives  
or bargaining positions with respect to  
the operation of any trade agreement  
and other matters arising in connection  
with the development, implementation  
and administration of the trade policy of  
the United States. During the discussion  
of such matters, the meeting will be  
closed to the public from 10:00 a.m. to  
1:00 p.m. The meeting will be open to  
the public and press from 1:00 p.m. to  
3:00 p.m. when other trade policy issues  
will be discussed.

#### Agenda

1:00 p.m.—U.S. Government Trade  
Promotion Policy

1:15 p.m.—Hong Kong Reversion

1:45 p.m.—WTO Trade Ministerial

2:15 p.m.—FTAA

2:40 p.m.—Korea Trade Relations

3:00 p.m.—Adjourn

Attendance during this part of the  
meeting is for observation only.  
Individuals who are not members of the  
committee will not be invited to  
comment.

Phyllis Shearer Jones,

*Assistant United States Trade Representative,  
Intergovernmental Affairs and Public Liaison.*

[FR Doc. 97-3186 Filed 2-7-97; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. NAFTA/D-2]

### NAFTA Dispute Settlement Proceeding Concerning Safeguard Measures on Broom Corn Brooms From Mexico

**AGENCY:** Office of the United States  
Trade Representative.

**ACTION:** Notice; invitation for  
submissions from the public.

**SUMMARY:** The Office of the United  
States Trade Representative (USTR) is  
providing notice that the Free Trade  
Commission of the North American Free  
Trade Agreement (NAFTA), at the  
request of the Government of Mexico,  
has established an arbitral panel to  
examine the consistency with U.S.  
obligations under the NAFTA of the  
emergency safeguard measures of the  
United States with respect to imports of  
broom corn brooms from Mexico. USTR  
invites written submissions from the  
public concerning the issues raised in  
the dispute.

**DATES:** Although USTR will accept  
submissions from the public at any time  
during the course of the dispute  
settlement proceeding, any submission  
should be made on or before March 7,  
1997, to be assured of timely  
consideration by USTR in preparing its  
first written submission to the panel.

**ADDRESSES:** Submissions should be  
made to Sybia Harrison, Office of the  
General Counsel, Room 222, Attn:  
Broom Corn Brooms Dispute, Office of  
the U.S. Trade Representative, 600 17th  
Street, NW., Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** John  
M. Melle, Director, Mexican Affairs,  
(202) 395-3412.

**SUPPLEMENTARY INFORMATION:** At the  
request of the U.S. Cornbroom Task

Force, the U.S. International Trade Commission (ITC) began, on March 4, 1996, bilateral and global safeguard investigations regarding the importation of broom corn brooms. USITC Inv. Nos. TA-201-65 and NAFTA 302-1, USITC Pub. 2984 (August 1996). On July 2, 1996, the ITC made affirmative determinations in both cases, finding that broom corn brooms are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing a like or directly competitive product. In reaching its determination, the ITC defined the domestic industry as consisting of facilities producing broom corn brooms, but not facilities producing plastic brooms. The ITC also found, pursuant to section 311(a) of the NAFTA Implementation Act (19 U.S.C. 3371(a)), that broom corn brooms produced in Mexico account for a substantial share of total imports and contribute importantly to the serious injury caused by imports.

On November 28, 1996, the President implemented relief action under section 203 of the Trade Act of 1974, as amended (19 U.S.C. 2253), and section 312(a) of the NAFTA Implementation Act (19 U.S.C. 3372(a)). This action included a temporary increase in duties over the next three years. Additional tariffs were imposed on brooms covered under subheading 9603.1050 of the Harmonized Tariff Schedule of the United States (HTS). For HTS subheading 9603.1060, tariffs are maintained at pre-safeguard levels until a specified quantity of imports is exceeded through the use of a tariff-rate quota (TRQ). Imports above TRQ levels are subject to additional duties. TRQs are allocated individually for each substantial supplier, with a residual allocation for all other suppliers. Developing countries which are not substantial suppliers are exempt from the safeguard.

The Government of Mexico has asked for the establishment of a panel under Chapter Twenty of the NAFTA to examine the consistency of the safeguard action—specifically, the ITC domestic industry determination—with the obligation of the United States under the NAFTA. Members of the panel are currently being selected, and the panel is expected to meet, as necessary, in Washington, D.C. to examine the dispute. The panel is expected to issue its final report detailing its findings and recommendations within 120 days after the last panelist is selected.

#### Requirements for Submissions From the Public

Interested persons are invited to submit written information or advice concerning the issues raised in the dispute. Submissions must be in English and provided in fifteen copies. A submitter requesting that information contained in the submission be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

A submitter requesting that information or advice contained in the submission, other than business confidential information, be treated as submitted in confidence in accordance with section 135(g)(2) of the Trade Act of 1974, as amended (19 U.S.C. 2155(g)(2))—

- (1) Must so designate that information or advice;
- (2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and
- (3) Is encouraged to provide a non-confidential summary or the information of advice.

USTR will maintain a public file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508. The public file will include non-confidential versions of submissions made to the dispute settlement panel and the final report of the dispute settlement panel. Under NAFTA Article 2017.4, the final report of the panel will be published 15 days after it is transmitted to the Free Trade Commission unless the Commission decides otherwise. A non-confidential version of the hearing transcript may be made available 15 days after the final report is published.

An appointment to review the public file (Docket NAFTA/D-2, "Mexico-Brooms") may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. A. Jane Bradley,

*Assistant U.S. Trade Representative for Monitoring and Enforcement.*

[FR Doc. 97-3230 Filed 2-6-97; 8:45 am]

BILLING CODE 3190-01-M

#### DEPARTMENT OF TRANSPORTATION

##### Aviation Proceedings; Agreements Filed During the Week Ending January 31, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* OST-97-2101

*Date filed:* January 28, 1997

*Parties:* Members of the International Air Transport Association

*Subject:* TC2 Telex Mail Vote 848, Middle East-Africa Reso 010f, Intended effective date: March 1, 1997

*Docket Number:* OST-97-2102

*Date filed:* January 28, 1997

*Parties:* Members of the International Air Transport Association

*Subject:*

PTC3 0045 dated December 17, 1996 r1-9

PTC3 0047 dated December 17, 1996 r10-18

PTC3 0048 dated December 17, 1996 r19-26

PTC3 0050 dated December 17, 1996 r27

PTC3 0052 dated December 17, 1996 r28-35

PTC3 0054 dated December 17, 1996 r36-43

PTC3 0055 dated December 17, 1996 r44

PTC3 0057 dated December 17, 1996 r45-57

PTC3 0058 dated December 17, 1996 r58-71

PTC3 0059 dated December 17, 1996 r72-94

PTC3 0061 dated December 17, 1996 r95-128

PTC3 0063 dated December 17, 1996 r129-140

PTC3 0064 dated December 17, 1996 r141-150

TC3 Resolutions (excluding US Territories)

PTC 0065 dated January 3, 1997

Correction PTC3 0068 dated January 17, 1997 Minutes

PTC3 Fares 0004 0005 dated January 7, 1997 Tables

Intended effective date: April 1, 1997

*Docket Number:* OST-97-2105

*Date filed:* January 30, 1997

*Parties:* Members of the International Air Transport Association

*Subject:* COMP Telex Mail Vote 849, Rounding Unit for Angola r1, COMP

Telex Mail Vote 850, Rounding Unit for Zimbabwe r2, Intended effective date: March 1, 1997

*Docket Number:* OST-97-2106

*Date filed:* January 30, 1997

*Parties:* Members of the International Air Transport Association

*Subject:* PTC3 0046 dated December 17, 1996 r1-8

PTC3 0049 dated December 17, 1996 r9-16

PTC3 0051 dated December 17, 1996 r17

PTC3 0053 dated December 17, 1996 r18

PTC3 0056 dated December 17, 1996 r19

PTC3 0060 dated December 17, 1996 r20-36

PTC3 0062 dated December 17, 1996 r37

TC3 Resolutions (involving US Territories) (The conference's minutes (PTC3 0068) and tables, (PTC3 Fares 0004-5) were submitted to the Department on January 28 and assigned Docket OST-97-2102) Intended effective date: April 1, 1997

*Docket Number:* OST-97-2107

*Date filed:* January 30, 1997

*Parties:* Members of the International Air Transport Association

*Subject:*

COMP Telex 024f

Local Currency Fare Changes-Namibia/Lesotho/Swaziland

Intended effective date: February 1, 1997

*Docket Number:* OST-97-2108

*Date filed:* January 30, 1997

*Parties:* Members of the International Air Transport Association

*Subject:*

PTC23 AFR-TC3 0005 dated November 16, 1996 r1-33

PTC23 AFR-TC3 0006 dated December 3, 1996 r34

Correction—PTC23 AFR-TC3 0007 dated December 13, 1996; PTC23 AFR-TC3 0012 dated January 28, 1997

Minutes—PTC23 AFR-TC3 0008 dated December 27, 1996

Tables—PTC23 AFR-TC3 Fares 0001 dated December 3, 1996 (Summary Attached)

Intended effective date: April 1/August 1, 1997

*Docket Number:* OST-97-2110

*Date filed:* January 31, 1997

*Parties:* Members of the International Air Transport Association

*Subject:* PTC23 Telex Mail Vote 852

Revalidate Europe-SASC agreement

Intended effective date: July 1, 1997

*Docket Number:* OST-97-2111

*Date filed:* January 31, 1997

*Parties:* Members of the International Air Transport Association

*Subject:*

PTC31 Telex Mail Vote 851

Correct Anomaly With US Add-ons to/from Japan

Intended effective date: April 1, 1997

Paulette V. Twine,

*Chief, Documentary Services.*

[FR Doc. 97-3128 Filed 2-7-97; 8:45 am]

BILLING CODE 4910-62-P

### Office of the Secretary; White House Commission on Aviation Safety and Security; Open Meeting

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The White House Commission on Aviation Safety and Security will hold its final meeting to discuss aviation safety and security issues. The meeting is open to the public.

**DATES:** The meeting will be held on Wednesday, February 12, 1997, from 8:00 AM-12:00 noon.

**ADDRESSES:** The meeting will take place in the Commerce Department Auditorium, 14th Street, between Constitution and Pennsylvania Avenues, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Richard K. Pemberton, Administrative Officer, Room 6210, GSA Headquarters, 18th & F Streets, NW., Washington, DC 20405; telephone 202.501.3863; telecopier 202.501.6160.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (5 USC Appendix), DOT gives notice of a meeting of the White House Commission on Aviation Safety and Security ("Commission"). The Commission was established by the President to develop advice and recommendations on ways to improve the level of civil aviation safety and security, both domestically and internationally. The principal purpose of the meeting on February 12, which was postponed from its original date of January 28, is to formulate the Commission's final recommendations to the President.

Limited seating is available on a first-come, first-served basis. The public may submit written comments to the Commission at any time; comments should be sent to Mr. Pemberton at the address and telecopier number shown above.

Issued in Washington, DC on February 3, 1997.

Nancy E. McFadden,

*General Counsel, Department of Transportation.*

[FR Doc. 97-3129 Filed 2-7-97; 8:45 am]

BILLING CODE 4910-62-P

### Federal Aviation Administration

#### RTCA, Inc.; Joint Special Committee 181/EUROCAE Working Group 13, Standards of Navigation Performance

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for Joint Special Committee 181/EUROCAE Working Group (WG) 13 meeting to be held February 24-28, 1997, starting at 9:00 a.m. The meeting will be held at the Warner Center Marriott, Woodland Hills, CA.

The agenda for Monday, February 24, will include the following: 9:00 a.m.-3:30 p.m. WG Sessions; 3:30 p.m.-4:30 p.m. Opening Plenary Session (1) Review of Agenda; (2) Review and Approval of Minutes of Previous Meeting; (3) Additional Taskings for Committee (Ground Database Standards); (4) Chairman's Report.

Tuesday, February 25: 9:00 a.m.-4:30 p.m. WG's 1 and 2 Sessions; February 26, 9:00 a.m.-4:30 p.m.: Joint Session (WG-1/WG-2); February 27, 9:00 a.m.-4:30 p.m. WG's 1 and 3 Sessions; February 28, 8:30 a.m.-11:00 a.m. WG's 1 and 3 Sessions; 11:00 a.m.-12:00 noon Closing Plenary Session (1) WG Status Reports; (2) Future Meeting Schedule; (3) New Business; (4) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833-9339 (phone) or (202) 833-9434 (fax). For hotel reservations, contact Michelle Massie, (818) 347-0907 (phone) or (818) 227-6111 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 4, 1997.

Janice L. Peters,

*Designated Official.*

[FR Doc. 97-3231 Filed 2-7-97; 8:45 am]

BILLING CODE 4810-13-M

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Birmingham International Airport, Birmingham, Alabama

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Birmingham International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). **DATES:** Comments must be received on or before March 12, 1997.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208-2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Walker Johnson, Director of Finance, of the

Birmingham International Airport at the following address: Birmingham Airport Authority, 5900 Airport Highway, Birmingham, AL 35212.

All carriers and foreign air carriers may submit copies of written comments previously provided to the Birmingham Airport Authority under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:**

David Shumate, Project Manager, FAA Airports, District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208-2306, telephone number 601-965-4628. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Birmingham Airport Authority under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 31, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by Birmingham Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 13, 1997.

The following is a brief overview of the application.

*PFC Application Number:* 97-01-C-00-BHM.

*Level of the proposed PFC:* \$3.00.

*Proposed charge effective date:* July 1, 1997.

*Proposed charge expiration date:* February 28, 2002.

*Total estimated PFC revenue:* \$14,401,263.

*Brief description of proposed project(s):* (1) Reconstruct/rehabilitate runway 5/23 (Design only), (2) Taxiway/holding apron improvements (Design only), (3) PFC administration, and (4) Reconstruct/rehabilitate runway 5/23 (Construction).

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Birmingham Airport Authority.

Issued in Jackson, Mississippi, on February 3, 1997.

Wayne Atkinson,  
Manager, Airports District Office, Southern Region, Jackson, Mississippi.

[FR Doc. 97-3237 Filed 2-7-97; 8:45 am]

BILLING CODE 4910-13-M

**Federal Highway Administration**

**Environmental Impact Statement:  
Allegheny, Beaver, and Butler  
Counties, PA**

**AGENCY:** Federal Highway Administration (FHWA).

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation improvement in the vicinity of northern Allegheny County and southern Beaver and Butler Counties in southwestern Pennsylvania locally known as the Crows Run Transportation Study.

**FOR FURTHER INFORMATION CONTACT:**

David W. Cough, P.E., District Engineer, Federal Highway Administration, 228 Walnut Street, Room 558, Harrisburg, Pennsylvania, 17101-1720. Telephone: (717) 782-3410 or Henry Nutbrown, P.E., District Engineer, Pennsylvania Department of Transportation, 45 Thomas Run Road, Bridgeville, Pennsylvania, 15017. Telephone: (412) 429-5084.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement (EIS) for a west-east transportation improvement within the study area of Traffic Route 65 (western terminus) to Traffic Route 19 and Interstate 79 (eastern terminus). The proposed study area includes Conway Borough, New Sewickley Township and Economy Borough in Beaver County, Cranberry and Jackson Townships in Butler County and Marshall Township in Allegheny County. The approximate length of the project is nine miles.

The purpose of the transportation improvement is to improve west-east access from the Ohio River Valley to the Pennsylvania Turnpike and Interstates 279 and 79. The project needs, which have been identified, are to develop a transportation improvement to: alleviate congestion, to address projected increases in traffic volumes, to provide an improved west-east connector between major north-south routes, to improve vertical and horizontal

geometry, to accommodate truck traffic, and to improve safety.

Alternatives that will be considered in the EIS include: (1) The No-Build; (2) Congestion Management Strategies (CMS), (3) Upgrade of existing roadways within the study area and (4) CMS and Upgrades. Through preliminary engineering and environmental studies, new alignment alternatives such as a new four lane facility north or south of Freedom Road were dismissed as these alternatives do not meet the project need and potentially have significant environmental impacts. The EIS will discuss the findings of these preliminary studies.

The following environmental areas will be investigated for inclusion in the EIS: Project Need; Traffic; Safety; Air Quality; Noise and Vibration; Socioeconomic and Land Use; Environmental Justice; Community Cohesion, Facilities and Services; Property Acquisition and Displacements; Historic and Archaeological Sites; Residual and Hazardous Waste Sites; Soils and Geology; Floodplains; Surface and Ground Water; Aquatic Environment; Wetlands; Threatened and Endangered Species; Vegetation and Wildlife; Agricultural Lands; Aesthetics; Construction Impacts; Energy and Section 4(f) resources.

A Citizen Advisory Committee (CAC) has been formed to solicit information from the community and to present the environmental process, project scoping and environmental studies to community representatives for distribution. The CAC is also responsible for advising PennDOT of the community's concerns and to evaluate the information presented and decisions to be made.

Periodic meetings are scheduled with state and federal environmental agencies through Agency Coordination Meetings (ACM) to present project information on scoping and the project development process. ACM will also be used to receive comments and direction from the agencies on the development of the project alternatives, the assessment of impacts and the identification of mitigation measures.

Public meetings have been and will continue to be held throughout the development of the EIS for the general public and agencies. Public notices of the time and place of these meetings and the public hearing will be published in area newspapers. A project Mailing List and Project Newsletter have been established to inform the public of project milestones. The draft EIS will be available for public and agency review and comment prior to the public

hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA or PennDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program)

Issued on: January 29, 1997.

J. Stephen Guhin,

Assistant Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 97-3144 Filed 2-7-97; 8:45 am]

BILLING CODE 4910-22-M

## MARITIME ADMINISTRATION

### Voluntary Intermodal Sealift Agreement (VISA)

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice of meeting of joint planning advisory group.

On January 28-29, 1997, the Maritime Administration and the United States Transportation Command, Co-Chairs of the Joint Planning Advisory Group (Group), conducted a meeting of the Group at Scott Air Force Base, IL, to discuss contingency movement operations through the application of Stages I and II of VISA (60 FR 54144, October 19, 1995). The meeting was closed to the public because material presented was classified.

#### CONTACT PERSON FOR ADDITIONAL

**INFORMATION:** James E. Caponiti, Associate Administrator for National Security (202) 366-5400.

By Order of the Maritime Administrator.

Dated: February 4, 1997.

Joel C Richard,

Secretary.

[FR Doc. 97-3240 Filed 2-6-97; 8:45 am]

BILLING CODE 4910-81-P

## Surface Transportation Board

[STB Finance Docket No. 33344]

### Grand Rapids Eastern Railroad, Inc.; Lease and Operation Exemption; Coopersville and Marne Railway Company Line

Grand Rapids Eastern Railroad, Inc. (GRE), a Class III rail carrier, has filed

a notice of exemption under 49 CFR 1150.41 to lease and operate approximately 6.94 miles of rail line owned and operated by Coopersville and Marne Railway Company Line (C&M),<sup>1</sup> a Class III rail carrier, between milepost 159.5 at Grand Rapids (Walker) and milepost 166.44 at Marne, in Kent and Ottawa Counties, MI.

The transaction is expected to be consummated on or after February 1, 1997.

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. 33344, 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 Michael W. Blaszak, Esq., 211 South Leitch Avenue, LaGrange, IL 60525-2162.

Decided: January 31, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97-3109 Filed 2-7-97; 8:45 am]

BILLING CODE 4915-00-P

[STB Finance Docket No. 33180]

### Indiana & Ohio Railway Company; Acquisition Exemption; Lines of the Grand Trunk Western Railroad Inc.

The Indiana & Ohio Railway Company (IORY), a Class III rail carrier, filed a notice of exemption under 49 CFR 1150.41 to acquire from the Grand Trunk Western Railroad Inc. (GTW) rail lines totaling approximately 146.1 miles between Diann, MI, and Springfield, OH. The lines are located between: (1) milepost 39.7 at Diann, MI, and milepost 107.29 at XN Station near Leipsic, OH; (2) milepost 128.3 at DT&I Junction near Lima, OH, and milepost 202.7 at Springfield, OH; and (3) the Ottawa Loop between mileposts 110.8 and 114.88, south of XN Station.

As part of the acquisition, IORY will be assigned GTW's overhead trackage rights totaling 107.6 miles over: (1) 20.7 miles of CSX Transportation, Inc. (CSXT) line between CSXT Milepost 155.2 at XN Station and CSXT Milepost

<sup>1</sup> C&M does not presently offer freight service over the line.

134.5 at DT&I Junction; (2) 3.5 miles of Indiana & Ohio Central Railroad, Inc. (IOCR) line between IOCR Milepost 129.1 at Maitland Junction and IOCR Milepost 132.6 at Cold Springs, OH; and (3) 83.4 miles of Consolidated Rail Corporation (CR) line between CR Milepost 36.3 at Springfield and CR Milepost 119.7 at Cincinnati, OH. IORY will also acquire incidental overhead trackage rights over 22.5 miles of GTW's rail line between GTW milepost 39.7 at Diann and GTW milepost 17.2 at Flat Rock, MI.

The transaction was scheduled to become effective on December 27, 1996. Petitions to stay the effective date of the exemption pending the consideration of concurrently filed petitions to reject or revoke the notice were filed. A decision served December 20, 1996, stayed the effective date of the exemption until January 26, 1997, and directed parties to file additional information about the transaction. A decision served January 24, 1997, extended the stay to February 4, 1997. By decision served February 3, 1997, the Board denied the petitions to reject or revoke and dismissed the petitions to stay as moot.

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 prior to consummation of a transaction does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33180, 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 Karl Morell, Suite 225, 1455 F Street, N.W., Washington, DC 20005 and other parties of record. To obtain a list of parties of record in this proceeding, call (202) 927-5628.

Decided: February 3, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97-3108 Filed 2-7-97; 8:45 am]

BILLING CODE 4915-00-P

[STB Finance Docket No. 33339]

### Owensville Terminal Company, Inc.—Acquisition and Operation Exemption—Evansville Terminal Company, Inc.

Owensville Terminal Company, Inc. (OTC), a Class III rail carrier, has filed



a notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 22.5 miles of rail line owned by Evansville Terminal Company, Inc. (ETC) between milepost 205.0 near Browns, IL, and milepost 227.5 at or near Poseyville, IN.<sup>1</sup>

The transaction was expected to be consummated on January 28, 1997.

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. 33339, 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., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606-2902.

Decided: January 31, 1997.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.  
Vernon A. Williams,  
Secretary.

[FR Doc. 97-3135 Filed 2-7-97; 8:45 am]

BILLING CODE 4915-00-P

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## DEPARTMENT OF THE TREASURY

### Fiscal Service

#### **Financial Management Service; Proposed Collection of Information: Application of Undertaker for Payment of Funeral Expense From Funds to the Credit of a Deceased Depositor**

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

<sup>1</sup> While OTC will be the operator of the line, ETC has embargoed rail operations.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the report "Application of Undertaker for Payment of Funeral Expenses from Funds to the Credit of a Deceased Depositor."

**DATES:** Written comments should be received on or before April 11, 1997.

**ADDRESSES:** Direct all written comments to Financial Management Service, 3361-L 75th Avenue, Landover, Maryland 20785.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Mary Morris, Room 6D30, 3700 East-West Highway, Hyattsville, Maryland 20782, (202) 874-8671.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

*Title:* Application of Undertaker for Payment of Funeral Expenses from Funds to the Credit of a Deceased Depositor.

*OMB Number:* 1510-0033.

*Form Number:* None.

*Abstract:* This form is used by an Undertaker to apply for payment of a deceased depositor's account as payment of funeral expenses. When application is approved, payment is made to the funeral home to be applied to the expenses of the deceased depositor's funeral bill.

*Current Actions:* Extension of currently approved collection.

*Type of Review:* Regular.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 15.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 7 hours 30 minutes.

*Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

Dated: February 3, 1997.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 97-3169 Filed 2-7-97; 8:45 am]

BILLING CODE 4810-35-M

# Corrections

Federal Register  
 Vol. 62, No. 27  
 Monday, February 10, 1997

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 THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 936

[SPATS No. OK-019-FOR]

#### Oklahoma Regulatory Program

##### Correction

In rule document 96-32319 beginning on page 67213 in the issue of Friday, December 20, 1996 make the following corrections:

1. On page 67215, in the first column, under V. Director's Decision:
  - a. In the second paragraph, twelve lines from the bottom "20-31(b)" should read "20-31-13(b)".
  - b. In the fourth paragraph, in the first line "39 CFR" should read "30 CFR".

2. On the same page, in the third column, in the authority citation for Part 936, in the first line "937" should read "936".

BILLING CODE 1505-01-D

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38175; File No. SR-NASD-96-55]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 of Proposed Rule Change Relating to Primary Market Maker Standards

##### Correction

In notice document 97-1559 beginning on page 3548 in the issue of Thursday, January 23, 1997 make the following correction:

1. On page 3549, in the second column, under IV Solicitation of Comments on Amendment No. 1, in the penultimate line "[insert date 21 days from date of publication]" should read "February 13, 1997".

BILLING CODE 1505-01-D

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Ch. 301

[FTR Amendment 52]

#### RIN 3090-AF98

### Federal Travel Regulation; Maximum Per Diem Rates

##### Correction

In rule document 96-29768 beginning on page 59185 in the issue of Thursday, November 21, 1996, make the following corrections:

1. On page 59185, in the second column, in the SUMMARY section, in the fifth line, "undated" should read "updated".
2. On the same page, in the third column, in the words of issuance, in the second line, "41 CFR 307-7" should read "41 CFR 301-7".

#### Appendix A to Chapter 301 [Corrected]

3. In Appendix A to Chapter 301, the following entries should read as follows [corrections are in bold print]:

### Appendix A To Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

The maximum rates listed below are prescribed under §301-7.3(a) of this chapter for reimbursement of per diem expenses incurred during official travel within CONUS (the continental United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses including applicable taxes. The M&IE rate shown in column (b) is a fixed amount allowed for meals and incidental expenses covered by per diem. The per diem payment calculated in accordance with part 301-7 of this chapter for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c). Seasonal rates apply during the periods indicated.

Per diem locality: Key city, <sup>1</sup> County and/or other defined location <sup>2,3</sup>	Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate <sup>4</sup> (c)
*****		*		*	*
California:					
*****		*		*	*
Napa, Napa:					
<b>(April 1-October 31)</b> .....	<b>83</b>		<b>42</b>		<b>125</b>
<b>(November 1-March 31)</b> .....	<b>76</b>		<b>42</b>		<b>118</b>
*****	*		*		*
Tahoe City, Placer .....	57		38		95
*****	*		*		*
Colorado:					
*****		*		*	*
Steamboat Springs, Routt:					
(December 1-March 31) .....	114		34		148
(April 1-November 30) .....	<b>74</b>		34		108
*****	*		*		*
Vail, Eagle:					
(November 1-March 31) .....	181		42		223
(April 1-October 31) .....	<b>89</b>		42		131
*****	*		*		*

Per diem locality: Key city, <sup>1</sup> County and/or other defined location <sup>2,3</sup>	Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate <sup>4</sup> (c)
Maine:					
*****	*		*		*
Bangor, Penobscot:					
(July 1–October 31) .....	57		30		87
(November 1–June 30) .....	50		30		80
*****	*		*		*
Massachusetts:					
*****	*		*		*
Pittsfield, Berkshire .....	56		34		<b>90</b>
*****	*		*		*
Missouri					
*****	*		*		*
Osage Beach, Camden:					
(May <b>15</b> –October 31) .....	68		34		102
(November 1–May 14) .....	57		34		91
*****	*		*		*
Nevada:					
*****	*		*		*
Incline Village*:					
(June 1–September 30) .....	149		38		187
(October 1–May 31) .....	106		38		144
*****	*		*		*
New Hampshire					
*****	*		*		*
Conway, <b>Carroll</b> :					
(June 1–October 31) .....	74		34		108
(November 1–May 31) .....	60		34		94
*****	*		*		*
North Carolina:					
Asheville, Buncombe:					
(May 1–October 31) .....	79		34		113
(November 1–April 30) .....	<b>50</b>		34		84
*****	*		*		*
South Dakota:					
Custer, Custer:					
(June 1–September 30) .....	73		30		103
(October 1–May 31) .....	52		30		<b>82</b>
*****	*		*		*

BILLING CODE 1505-01-D

Federal Reserve

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Monday  
February 10, 1997

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**Part II**

**Securities and  
Exchange  
Commission**

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17 CFR Part 210, et al.

**Disclosure of Accounting Policies for  
Derivative Financial Instruments and  
Derivative Commodity Instruments and  
Disclosure of Quantitative and Qualitative  
Information About Market Risk Inherent  
in Derivative Financial Instruments, Other  
Financial Instruments, and Derivative  
Commodity Instruments; Final Rule**

**SECURITIES AND EXCHANGE  
COMMISSION****17 CFR Parts 210, 228, 229, 239, 240,  
and 249**[Release Nos. 33-7386; 34-38223; IC-  
22487; FR-48; International Series No. 1047;  
File No. S7-35-95]

RIN 3235-AG42, 3235-AG77

**Disclosure of Accounting Policies for  
Derivative Financial Instruments and  
Derivative Commodity Instruments and  
Disclosure of Quantitative and  
Qualitative Information About Market  
Risk Inherent in Derivative Financial  
Instruments, Other Financial  
Instruments, and Derivative  
Commodity Instruments**AGENCY: Securities and Exchange  
Commission.

ACTION: Final rule.

**SUMMARY:** The Securities and Exchange Commission ("Commission" or "SEC") is amending rules and forms for domestic and foreign issuers to clarify and expand existing disclosure requirements for derivative financial instruments, other financial instruments, and derivative commodity instruments, as defined (collectively "market risk sensitive instruments"). The amendments require enhanced disclosure of accounting policies for derivative financial instruments and derivative commodity instruments (collectively "derivatives") in the footnotes to the financial statements. In addition, the amendments expand existing disclosure requirements to include quantitative and qualitative information about market risk inherent in market risk sensitive instruments. The required quantitative and qualitative information should be disclosed outside the financial statements and related notes thereto. In addition, the quantitative and qualitative information will be provided safe harbor protection under a new Commission rule. Finally, this release reminds registrants that any disclosures about financial instruments, commodity positions, firm commitments, and anticipated transactions ("reported items"), should include disclosures about derivatives that directly or indirectly affect such reported items, to the extent such information is material and necessary to prevent the disclosures about the reported items from being misleading. In the aggregate, these amendments are designed to provide additional information about market risk sensitive instruments, which investors can use to better understand

and evaluate the market risk exposures of a registrant.

**DATES:** Effective Date: April 11, 1997.

*Compliance Dates:* § 210.4-08(n) of Regulation S-X and the amendment to Item 310 of Regulation S-B shall apply, and disclosures under that rule shall be required, for filings with the Commission that include financial statements for fiscal periods ending after June 15, 1997. For bank and thrift registrants, as defined, and non-bank and non-thrift registrants with market capitalizations on January 28, 1997 in excess of \$2.5 billion, Item 305 of Regulation S-K and Item 9A of Form 20-F shall apply, and disclosures under those items shall be required, for filings with the Commission that include annual financial statements for fiscal years ending after June 15, 1997. For non-bank and non-thrift registrants with market capitalizations on January 28, 1997 of \$2.5 billion or less, Item 305 of Regulation S-K and Item 9A of Form 20-F shall apply, and disclosures under those items shall be required, for filings with the Commission that include annual financial statements for fiscal years ending after June 15, 1998. Under Item 305 of Regulation S-K and Item 9A of Form 20-F, interim information is not required until after the first fiscal year end in which Item 305 of Regulation S-K and Item 9A of Form 20-F are effective. Item 10(g) of Regulation S-B shall apply for filings with the Commission made on or after April 11, 1997.

**FOR FURTHER INFORMATION CONTACT:** Cathy J. Cole, Thomas J. Linsmeier, Russell B. Mallett, III, or Stephen M. Swad, at (202) 942-4400, Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 11-3, Washington, D.C. 20549, or Kurt R. Hohl, at (202) 942-2960, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 3-13, Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is amending<sup>1</sup> Rule 4-08 of Regulation S-X<sup>2</sup> and adding a new Item 305 to Regulation S-K.<sup>3</sup>

The Commission also is making conforming amendments to Forms S-1, S-2, S-4, S-11, and F-4<sup>4</sup> under the Securities Act of 1933,<sup>5</sup> and Rule 14a-

<sup>1</sup> The amendments were proposed in Securities Act Release No. 7250; Exchange Act Release No. 36643; Investment Company Act Release No. 21625; File No. S7-35-95 (December 28, 1995) [61 FR 578].

<sup>2</sup> 17 CFR 210.4-08. Item 310 of Regulation S-B, 17 CFR 228.310, also is amended to incorporate the changes to Rule 4-08 of Regulation S-X.

<sup>3</sup> 17 CFR Part 229.

<sup>4</sup> 17 CFR 239.11, 12, 25, 18, and 34.

<sup>5</sup> 15 U.S.C. 77a et seq.

3,<sup>6</sup> Schedule 14A,<sup>7</sup> and Forms 10, 20-F, 10-Q, and 10-K<sup>8</sup> under the Securities Exchange Act of 1934.<sup>9</sup>

**I. Executive Summary**

During the last several years, the use of derivative financial instruments, other financial instruments, and derivative commodity instruments<sup>10</sup> increased substantially.<sup>11</sup> The Commission recognizes that these instruments can be effective tools for managing exposures to market risk.<sup>12</sup> However, in using market risk sensitive instruments some registrants experienced significant, and sometimes unexpected, losses. Those losses

<sup>6</sup> 17 CFR 240.14a-3.

<sup>7</sup> 17 CFR 240.14a-101.

<sup>8</sup> 17 CFR 249.210, 220f, 308a, and 310.

<sup>9</sup> 15 U.S.C. 78a et seq.

<sup>10</sup> See the instructions to Item 305 of Regulation S-K or Item 9A of Form 20-F, *infra*, for complete definitions of the terms "derivative financial instruments," "other financial instruments," and "derivative commodity instruments." In brief, for purposes of this release: (1) Derivative financial instruments include futures, forwards, swaps, options, and other financial instruments with similar characteristics, (2) other financial instruments include, for example, investments, loans, structured notes, mortgage-backed securities, indexed debt instruments, interest-only and principal-only obligations, deposits, and other debt obligations, and (3) derivative commodity instruments include, to the extent such instruments are not derivative financial instruments, commodity futures, commodity forwards, commodity swaps, commodity options, and other commodity instruments with similar characteristics that are permitted to be settled in cash or with another financial instrument by contract or business custom. In addition, for purposes of this release, the terms (1) "derivatives" refer to derivative financial instruments and derivative commodity instruments, together, and (2) "market risk sensitive instruments" refer to derivative financial instruments, other financial instruments, and derivative commodity instruments, collectively.

<sup>11</sup> The worldwide notional/contract amounts for derivative financial instruments and derivative commodity instruments increased from \$7.1 trillion in 1989 to \$69.6 trillion in 1995. These notional amounts, while one way to measure derivative activities, do not represent a precise measure of the risk associated with these instruments. In many instances, the amount at risk is much smaller than the notional amount. See *Financial Derivatives: Actions Needed to Protect the Financial System*, United States General Accounting Office Report to Congressional Requesters (May 1994), and *Survey of Disclosures about Trading and Derivatives Activities of Banks and Securities Firms*, Basle Committee on Banking Supervision ("Basle Committee") and the Technical Committee of the International Organisation of Securities Commissions ("IOSCO") (November 1996).

<sup>12</sup> Market risk is the risk of loss arising from adverse changes in market rates and prices, such as interest rates, foreign currency exchange rates, commodity prices, and other relevant market rate or price changes (e.g., equity prices). See Group of Thirty, "Derivatives: Practices and Principles" (July 1993), and Financial Accounting Standards Board ("FASB"), *Statement of Financial Accounting Standards No. 105, "Disclosure of Information about Financial Instruments with Off-Balance-Sheet Risk and Financial Instruments with Concentrations of Credit Risk,"* ("FAS 105") (March 1990), for similar definitions of market risk.

resulted from changes in interest rates, foreign currency exchange rates, and commodity prices, among other things. In light of those losses and the substantial growth in the use of market risk sensitive instruments, the adequacy of existing disclosures about market risk emerged as an important financial reporting issue.

During 1994 and 1995, the SEC staff reviewed annual reports filed with the Commission by approximately 500 registrants to better understand this emerging issue. In reviewing the annual reports, the staff intended to (i) assess the quality of current disclosures about market risk sensitive instruments, (ii) improve the quality of those disclosures through the comment process, and (iii) determine what, if any, additional disclosures are needed to help investors better assess the market risk inherent in those instruments. After reviewing the annual reports, the SEC staff noted that the 1995 disclosures were more informative than the 1994 disclosures, in part because of improved FASB disclosure guidance.<sup>13</sup> However, the staff observed three significant disclosure deficiencies, which are described in section II of this release. To address those deficiencies:

1. The Commission is amending Rule 4-08 of Regulation S-X and Item 310 of Regulation S-B to require enhanced descriptions of accounting policies for derivatives in the footnotes to the financial statements.<sup>14</sup>

2. The Commission is amending Regulation S-K to add Item 305 and Form 20-F to add Item 9A. Those amendments require disclosure of quantitative and qualitative information about market risk for derivatives and other financial instruments<sup>15</sup> and require

<sup>13</sup> See FASB, *Statement of Financial Accounting Standards No. 119, "Disclosures about Derivative Financial Instruments and Fair Value of Financial Instruments,"* ("FAS 119") (October 1994).

<sup>14</sup> Those disclosure requirements are applicable only to derivatives; the requirements do not relate to other financial instruments. Accounting policy disclosure requirements for other financial instruments are prescribed by existing generally accepted accounting principles and Commission guidance (see, e.g., American Institute of Certified Public Accountants ("AICPA"), *Accounting Principles Board Opinion No. 22, "Disclosure of Accounting Policies,"* ("APB 22") (April 1972)).

<sup>15</sup> Items 305 and 9A do not pertain solely to derivatives, but also to other financial instruments. Thus, disclosures under those Items are required for registrants that have material amounts of other financial instruments, even when they have no derivatives.

Items 305 and 9A also encourage registrants to include other market risk sensitive instruments, positions, and transactions (such as commodity positions, derivative commodity instruments that are not permitted by contract or business custom to be settled in cash or with another financial instrument, and cash flows from anticipated transactions) within the scope of their quantitative and qualitative disclosures about market risk. Registrants that select the sensitivity analysis or value at risk disclosure alternatives and voluntarily include those other market risk sensitive

that those disclosures be presented outside the financial statements.<sup>16</sup>

a. Items 305(a) and 9A(a) require registrants to disclose quantitative information about market risk sensitive instruments using one or more of the following alternatives:

i. Tabular presentation of fair value information and contract terms relevant to determining future cash flows, categorized by expected maturity dates;

ii. Sensitivity analysis expressing the potential loss in future earnings, fair values, or cash flows from selected hypothetical changes in market rates and prices; or

iii. Value at risk disclosures expressing the potential loss in future earnings, fair values, or cash flows from market movements over a selected period of time and with a selected likelihood of occurrence.

In preparing this quantitative information, registrants should categorize market risk sensitive instruments into instruments entered into for trading purposes<sup>17</sup> and instruments entered into for purposes other than trading. Within both the trading and other than trading portfolios, separate quantitative information should be presented for each market risk exposure category (i.e., interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market risks, such as equity price risk), to the extent material. Registrants may use different disclosure alternatives for each of the separate disclosures.

b. Items 305(b) and 9A(b) require registrants to disclose qualitative information about market risk. Those items require disclosure of:

i. a registrant's primary market risk exposures<sup>18</sup> at the end of the current reporting period;

ii. how the registrant manages those exposures (such as a description of the objectives, general strategies, and instruments, if any, used to manage those exposures); and

iii. changes in either the registrant's primary market risk exposures or how those exposures are managed, when compared to

instruments, positions, and transactions within their quantitative disclosures about market risk are permitted to present comprehensive market risk disclosures, which reflect the combined effect of both the required and voluntarily selected instruments, positions, and transactions (see section III B.1.c.(vi) for details). Finally, if those other market risk sensitive instruments, positions, and transactions are not voluntarily included in the quantitative disclosures about market risk and, as a result, the disclosures do not fully reflect the net market risk exposures of the registrant, Items 305(a) and 9A(a) require that registrants discuss the absence of those items as a limitation of the disclosed market risk information.

<sup>16</sup> The term "financial statements" includes the footnotes to the financial statements. Therefore, the disclosures should be presented outside of the footnotes to the financial statements. See section III B.4.b., *infra*, for a more complete discussion about where these disclosures should appear.

<sup>17</sup> For purposes of this release, the term "trading purposes" has the same meaning as defined by generally accepted accounting principles (see, e.g., FAS 119 ¶ 9a).

<sup>18</sup> See note 58, *infra*, for a definition specifying how the term "primary market risk exposures" is used in this release.

the most recent reporting period and what is known or expected in future periods.

c. Items 305 and 9A state that forward looking disclosures made pursuant to those items are within the statutory safe harbor under the Securities Act of 1933 and Securities Exchange Act of 1934.

3. The Commission reminds registrants that, when they provide disclosures about financial instruments, commodity positions, firm commitments, and anticipated transactions<sup>19</sup> ("reported items"), disclosures about derivatives that directly or indirectly affect such reported items also are required, to the extent the effects of such information are material and necessary to prevent the disclosures about the reported items from being misleading.

The amendments in Rule 4-08(n) and Item 310 relating to accounting policy disclosures apply to registered investment companies and small business issuers, among other registrants. In contrast, Item 305 and Item 9A do not apply to registered investment companies and small business issuers. However, if market risk represents a material known risk or uncertainty, small business issuers, like other registrants, will continue to be required to discuss those risks and uncertainties to the extent required by Management's Discussion & Analysis ("MD&A").<sup>20</sup>

The amendments become effective over the next several months to provide registrants with time to respond to the new disclosure requirements. Rule 4-08(n) and the amendment to Item 310 will be effective for filings with the Commission that include financial statements for fiscal periods ending after June 15, 1997. For registrants that are likely to have experience with measuring market risk, such as banks, thrifts, and non-bank and non-thrift registrants with market capitalizations on January 28, 1997 in excess of \$2.5 billion, Item 305 and Item 9A are effective for filings with the Commission that include annual financial statements for fiscal years ending after June 15, 1997. For other registrants, Item 305 and Item 9A are effective for filings with the Commission that include annual financial statements for fiscal years ending after June 15, 1998. Under Item 305 and Item 9A, interim information is

<sup>19</sup> For purposes of this release, "anticipated transactions" means transactions (other than transactions involving existing assets or liabilities or transactions necessitated by existing firm commitments) an enterprise expects, but is not obligated, to carry out in the normal course of business (see, e.g., ¶ 9 of FASB, *Statement of Financial Accounting Standards No. 80, "Accounting for Futures Contracts,"* ("FAS 80") (August 1984)).

<sup>20</sup> See, e.g., Item 303 of Regulation S-B, 17 CFR 228.303, and Item 303 of Regulation S-K, 17 CFR 229.303.

not required until after the first fiscal year end in which those Items are effective.

Taken together, Rule 4-08(n), Item 310, Item 305, and Item 9A represent one step by the Commission to improve disclosures about market risk to help investors better understand and evaluate a registrant's market risk exposures. The Commission recognizes the evolving nature of market risk sensitive instruments, market risk measurement systems, and market risk management strategies and, thus, intends to continue considering how best to meet the information needs of investors. In this regard, the Commission expects to monitor continuously the effectiveness of the new rules and final disclosure items issued today, as well as the need for additional proposals. Specifically, the Commission expects to reconsider these amendments after each of the following: (i) Issuance of a new accounting standard for derivatives by the FASB;<sup>21</sup> (ii) development in the marketplace of new generally accepted methods for measuring market risk; and (iii) a period of three years from the initial effective date of Item 305 and Item 9A.

## II. Initiatives Regarding Disclosures About Derivatives and Market Risk

Certain private sector organizations expressed concerns that users of financial reports are dissatisfied with current disclosures about market risk sensitive instruments. For example, the Association for Investment Management and Research ("AIMR"), an organization of financial analysts, noted that users of financial information "are confounded by the \* \* \* complexity of financial instruments."<sup>22</sup> In addition, after considerable investigation into the needs of investors and creditors, the American Institute of Certified Public Accountants' ("AICPA") Special Committee on Financial Reporting stated:

Users are confused. They complain that business reporting is not answering important questions, such as: \* \* \* What [innovative financial] instruments has the company entered into, and what are their terms? How has the company accounted for those instruments, and how has that accounting affected the financial statements? What risks has the company transferred or taken on?<sup>23</sup>

<sup>21</sup> The FASB currently is working on a project to improve accounting recognition, measurement, and related disclosures for derivatives.

<sup>22</sup> See AIMR, *Financial Reporting in the 1990s and Beyond*, page 30, (1993).

<sup>23</sup> See AICPA Special Committee on Financial Reporting, *Improving Business Reporting—A Customer Focus: Meeting the Information Needs of Investors and Creditors*, at 76 (1994).

In addition to identifying disclosure shortcomings, other organizations recommended improvements to disclosures about market risk sensitive instruments. These organizations include regulators, such as the General Accounting Office,<sup>24</sup> Group of 10 Central Bankers,<sup>25</sup> the Federal Reserve Bank of New York,<sup>26</sup> the Basle Committee and the Technical Committee of IOSCO,<sup>27</sup> and private sector bodies, such as the Group of Thirty<sup>28</sup> and a task force of the Financial Executives Institute ("FEI").<sup>29</sup>

In general, those organizations stressed the need to make the risks inherent in market risk sensitive instruments more understandable. To that end, many recommended additional quantitative and qualitative disclosures about market risk. For example, the Federal Reserve Bank of New York recommended a new financial statement providing quantitative information about the overall market risk of an entity.<sup>30</sup> In addition, the FEI task force recommended that companies "disclose some type of information which conveys overall exposure to market risk."<sup>31</sup> The FEI task force specifically suggested two distinct approaches. One approach is to provide a high-level summary of relevant statistics about outstanding activity in market risk sensitive instruments at period end. The second approach is to communicate the potential loss that could occur under specified conditions using either value at risk or another comprehensive model for measuring market risk.<sup>32</sup>

In October 1994, the FASB, responding in part to calls for improved disclosure, issued FAS 119 (October

<sup>24</sup> See General Accounting Office, *Financial Derivatives: Actions Taken or Proposed Since May 1994* (November 1996).

<sup>25</sup> See Bank for International Settlements, *A Discussion Paper on Public Disclosure of Market and Credit Risks by Financial Intermediaries*, prepared by working group of the Euro-currency Standing Committee of the Central Banks of the Group of Ten Countries (September 1994).

<sup>26</sup> See Federal Reserve Bank of New York, *Public Disclosure of Risks Related to Market Activity: A Discussion Paper* (November 1994).

<sup>27</sup> See Basle Committee and the Technical Committee of IOSCO, *Framework for Supervisory Information about the Derivatives Activities of Banks and Securities Firms* (May 1995). See also Basle Committee and the Technical Committee of IOSCO, *Public Disclosure of the Trading and Derivatives Activities of Banks and Securities Firms* (November 1995).

<sup>28</sup> See Group of Thirty, *Derivatives: Practices and Principles* (July 1993).

<sup>29</sup> See FEI, *Derivative Financial Instruments Accounting and Disclosure Issues*, ("FEI Report") prepared by FEI CCF/CCR Derivatives Disclosure Task Force (August 1994).

<sup>30</sup> See note 26, *supra*.

<sup>31</sup> See Attachment A, page 1 of FEI Report.

<sup>32</sup> See Attachment B, pages 5 and 6 of FEI Report.

1994).<sup>33</sup> Among other things, FAS 119 prescribes disclosures in the financial statements about the policies used to account for derivative financial instruments and a discussion of the nature, terms, and cash requirements of derivative financial instruments. FAS 119 also encourages, but does not require, disclosure of quantitative information about an entity's market risk exposures.<sup>34</sup>

During 1994, in response, in part, to the concerns of investors, regulators, and private sector entities, the SEC staff reviewed the annual reports of approximately 500 registrants. In addition, during 1995 the SEC staff reviewed more recent annual reports to assess the effect of FAS 119 on disclosures about market risk sensitive instruments. In comparing the 1994 and 1995 annual reports, the SEC staff observed that FAS 119 had a positive effect on the quality of disclosures about derivative financial instruments. However, the staff concluded that investors still needed improved disclosures about market risk sensitive instruments. In particular, the SEC staff identified three primary disclosure issues:

1. Footnote disclosures of accounting policies for derivatives often were too general to convey adequately the diversity in accounting that exists for derivatives. Thus, it often was difficult to determine the impact of derivatives on registrants' statements of financial position, cash flows, and results of operations.

2. Disclosures about different types of market risk sensitive instruments often were reported separately. Thus, it was difficult to assess the aggregate market risk exposures inherent in these instruments.

3. Disclosure about reported items in the footnotes to the financial statements, MD&A, schedules, and selected financial data may not have reflected adequately the effect of derivatives on such reported items. Thus, information about the reported items may have been incomplete and could be misleading.

The Commission designed Rule 4-08(n), Item 310, Item 305, and Item 9A to address these issues. In forming these requirements, the Commission used the following guiding principles:

- Disclosures should make transparent the impact of derivatives on

<sup>33</sup> Similar standards were recently adopted by the International Accounting Standards Committee, the Canadian Institute of Chartered Accountants, and the Australian Accounting Standards Board. See *International Accounting Standards No. 32, "Financial Instruments: Disclosure and Presentation,"* ("IAS 32") (March 1995), Section 3860 of the *Handbook of the Canadian Institute of Chartered Accountants*, and the Australian Accounting Standards Board's accounting standard entitled, *"Presentation and Disclosure of Financial Instruments,"* (December 1996), respectively.

<sup>34</sup> See FAS 119 ¶ 12.

a registrant's statements of financial position, cash flows, and results of operations;

- Disclosures should provide information about a registrant's exposures to market risk;
- Disclosures should explain how market risk sensitive instruments are used in the context of the registrant's business;
- Disclosures about market risk exposures should not focus on derivatives in isolation, but rather should reflect the risk of loss inherent in all market risk sensitive instruments;
- Market risk disclosure requirements should be flexible enough to accommodate different types of registrants, different degrees of market risk exposure, and alternative ways of measuring market risk;
- Disclosures about market risk should address, where appropriate, special risks relating to leverage, option, or prepayment features; and
- New disclosure requirements should build on existing requirements, where possible, to minimize compliance costs.

### III. Discussion of Amendments

#### A. Disclosure of Accounting Policies for Derivatives

##### 1. Background

During the last several years, a significant number of issues relating to the accounting for derivatives have been raised. The FASB is working on a project that will address comprehensively the accounting for derivatives. However, currently there is little authoritative literature on the accounting for options and complex derivatives.<sup>35</sup>

In the absence of comprehensive accounting literature, registrants have developed accounting practices for options and complex derivatives by analogy to the limited amount of literature that does exist. Those analogies are complicated because, under existing accounting literature, there are at least three distinctly different methods of accounting for derivatives (e.g., fair value accounting, deferral accounting, and accrual accounting).<sup>36</sup> Further, the underlying

<sup>35</sup> The authoritative accounting literature for options and complex derivatives generally is limited to a few consensus from the FASB Emerging Issues Task Force ("EITF"), which by their nature address the accounting for specific transactions. See, e.g., EITF Issues 88-8, "Mortgage Swaps," and 90-17, "Hedging Foreign Currency Risks with Purchased Options."

<sup>36</sup> Under the fair value method, derivatives are carried on the balance sheet at fair value with changes in that value recognized in earnings or stockholders' equity (see, e.g., FASB, *Statement of*

concepts and criteria used in determining the applicability of those accounting methods are not consistent.<sup>37</sup> As a result, during its 1994 and 1995 reviews of annual reports, the SEC staff observed that registrants with similar risk management objectives often accounted for derivatives with similar economic characteristics in different ways.<sup>38</sup> Thus, it was difficult to ascertain and compare the financial statement effects of derivatives among registrants.

To provide a better understanding of the accounting for derivative financial instruments, paragraph 8 of FAS 119 requires disclosure of the policies used to account for those instruments, pursuant to the requirements of APB 22.<sup>39</sup> Specifically, FAS 119 emphasizes

*Financial Accounting Standards No. 52, "Foreign Currency Translation,"* ("FAS 52") (December 1981), and FAS 80. Under the deferral method, gains and losses from derivatives are deferred on the balance sheet and recognized in earnings in conjunction with earnings of designated items (see, e.g., FAS 52 and FAS 80). Under the accrual method, each net payment/receipt due or owed under the derivative is recognized in earnings during the period to which the payment/receipt relates; there is no recognition on the balance sheet for changes in the derivative's fair value (see, e.g., EITF Issue 84-36, "Interest Rate Swap Transactions").

<sup>37</sup> For example, the risk reduction criterion in FAS 52 is different from the risk reduction criterion in FAS 80. FAS 52 specifies risk reduction on a transaction basis, while FAS 80 specifies risk reduction on an enterprise basis. In addition, FAS 80 permits the use of deferral accounting for futures contracts used to hedge probable, but not firmly committed, anticipated transactions, while FAS 52 prohibits deferral accounting for foreign currency forward exchange contracts used to hedge those same types of anticipated transactions.

<sup>38</sup> The Commission does not mean to imply by this statement that registrants may justify the use of any method of accounting for derivatives. Registrants must select appropriate accounting methods that are consistent with generally accepted accounting principles. In particular, generally accepted accounting principles require registrants using derivatives for trading, dealing, or speculative purposes to recognize those instruments on the balance sheet at fair value and to recognize changes in that value immediately in earnings (see, e.g., FAS 80 ¶ 3).

<sup>39</sup> APB 22 ¶ 12 states:

Disclosure of accounting policies should identify and describe the accounting policies followed by the reporting entity and the methods of applying those principles that materially affect the determination of financial position, cash flows or results of operations. In general, the disclosure should encompass important judgments as to the appropriateness of principles relating to recognition of revenue and allocation of asset costs to current and future periods; in particular, it should encompass those accounting principles and methods that involve \* \* \* a selection from existing acceptable alternatives.

The Accounting Principles Board was the predecessor to the FASB. Unless superseded by FASB Statements, APB Opinions continue to be regarded as the highest level of generally accepted accounting principles followed by the accounting profession. See generally AICPA, *Statements on Auditing Standards No. 69, "The Meaning of Present Fairly in Conformity With Generally*

the disclosure of "policies for recognizing (or not recognizing) and measuring derivative financial instruments \* \* \* and when recognized, where those instruments and related gains and losses are reported in the statements of financial position and income."<sup>40</sup> Notwithstanding its helpful guidance, FAS 119 does not explicitly indicate the type of information that should be included in the accounting policies footnote to help investors understand the effects of derivatives on the statements of financial position, cash flows, and results of operations. FAS 119 also does not address disclosure of accounting policies for derivative commodity instruments.

#### 2. Rule 4-08(n) of Regulation S-X and Item 310 of Regulation S-B

To facilitate a more informed assessment of the effects of derivatives on financial statements, Rule 4-08(n) and Item 310 explicitly require that seven items be disclosed in the derivatives accounting policies footnote, when material. For example, Rule 4-08(n) and Item 310 require a description of the methods used to account for derivatives, the types of derivatives accounted for under each method, and the criteria required to be met for each accounting method used. See Rule 4-08(n) and Item 310 for further requirements.

When assessing materiality under Rule 4-08(n) and Item 310, the Commission expects registrants to consider (i) the financial statement effects of all derivatives, including those not recognized in the statement of financial position and (ii) the relative effects of using the accounting method selected as compared to the other methods available (e.g., accrual, deferral, or fair value methods of accounting).

In essence, Rule 4-08(n) and Item 310 clarify how the accounting policy disclosure requirements in FAS 119 should be applied to derivative financial instruments. They also extend those requirements to derivative commodity instruments. The Commission expects to reconsider the effectiveness of and the need for the accounting policy disclosures, prescribed under Rule 4-08(n) and Item 310, when a new accounting standard for derivatives is issued by the FASB.

*Accepted Accounting Principles in the Independent Auditor's Report,* ¶ 5 (March 1992); AU § 411.05.

<sup>40</sup> See FAS 119 ¶ 60.



## B. Disclosures of Quantitative and Qualitative Information About Market Risk

### 1. Quantitative Information About Market Risk

*a. Nature of Disclosures.* A primary objective of the quantitative disclosure requirements is to provide investors with forward looking information about a registrant's potential exposures to market risk. These quantitative disclosures are dependent on several choices about key model characteristics and assumptions (e.g., hypothetical changes in future market rates or prices).<sup>41</sup> By their nature, these forward looking choices are only estimates and will be different from what actually occurs in the future. As a result, actual future gains or losses will differ from those reported in the quantitative disclosures. For example, differences between actual and reported gains and losses will arise when (i) actual market rate or price changes differ from those estimated or (ii) the portfolio of market risk sensitive instruments held during the year differs from the portfolio held at the prior year-end.

Notwithstanding this limitation, the Commission believes that the reported market risk information should provide benefits to both investors and registrants. The quantitative disclosures should help investors better understand specific market risk exposures of different registrants, thereby allowing them to better manage market risks in their investment portfolios. Those disclosures also should provide a mechanism, where applicable, for registrants to disclose that their use of derivatives represents risk management, rather than speculation. Those disclosures are not precise indicators of expected future reported losses. Instead, depending on the modeling technique and assumptions used, they are indicators of remote or reasonably possible losses. Nevertheless, those disclosures should provide investors with important indicators of how a particular registrant views and manages its market risk.

The Commission has provided flexibility in the quantitative and qualitative disclosure requirements to accommodate different types of registrants, different degrees of market risk exposure, and alternative ways of measuring market risk. The Commission believes, at this time, that such flexibility is necessary and important to

allow risk management and reporting practices to evolve, even though such flexibility is likely to reduce the comparability of disclosures. To address this comparability issue, registrants are required to disclose the key model characteristics and assumptions used in preparing the quantitative market risk disclosures. These disclosures are designed to allow investors to evaluate the potential impact of variations in those model characteristics and assumptions on the reported information. In addition, as more standard risk management practices and methods of reporting market risk are developed, the Commission anticipates reviewing the disclosure requirements with the view to enhancing comparability.

*b. Background.* Market risk is inherent in derivative and non-derivative instruments, including:

- Derivative financial instruments—futures, forwards, swaps, options, and other financial instruments with similar characteristics;
- Other financial instruments—non-derivative financial instruments, such as investments, loans, structured notes, mortgage-backed securities, indexed debt instruments, interest-only and principal-only obligations, deposits, and other debt obligations;
- Derivative commodity instruments that are permitted by contract or business custom to be settled in cash or with another financial instrument—commodity futures, commodity forwards, commodity swaps, commodity options, and other commodity instruments with similar characteristics, to the extent such instruments are not derivative financial instruments.

Generally accepted accounting principles and prior Commission rules already require disclosure of certain quantitative information pertaining to some of these instruments. For example, registrants are required to disclose notional amounts of derivative financial instruments and the nature and terms of debt obligations.<sup>42</sup> However, this information (i) often is abbreviated, (ii) is presented piecemeal in different parts of the financial statements, and (iii) does not apply to all market risk sensitive instruments. Thus, investors often have been unable to assess the net market risk exposures inherent in these instruments.

FAS 119 encourages, but does not require, disclosure of quantitative information about the market risk exposures inherent in market risk sensitive instruments.<sup>43</sup> However,

without an explicit requirement, the Commission observed that registrants often were not making these disclosures.

c. Item 305(a) of Regulation S-K and Item 9A(a) of Form 20-F. In essence, Items 305(a) and 9A(a)<sup>44</sup> are designed to make disclosures about market risk more comprehensive by requiring disclosures of quantitative information about market risk, similar to those encouraged by FAS 119. Items 305(a) and 9A(a) apply to market risk sensitive instruments.

Under these Items, registrants should furnish quantitative information about market risk using one or more of three prescribed alternative methods.<sup>45</sup> The three alternative methods, described in detail below, are a tabular presentation, sensitivity analysis, and value at risk.

In preparing this quantitative information, registrants should categorize market risk sensitive instruments into instruments entered into for trading purposes and instruments entered into for purposes other than trading. Within both the trading and other than trading portfolios, separate quantitative information should be presented for each market risk exposure category (i.e., interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market risks, such as equity price risk), when material.

A registrant may use (i) the same alternative for all market risk disclosures, (ii) one alternative, such as value at risk, for all disclosures related to instruments entered into for trading purposes, and another alternative, such as sensitivity analysis, for all disclosures related to instruments entered into for other than trading purposes, or (iii) different or the same alternatives for each category of market risk within the trading and other than trading portfolios.

(i) Tabular Presentation. The tabular presentation alternative permits

market risk. They are: (i) Details about current positions and perhaps activity during the period, (ii) the hypothetical effects on equity, or on annual income, of several possible changes in market price, (iii) a gap analysis of interest rate repricing or maturity dates, (iv) the duration of the financial instruments, and (v) the entity's value at risk from derivative financial instruments and from other positions at the end of the reporting period and the average value at risk during the year.

<sup>44</sup> Item 9A(a) of Form 20-F, like the other portions of Item 9A, is substantively identical to related sections in Item 305.

<sup>45</sup> At the current time, the Commission is not prescribing standardized methods and procedures specifying how to comply with each of these disclosure alternatives. To facilitate comparison across registrants, however, Item 305(a) requires that registrants describe the model and assumptions used to prepare quantitative market risk disclosures.

<sup>41</sup> The Commission believes that the exercise of discretion in making such choices by registrants should not subject registrants to liability with respect to private rights of action.

<sup>42</sup> See, e.g., FAS 119 ¶ 8b and Rule 5-02 of Regulation S-X, 17 CFR 210.5-02, respectively.

<sup>43</sup> In particular, FAS 119 ¶ 12 lists five possible quantitative methods of measuring and disclosing

registrants to provide quantitative information about market risk sensitive instruments in a tabular format. The required information includes the fair values of market risk sensitive instruments and contract terms sufficient to determine the future cash flows from those instruments, categorized by expected maturity dates. These tabular disclosures should present information sufficient to allow readers of the table to determine expected cash flows from market risk sensitive instruments for each of the next five years and the aggregate cash flows expected for the remaining years thereafter.<sup>46</sup> These tabular disclosure requirements were selected because expected cash flows are common inputs to market risk measurement methods and, therefore, are expected to help investors make estimates of a registrant's market risk exposures.

To facilitate an investor's ability to make such estimates, Items 305(a) and 9A(a) require that tabular information be grouped based on common market risk characteristics. In particular, those Items require separate presentation of tabular information for instruments: (i) Entered into for trading and other than trading purposes, (ii) subject to different categories of market risk exposure (e.g., interest rate risk, foreign currency exchange rate risk, etc.), and (iii) subject to different market risk characteristics within a particular exposure category (e.g., different functional currencies,<sup>47</sup> different underlying commodity exposures, different instrument types, and different contractual rates or prices). See Items 305(a)(1)(i) and 9A(a)(1)(i) for further requirements.

In particular, when preparing the tabular disclosures registrants should consider whether differences in market risk would be reflected better by separately presenting tabular information for a particular instrument or group of instruments. For example, Items 305(a)(1)(i) and 9A(a)(1)(i) require the grouping of options with similar strike prices. This grouping is required because option payouts can differ significantly depending how far the option is in or out of the money. Thus,

<sup>46</sup> In some instances, the tabular presentation alternative is similar to the gap analysis commonly provided by financial institutions. Thus, with minor modifications, if any, those registrants could report a gap analysis and comply with the tabular information requirements.

<sup>47</sup> For purpose of Item 305 and Item 9A, functional currency means the currency of the primary economic environment in which the entity operates; normally, that is the currency of the environment in which an entity primarily generates and expends cash. This definition is the same as the definition of functional currency in FAS 52, Appendix E.

the separate presentation of tabular information for options with dissimilar strike prices should enhance an investor's ability to determine the potential market risk inherent in those instruments. Registrants should make similar evaluations when determining which instruments should be grouped together within the tabular disclosures.

Items 305(a) and 9A(a) also require disclosure of information regarding the contents of the table and related assumptions necessary to understand a registrant's market risk disclosures. In this regard, registrants should describe, for example, the different amounts reported in the table for the various categories of the market sensitive instruments (e.g., principal amounts for debt, notional amounts for swaps, and the different types of reported market rates or prices) and key prepayment or reinvestment assumptions relating to the timing of reported amounts. See Items 305(a)(1)(i) and 9A(a)(1)(i) for further details.

The Appendix to each of these Items provides a sample disclosure format.

(ii) Sensitivity Analysis. The sensitivity analysis disclosure alternative permits registrants to express the potential loss in future earnings, fair values, or cash flows of market risk sensitive instruments resulting from one or more selected hypothetical changes in interest rates, foreign currency exchange rates, commodity prices, and other relevant market rate or price changes (e.g., equity prices) over a selected time period.<sup>48</sup> Items 305(a) and 9A(a) require that registrants select hypothetical changes in market rates and prices that are expected to reflect reasonably possible<sup>49</sup> near-term<sup>50</sup> changes in those rates and prices. Absent economic justification for the selection of a different amount, registrants should use changes that are not less than 10 percent of end of period market rates or prices.

Items 305(a) and 9A(a) also require a description of the model, assumptions, and parameters underlying the registrant's sensitivity analysis that are

<sup>48</sup> The term "sensitivity analysis," as used in Items 305(a) and 9A(a), describes a general class of models that assesses the risk of loss in market risk sensitive instruments based on hypothetical changes in market rates or prices. The term sensitivity analysis is not meant to refer to any one model for quantifying market risk. Sensitivity analysis models include, for example, duration analysis or other "sensitivity" measures already required to be calculated for regulatory purposes for thrift institutions (see Office of Thrift Supervision, *Regulatory Capital: Interest Rate Risk Component*, 12 CFR 567.5(c)(4) (August 1993)).

<sup>49</sup> See note 67, *infra*, for a definition of the term "reasonably possible."

<sup>50</sup> See note 66, *infra*, for a definition of the term "near-term."

necessary to understand the registrant's market risk disclosure. In this regard, registrants are required to specify, for example, (i) how "loss" is defined by the model (e.g., loss in earnings, fair values, or cash flows), (ii) a general description of the modeling technique (e.g., the change in net present values arising from selected shifts in market rates or prices), (iii) the types of instruments covered by the model, and (iv) other relevant information about the model's assumptions and parameters (e.g., the magnitude and timing of selected hypothetical changes in market rates or prices used). See Items 305(a)(1)(ii) and 9A(a)(1)(ii) for further requirements.

(iii) Value at Risk. The value at risk disclosure alternative permits registrants to express the potential loss in future earnings, fair values, or cash flows of market risk sensitive instruments over a selected period of time, with a selected likelihood of occurrence, from changes in interest rates, foreign currency exchange rates, commodity prices, and other relevant market rates or prices.<sup>51</sup> Items 305(a) and 9A(a) state that when preparing value at risk disclosures, registrants should select confidence intervals that reflect reasonably possible near-term changes in market rates and prices. In this regard, absent economic justification for the selection of different confidence intervals, registrants should use intervals that are 95 percent or higher.

For each category for which value at risk disclosures are presented, Items 305(a) and 9A(a) require registrants to provide either (i) the average, high and low amounts, or the distribution of value at risk amounts for the reporting period, (ii) the average, high and low amounts, or the distribution of actual changes in fair values, earnings, or cash flows from market risk sensitive instruments occurring during the reporting period, or (iii) the percentage or number of times the actual changes in fair values, earnings, or cash flows from market risk sensitive instruments exceeded the value at risk amounts during the reporting period.

Items 305(a) and 9A(a) also require a description of the model, assumptions, and parameters underlying the

<sup>51</sup> The term "value at risk," as used in Items 305(a) and 9A(a), describes a general class of models that provides a probabilistic assessment of the risk of loss in market risk sensitive instruments. The term value at risk is not meant to refer to any one model for quantifying market risk. Value at risk models can be adapted to non-trading activities as well as trading activities and to non-financial institutions as well as financial institutions, depending on the model and assumptions selected by the registrant.

registrant's value at risk model that are necessary to understand the registrant's market risk disclosure. In this regard, registrants should specify, for example, (i) how "loss" is defined by the model (e.g., loss in earnings, fair values, or cash flows), (ii) the type of model used (e.g., variance/covariance, historical simulation, or Monte Carlo simulation and a description as to how optionality is addressed by the model), (iii) the types of instruments covered by the model, and (iv) other relevant information about the model's assumptions and parameters (e.g., holding periods and confidence intervals).<sup>52</sup> See Items 305(a)(1)(iii) and 9A(a)(1)(iii) for further requirements.

(iv) An Alternative to Reporting Year-End Information. Items 305(a) and 9A(a) require disclosure of quantitative information about market risk as of the end of the latest fiscal year.

Alternatively, registrants, such as those with proprietary concerns about reporting year-end information under the sensitivity analysis and value at risk disclosure alternatives, may report the average, high, and low amounts for the reporting period. In determining those average, high, and low amounts for the fiscal year, registrants should use sensitivity analysis or value at risk amounts relating to at least four equal time periods throughout the reporting period (e.g., four quarter-end amounts, 12-month-end amounts, or 52 week-end amounts).

(v) Other Disclosure Requirements. Items 305(a) and 9A(a) require registrants to provide summarized quantitative information about market risk for the preceding fiscal year. In addition, registrants should discuss the reasons for material quantitative changes in market risk exposures between the current and preceding fiscal years.<sup>53</sup> In determining the amount and type of summarized information to be provided for the

preceding fiscal year, registrants should evaluate whether sufficient information is disclosed to enable investors to assess material trends in quantitative market risk information. This summary should include information relating to each market risk exposure category disclosed in the preceding or latest fiscal year.

In addition, Items 305(a) and 9A(a) permit registrants to change disclosure alternatives or key model characteristics, assumptions, and parameters used in providing quantitative information about market risk (e.g., changing from tabular presentation to value at risk, changing the scope of instruments included in the model, changing the definition of loss from fair values to earnings). However, if the effects of such a change are material,<sup>54</sup> registrants should (i) explain the reasons for the change and (ii) either provide summarized comparable information, under the new disclosure method, for the year preceding the current reporting period or, in addition to providing disclosure for the current year under the new method, provide disclosure for the current year and preceding fiscal year under the method used in the preceding year.

(vi) Encouraged Disclosures. The Commission recognizes that market risk exposures may exist in instruments, positions, and transactions other than in the market risk sensitive instruments specifically covered by Items 305 and 9A. In particular, market risk, in its broadest view, also may be inherent in the following items:

- Derivative commodity instruments that are not permitted by contract or business custom to be settled in cash or with another financial instrument—such as a commodity forward contract that must be settled in the commodity;
- Commodity positions—such as investments in corn, wheat, oil, gas, lumber, silver, gold, and other commodity inventory positions;
- Cash flows from anticipated transactions<sup>55</sup>—such as cash flows from anticipated purchases and sales of inventory, and operating cash flows from non-financial and non-commodity instruments (e.g., cash flows generated by manufacturing activities); and
- Certain financial instruments not included among the required disclosure items—such as insurance contracts, lease contracts, and employers' and plans' obligations for pension and other post-retirement benefits.

The Commission also recognizes, however, that the amount and timing of the cash flows inherent in such instruments, positions, and transactions sometimes may be difficult to estimate. In addition, it has been represented to the staff that many risk measurement systems currently do not include such instruments, positions, and transactions in their quantitative assessments of market risk. For these practical reasons, the Commission is not requiring, at this time, that these items be included in the quantitative disclosures about market risk. Registrants, however, are encouraged to include such items within their quantitative market risk disclosures.

Registrants that choose the tabular presentation disclosure alternative should present voluntarily selected instruments, positions, or transactions in a manner consistent with the requirements in Items 305 and 9A for market risk sensitive instruments. Registrants selecting the sensitivity analysis or value at risk disclosure alternatives are not required to provide separate market risk disclosures for any voluntarily selected instruments, positions, or transactions. Instead, registrants selecting those disclosure alternatives are permitted to present comprehensive market risk disclosures, which reflect the combined market risk exposures inherent in both the required and any voluntarily selected instruments, position, or transactions.

If a registrant elects to include voluntarily a particular type of instrument, position, or transaction in their quantitative disclosures about market risk, that registrant should include all, rather than some, of those instruments, positions, or transactions within their disclosures. For example, if a registrant holds in inventory a particular type of commodity position and elects to include that commodity position within their market risk disclosures, the registrant should include the entire commodity position, rather than only a portion thereof, in their quantitative disclosures about market risk.

Finally, if instruments, positions, or transactions are not included voluntarily in the market risk disclosures and, as a result, the disclosures do not fully reflect the net market risk exposures of the registrant, the registrant should discuss the absence of those items as a limitation of the quantitative information, as discussed below.<sup>56</sup>

<sup>52</sup> The primary differences between the value at risk and sensitivity analysis disclosure alternatives are (i) value at risk analysis reports the potential loss arising from equally likely market movements across instruments, while sensitivity analysis reports the potential loss arising from hypothetical market movements with differing likelihoods of occurrence across instruments and (ii) value at risk explicitly adjusts the potential loss to reflect correlations between market movements, while sensitivity analysis is not designed explicitly to make such adjustments.

<sup>53</sup> For transition purposes, quantitative disclosures about market risk provided in the initial year in which a registrant must present information under Item 305 is not required to contain comparable summarized information for the preceding year. Similarly, in the first fiscal year in which a registrant must present information under Item 305, a discussion of the reasons for material changes in reported amounts as compared to the preceding year is not necessary.

<sup>54</sup> In this regard, the Commission believes that all changes from one disclosure alternative to another are material; however, other changes discussed in this section require judgment as to whether the effects of such changes are material.

<sup>55</sup> See note 19, *supra*.

<sup>56</sup> In addition, registrants should review the requirements of Item 303 of Regulation S-K, 17 CFR 229.303, to ensure their disclosures are sufficient to

(vii) Limitations. Items 305(a) and 9A(a) require registrants to discuss limitations that cause the quantitative information about market risk not to reflect fully the net market risk exposures of the entity. This discussion is to include a description of instruments, positions, and transactions omitted from the quantitative market risk disclosure information, or the features of instruments, positions, and transactions that are included, but not reflected fully in the quantitative information disclosed.

Two illustrative examples are provided. First, as just stated, certain instruments, positions, and transactions are excluded from the required quantitative disclosures about market risk, but may be included on a voluntary basis. The failure of a registrant to include voluntarily those instruments, positions, or transactions in the quantitative disclosures is a limitation of the quantitative information provided. This limitation should be discussed, if material, and a summarized description of the instruments, positions, or transactions not reflected fully within the quantitative market risk disclosures should be disclosed.

Second, the prescribed quantitative disclosures may not inform investors of the degree of market risk inherent in instruments with leverage, option, or prepayment features (e.g., options, including written options, structured notes, collateralized mortgage obligations, leveraged swaps, and options embedded in swaps). Tabular information on fair values and contract terms may not necessarily indicate that instruments have such features. Similarly, if leverage, option, or prepayment features are triggered by changes in market rates or prices outside those reflected in the value at risk and sensitivity analysis disclosures, the potential loss from such market rate or price changes may be significantly larger than would be implied by a simple linear extrapolation of the reported numbers. Thus, to make investors fully aware of the market risk inherent in instruments with such features, Item 305(a) and Item 9A(a) require a discussion of this limitation, including a summarized description of the features of the instruments causing the limitation.

## 2. Qualitative Information About Market Risk

*a. Background.* The Commission believes that quantitative information

inform readers of material risks to which a registrant is exposed.

about market risk is more meaningful when accompanied by qualitative disclosures about a registrant's market risk exposures and how those exposures are managed. Such qualitative disclosures help investors understand a registrant's market risk management activities and help place those activities in the context of the business.

FAS 119 requires qualitative disclosures about market risk management activities associated with certain derivative financial instruments. In particular, FAS 119 requires disclosure of "the entity's objectives for holding or issuing the derivative financial instruments, the context needed to understand those objectives, and its general strategies for achieving those objectives."<sup>57</sup> However, the qualitative disclosure requirements of FAS 119 only apply to derivative financial instruments held or issued for purposes other than trading.

*b. Item 305(b) and Item 9A(b).* Items 305(b) and 9A(b) expand the qualitative market risk disclosure requirements of FAS 119 to (i) Encompass derivative commodity instruments, other financial instruments, and derivative financial instruments entered into for trading purposes and (ii) require registrants to evaluate and describe material changes in their primary risk exposures and in how those exposures are managed. In particular, Items 305(b) and 9A(b) require a description of (i) a registrant's primary market risk exposures<sup>58</sup> as of the end of the latest fiscal year, (ii) how those exposures are managed (such descriptions should include, but not be limited to, a discussion of the objectives, general strategies, and instruments, if any, used to manage those exposures), and (iii) changes in either the registrant's primary market risk exposures or in how those exposures are managed, when compared to what was in effect during the most

<sup>57</sup> See FAS 119 ¶ 11a. Footnote 4 of FAS 119 illustrates the qualitative disclosures required by ¶ 11a. That footnote states:

If an entity's objective for a derivative position is to keep a risk from the entity's non-derivative assets below a specified level, the context would be a description of those assets and their risks, and a strategy might be purchasing put options in a specified proportion to the assets at risk.

<sup>58</sup> For purposes of Items 305(b) and 9A(b), primary market risk exposures mean (i) the following categories of market risk: Interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market rate or price risks (e.g., equity price risk) and (ii) within each of these categories, the particular markets that present the primary risks of loss to the registrant. For example, if a registrant (i) has a material exposure to foreign currency exchange rate risk and, within this category of market risk, (ii) is most vulnerable to changes in dollar/yen, dollar/pound, and dollar/peso exchange rates, the registrant should disclose those exposures.

recently completed fiscal year and what is known or expected to be in effect in future reporting periods.

Items 305(b) and 9A(b) apply to market risk sensitive instruments. In addition, the qualitative disclosures required by these items should be presented separately for market risk sensitive instruments entered into for trading purposes and those entered into for purposes other than trading.

Finally, to help make disclosures about market risk more comprehensive, the Commission encourages registrants to include within their qualitative disclosures about market risk, certain instruments, positions, and transactions not required under Items 305(b) and 9A(b). Those instruments, positions, and transactions include derivative commodity instruments not permitted by contract or business custom to be settled in cash or with another financial instrument, commodity positions, cash flows from anticipated transactions, and certain financial instruments not included among the required disclosure items. See Items 305(b) and 9A(b) for further requirements.<sup>59</sup>

If a registrant elects not to include those instruments, positions, and transactions in its qualitative disclosures about market risk, the Commission reminds registrants to consider whether qualitative disclosures about the market risk inherent in those items would be required under (i) Items 101 or 303 of Regulation S-K<sup>60</sup> or (ii) Rules 12b-20 under the Securities Exchange Act of 1934 ("Exchange Act") or 408 under the Securities Act of 1933 ("Securities Act")<sup>61</sup> Item 101 of Regulation S-K requires disclosures relating to a "Description of the Business." Item 303 requires discussion of known risks and uncertainties within "Management's Discussion and Analysis." Rule 12b-20 under the Exchange Act and Rule 408 under the Securities Act state that registrants should include in any filings or reports any material information necessary to make statements made, in light of the circumstances, not misleading.

## 3. Safe Harbor for Forward Looking Information

In the release proposing Item 305 and Item 9A, the Commission noted its intention to consider the application of an appropriate safe harbor to the

<sup>59</sup> See section III B.1.c.(vi), *supra*, for a discussion as to why these instruments are encouraged, but not required, to be included in disclosures about market risk.

<sup>60</sup> See 17 CFR 228.101 and 17 CFR 228.303, respectively.

<sup>61</sup> See 17 CFR 240.12b-20 and 17 CFR 230.408, respectively.

forward looking aspects of the disclosures. Such a safe harbor subsequently was proposed for public comment,<sup>62</sup> and the Commission is adopting that provision substantially as proposed.

As adopted, the safe harbors for forward looking statements provided in Section 27A of the Securities Act and Section 21E of the Exchange Act apply to quantitative information about market risk provided outside the financial statements and related notes thereto, all of which, as described further below, is deemed to be a forward looking statement for purposes of the safe harbor, pursuant to Item 305(a) or Item 9A(a); qualitative information about market risk provided outside the financial statements and related notes thereto, pursuant to Item 305(b) or Item 9A(b); and interim information provided pursuant to Item 305(c) and Item 9A(c).

As proposed, the safe harbor would have applied to information disclosed pursuant to Items 305 and 9A regardless of whether the information was set forth in the notes to the financial statements or elsewhere in a registrant's required filings. As discussed below,<sup>63</sup> the Commission has determined that information required by Items 305 and 9A should be disclosed outside of the financial statements and related notes thereto. Similarly, as adopted, the safe harbor applies only to information located in accordance with the revised rule.

The safe harbors are available with respect to the specified information, regardless of whether the issuer providing it or the type of transaction otherwise is excluded from the statutory safe harbors. For example, first-time Commission registrants and those making initial public offerings are covered by the safe harbors with respect to this specific information if all other conditions are satisfied.

As is the case with the statutory safe harbors, however, the safe harbors adopted pursuant to this release apply only to a forward looking statement made by: (i) An issuer, (ii) a person acting on behalf of the issuer, (iii) an outside reviewer retained by the issuer making a statement on behalf of the issuer, or (iv) an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

The Commission recognizes that, due to the difficult nature of the disclosures,

some registrants may require assistance in preparing the information required by Items 305 and 9A. For example, registrants may need assistance from third parties with respect to compiling the required information, assessing the reasonableness of management's assumptions, or testing the mathematical computations that translate the assumptions into the required disclosures. Moreover, some registrants may wish to have outside third parties review the information prior to its disclosure. The Commission considers such assistance and reviews relating to forward looking disclosure required by Items 305 and 9A to be "made by an outside reviewer retained by the issuer making a statement on behalf of the issuer" under the safe harbor rule.

The rule now clarifies two additional points about the application of the new safe harbor rules. First, the Commission deems all information required by paragraphs (a), (b)(1)(i), (b)(1)(iii) and (c) of Items 305 and 9A to be "forward looking statements" for purposes of the new safe harbor rules, except for historical facts such as the terms of particular contracts and number of market risk sensitive instruments held during or at the end of the reporting period. To the extent that information provided pursuant to paragraph (b)(1)(ii) of Items 305 and 9A includes forward looking statements, those statements would be eligible for safe harbor protection.

Second, the "meaningful cautionary statements" prong of the safe harbors will be satisfied with respect to the Items 305(a) and 9A(a) disclosures if a registrant satisfies the requirements of those Items. In this regard, the Commission notes that Items 305(a) and 9A(a) require disclosure of both the assumptions underlying, and the limitations of, the disclosure provided. For the remainder of the information required by the new items, registrants desiring to qualify for the "meaningful cautionary statements" prong of the safe harbor will need to consider what information should be given to alert investors to important factors that could cause actual results to differ materially from the information given in the forward looking statements.<sup>64</sup>

Finally, although Item 305 and Item 9A information is not required of small business issuers (as defined by Commission rule),<sup>65</sup> the safe harbors are available to those small issuers that

voluntarily choose to disclose such information. Similarly, the safe harbors are available to non-small business issuers who voluntarily disclose information under Item 305(a) and Item 9A(a) prior to the June 15, 1997 and June 15, 1998 effective dates.

#### 4. Implementation Issues Relating to Quantitative and Qualitative Disclosures About Market Risk

*a. Disclosure Threshold.* Under Items 305 and 9A, quantitative and qualitative disclosures about market risk are required, when material, for each market risk exposure category within the trading and other than trading portfolios. For purposes of assessing materiality, registrants should evaluate both (i) the materiality of the fair values of market risk sensitive instruments outstanding as of the end of the latest fiscal year and (ii) the materiality of potential near-term<sup>66</sup> losses in future earnings, fair values, and cash flows from reasonably possible<sup>67</sup> near-term changes in market rates or prices.

If either (i) or (ii) in the previous paragraph are material, the registrant should disclose quantitative and qualitative information about market risk, if such market risk for the particular market risk exposure category is material. However, the choice of methods, model characteristics, assumptions, and parameters used to comply with the quantitative market risk disclosures remain at the election of the registrant, provided disclosure is made regarding a material risk of loss in either earnings, fair values, or cash flows.

For example, if a registrant expects a material near-term loss in fair values only, that registrant should not report quantitative market risk information in terms of earnings or cash flows, rather than fair values. In these circumstances, the registrant could, of course, make additional quantitative disclosures about the loss in earnings or cash flows, but should disclose the risk of loss in fair values. In contrast, if a registrant is required to disclose market risk information because near-term losses in future earnings, fair values, and cash

<sup>66</sup> For the purposes of Item 305 and Item 9A, the term "near-term" means a period of time going forward up to one year from the date of the financial statements. See generally AICPA, Statement of Position 94-6, *Disclosure of Certain Significant Risks and Uncertainties*, at paragraph 7 (December 30, 1994).

<sup>67</sup> For purposes of Item 305 and Item 9A, the term "reasonably possible" is defined by ¶ 3 of FASB, *Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies"* ("FAS 5") (March 1975), which states that "reasonably possible" means the chance of a future transaction or event occurring is more than remote but less than likely.

<sup>62</sup> Securities Act Release No. 7280; Exchange Act Release No. 37086; File No. S7-10-96 (April 9, 1996) [61 FR 16672].

<sup>63</sup> See section III B.4.b., *infra*, for a discussion about where these disclosures should appear.

<sup>64</sup> Registrants are reminded that the safe harbor requires that forward looking statements be identified as such.

<sup>65</sup> 17 CFR part 228, *et seq.*

flows all are material, it may report quantitative information in terms of either earnings, fair values, or cash flows.

In assessing the materiality of the fair values of market risk sensitive instruments, those fair values generally should not be netted, except to the extent allowed under *FASB Interpretation No. 39, "Offsetting of Amounts Related to Certain Contracts"* ("Interpretation 39") (March 1992).<sup>68</sup> For example, the fair value of assets generally should not be netted with the fair value of liabilities. Instead, the fair values of such instruments should be aggregated, without netting, for purposes of assessing materiality.

In assessing the materiality of potential near-term losses in future earnings, fair values, or cash flows from reasonably possible near-term changes in market rates or prices, registrants should consider (i) The magnitude of past market movements, (ii) the magnitude of reasonably possible, near-term market movements, and (iii) potential losses that may arise from leverage, option, and multiplier features.

**b. Location of Quantitative and Qualitative Disclosures.** As adopted, Items 305 and 9A require that the quantitative and qualitative market risk disclosures be placed outside the financial statements and related notes thereto. As proposed, registrants would have been permitted to disclose such information in the notes to the financial statements. Because of the evolving nature of the disclosures and the FASB's pending project on accounting for derivatives, which also will address disclosures about derivatives within the financial statements, the Commission has determined that the better course, at this time, is to require that the disclosures mandated by Items 305 and 9A be located outside of the financial statements and related notes.

The Commission believes that the information required by Items 305 and 9A should be included in the annual report delivered to shareholders; consequently Rule 14a-3 of the proxy rules has been amended to include this requirement. For other documents delivered to investors, the information should be included or incorporated by

<sup>68</sup> Interpretation 39 states that it is a general principle of accounting that the offsetting of assets and liabilities in the balance sheet is improper except where a right of set off exists. Interpretation 39 defines right of set off and specifies what conditions must be met to have that right. FAS 119 ¶ 15(d) in disclosing the fair values of instruments also prohibits the netting of fair values, except to the extent that the offsetting of carrying amounts in the statement of financial position is permitted under Interpretation 39.

reference from other Commission filings.

**c. Cross-Referencing of Disclosures.** The Commission believes it is most meaningful to disclose together, in one location, quantitative and qualitative information relating to the same market risk exposure category. However, because market risk sensitive instruments often are used to manage known risks and uncertainties in market rates and prices, the disclosures provided under Items 305 and 9A may overlap with disclosures provided under Item 303 of Regulation S-K. To the extent that the disclosures in a registrant's MD&A satisfy the requirements of Items 305 or 9A, registrants need not repeat this information elsewhere in their filings. If this information is disclosed in more than one location, however, registrants should ensure that the resulting disclosures are meaningful to investors and provide cross-references to the locations of the related disclosures.

**d. Application to Registrants.** Items 305 and 9A are required to be followed by many different types of registrants, including, for example, commercial and industrial companies, financial institutions, broker-dealers, service companies, business development companies, and companies registering insurance contracts, such as market-value adjusted annuities and real estate funds underlying annuity contracts. Items 305 and 9A do not apply to registered investment companies and, as described further in Section IV, small business issuers.

**e. Reporting Frequency.** Items 305 and 9A apply to all registration statements filed under the Securities Act and all reports, proxy statements, and information statements filed under the Exchange Act that are required to include or incorporate financial statements. However, for reports that include only interim financial statements (e.g., Form 10-Qs), registrants need only present market risk information if there have been material changes in reported market risks faced by the registrant since the end of the most recent fiscal year. In these circumstances, registrants should provide a discussion and analysis that enables investors to assess the sources and effects of those material changes in market risks.

#### IV. Applicability of Amendments

##### A. Application to Small Business Issuers

The Commission believes that because of (i) The evolving nature of these disclosures and (ii) the relative costs of complying with these

disclosures for small business issuers,<sup>69</sup> it is appropriate, at this time, to exempt small business issuers from disclosing quantitative and qualitative information about market risk.<sup>70</sup>

Accordingly, at this time, the Commission is not adopting amendments to Regulation S-B to incorporate an item similar to Item 305. Small business issuers, however, are required (i) To comply with the amendment regarding accounting policies disclosures for derivatives, (ii) to comply with Rule 12b-20 under the Exchange Act and Rule 408 under the Securities Act, which require registrants to provide additional information about the material effects of derivatives on other information expressly required to be filed with the Commission, and (iii) to the extent market risk represents a known trend, event, or uncertainty, to discuss the impact of market risk on past and future financial condition and results of operations, pursuant to Item 303 of Regulation S-B.

##### B. Application to Foreign Private Issuers

Item 9A of Form 20-F requires disclosure by all foreign private issuers of quantitative and qualitative information about market risk. In addition, foreign private issuers that prepare financial statements in accordance with Item 18 of Form 20-F are required to provide all information required by U.S. generally accepted accounting principles and Regulation S-X, including descriptions in the footnotes to the financial statements of the policies used to account for derivatives. Foreign private issuers that prepare financial statements in accordance with Item 17 of Form 20-F are not required to provide financial statement disclosures required by U.S. generally accepted accounting principles and Regulation S-X. The amendments requiring disclosures of accounting policies in Rule 4-08(n) of Regulation S-X do not apply to foreign private issuers filing under Item 17 of Form 20-F. However, foreign private

<sup>69</sup> "Small business issuer" is defined to mean any entity that (1) Has revenues of less than \$25,000,000, (2) is a United States or Canadian issuer, (3) is not an investment company, and (4) if a majority owned subsidiary, the parent corporation is also a small business issuer. An entity is not a small business issuer, however, if it has a public float (the aggregate market value of the outstanding securities held by non-affiliates) of \$25,000,000 or more. See 17 CFR 230.405.

<sup>70</sup> Small business issuers will not be required to provide these market risk disclosures whether or not they file on specially designated small business forms.

In addition, as noted elsewhere in this release, the Commission has extended the safe harbor for forward looking information to Item 305 disclosures that are made voluntarily by small business issuers.

issuers filing under Item 17 of Form 20-F should consider the guidance presented in Staff Accounting Bulletin Topic 1:D ("SAB Topic 1:D") to determine if information regarding accounting policies for derivatives should be provided in MD&A.<sup>71</sup>

### C. Scope and Definition of Instruments

The instructions to Rule 4-08(n), Item 305, and Item 9A define financial instruments, derivative financial instruments, other financial instruments, and derivative commodity instruments as follows. "Financial instruments" have the same meaning as defined by generally accepted accounting principles (see, e.g., FASB, *Statement of Financial Accounting Standards No. 107, "Disclosures about Fair Value of Financial Instruments,"* ("FAS 107") paragraphs 3 and 8 (December 1991)). "Derivative financial instruments" are a subset of financial instruments and include futures, forwards, swaps, options, and other financial instruments with similar characteristics, as defined by generally accepted accounting principles (see, e.g., FAS 119 paragraphs 5-7 (October 1994)). See, the General Instructions to Paragraphs 305(a) and 305(b) of Item 305 or the General Instructions to Paragraphs 9A(a) and 9A(b) of Item 9A for further details.

Other financial instruments include all financial instruments that must be disclosed at fair value under FAS 107, except for derivative financial instruments, as defined above. For example, other financial instruments include trade accounts receivable, investments, loans, structured notes, mortgage-backed securities, trade accounts payable, indexed debt instruments, interest-only and principal-only obligations, deposits, and other debt obligations. However, for purposes of this release, trade accounts receivable and trade accounts payable need not be considered other financial instruments when their carrying amounts approximate fair value. Other financial instruments exclude employers' and plans' obligations for pension and other post-retirement benefits, substantively extinguished debt, insurance contracts, lease contracts, warranty obligations and rights, unconditional purchase obligations, investments accounted for

<sup>71</sup> SAB Topic 1:D provides several examples of disclosures in MD&A that might be necessary to enable readers to understand the financial statements as a whole. One of those example disclosures includes significant accounting policies and measurement assumptions which may bear upon an understanding of operating trends or financial condition.

under the equity method, minority interests in consolidated enterprises, and equity instruments issued by the registrant and classified in stockholders' equity in the statement of financial position.

Derivative commodity instruments include, to the extent such instruments are not derivative financial instruments, commodity futures, commodity forwards, commodity swaps, commodity options, and other commodity instruments with similar characteristics, that are permitted by contract or business custom to be settled in cash or with another financial instrument.

Thus, the instrument definitions described above do not encompass (i) commodity positions, (ii) derivative commodity instruments that are not permitted by contract or business custom to be settled in cash or with another financial instrument (e.g., a commodity forward contract that must be settled in the commodity), (iii) cash flows from anticipated transactions, (e.g., operating cash flows from non-financial and non-commodity instruments), and/or (iv) certain financial instruments not included among the required disclosure items.<sup>72</sup>

### V. Disclosure of the Effects of Derivative Instruments on Disclosures about Financial Instruments, Commodity Positions, Firm Commitments, and Anticipated Transactions

In conjunction with the adoption of Items 305 and 9A, the Commission reminds registrants that other reporting obligations also require certain disclosures about derivatives. The staff's 1994 and 1995 reviews of registrant filings suggested that some registrants are not providing sufficient disclosure about how derivatives directly or indirectly affect reported items. As a result, those disclosures may not have reflected as well as they otherwise might have such matters as the effective terms or expected cash flows of the derivatives and reported items.

It is fundamental that registrants include in any filings or reports any material information necessary to make statements made, in light of the circumstances, not misleading.<sup>73</sup> That is, registrants should provide disclosure about derivatives that affect, directly or indirectly, the terms, fair values, or cash flows of the reported items. This includes derivative transactions that are designated to reported items under

<sup>72</sup> See section III B.1.c.(vi), *supra*, for a further description of the instruments, positions, and transactions described in this paragraph.

<sup>73</sup> See, e.g., Rule 12b-20 under the Exchange Act and Rule 408 under the Securities Act.

generally accepted accounting principles.<sup>74</sup>

Thus, for example, information required to be disclosed in the footnotes to the financial statements about the interest rates and repricing characteristics of debt obligations should include, when material, information about the effects of derivatives. Similarly, summary information and disclosures in MD&A about the interest costs of debt obligations should include, when material, disclosure of the effects of derivatives. Likewise, when derivatives directly or indirectly affect the terms and cash flows of items such as securities held as assets, servicing rights, oil and gas reserves, loan receivables, deposit liabilities, and leases, disclosure about the terms and cash flows of those items should include, when material, disclosure of the effects of derivatives to the extent such disclosure is necessary to prevent the disclosure about the reported item from being misleading.

## VI. Response to Comments

### A. Accounting Policies

#### 1. Disclosure Threshold

In the proposing release, disclosures of accounting policies for derivatives would have been required if the fair values of derivative financial instruments and derivative commodity instruments were material. Commenters noted that the disclosure threshold in the proposing release is different than the threshold provided by generally accepted accounting principles (*i.e.*, APB 22) and Regulation S-X. These commenters indicated that introducing a new and different threshold could add unnecessary confusion to the disclosure process. In response to those commenters, the disclosure threshold in the final rule relies on the standards of materiality present in APB 22 and Regulation S-X. APB 22 requires disclosure of accounting policies that materially affect the determination of financial position, cash flows, or results of operations. Regulation S-X limits the information to those matters about which an average prudent investor ought reasonably be informed.

#### 2. Future Reconsideration

Some commenters urged the Commission to coordinate its efforts with the FASB, especially by committing to review the accounting policies disclosure requirements after the FASB completes its derivatives and hedging project. Those commenters

<sup>74</sup> See, e.g., FAS 52 ¶ 21a and FAS 80 ¶ 4a.

suggested that when the accounting for derivatives is addressed comprehensively by the FASB, rules explicitly prescribing the content of derivative accounting policy disclosures may no longer be necessary. In response to those commenters' concerns, after the FASB completes its project, the Commission will direct its staff to review Rule 4-08(n) and Item 310 and to recommend whether the Commission should amend those items.

### *B. Quantitative Disclosures About Market Risk*

#### 1. Different Alternatives for Different Categories of Instruments

A number of commenters recommended that the same quantitative market risk disclosure alternative not be required (i) For instruments entered into for trading and other than trading purposes and (ii) for each market risk exposure category (e.g., interest rates, foreign currency exchange rates, and commodity prices) within the trading and other than trading portfolios. For example, some commenters indicated that market risk inherent in trading portfolios is evaluated using one approach, such as value at risk, and market risk inherent in the other than trading portfolios is evaluated using another approach, such as sensitivity analysis. Similarly, some commenters suggested that instruments exposed to foreign currency exchange rate risk are evaluated using one approach, while instruments exposed to interest rate risk are evaluated using another approach.

Those commenters suggested that Items 305(a) and 9A(a) permit the use of different quantitative disclosure alternatives for the market risks inherent in (i) The trading and other than trading portfolios and (ii) different market risk exposure categories within each of these portfolios. Due to the evolving nature of market risk management technologies, the Commission has decided it is too early to require that the same disclosure alternative be used to report market risk across (i) The trading and other than trading portfolios and (ii) each market risk exposure category within those portfolios. The Commission, therefore, has revised the disclosure items to permit the use of more than one disclosure alternative across each of those categories.

#### 2. Use of Additional Disclosure Methods

Some commenters suggested adding an alternative that would allow disclosure of quantitative information about market risk using a "management approach"; that is, the approach that

management uses internally to manage market risk. They commented that the approaches in the proposing release (i) Do not appear to allow gap and duration analyses, which are currently used by some to measure market risk and (ii) may become outdated as new measurement approaches are developed in the market place. Other commenters, however, support more consistent reporting and requested that the Commission limit the quantitative disclosure alternatives for the sake of comparability.

The approach taken in the final disclosure items strikes a balance between the different commenters' perspectives. The Commission believes that the final disclosure items allow most registrants, if they so desire, to report market risk using one or more of four common methods of managing market risk. These methods are: (i) Gap analysis, (ii) duration, (iii) sensitivity analysis, and (iv) value at risk. Gap analysis is a tabular disclosure approach and with minor revision would satisfy the tabular disclosure requirements. Likewise, duration is a form of sensitivity analysis and with minor revision would satisfy the sensitivity analysis disclosure requirements.

Registrants that do not internally manage market risk using any of these four common quantitative methods, however, still are required to report market risk disclosures using the methods specified by the final disclosure items. The Commission believes that reporting using a management approach outside of this framework could result in disclosures that could make it difficult for investors to assess market risk.

Finally, to address commenters' concerns that the alternatives for reporting market risk may become outdated, the Commission expects the staff to review the disclosure requirements periodically and to recommend amendments to those requirements, when appropriate, to reflect new developments in market risk management techniques.

#### 3. Proprietary Information

Some commenters indicated that they were concerned that the proposed quantitative disclosure requirements, particularly the tabular disclosure, would result in presentation of proprietary information. They expressed concern that the tabular information required by the proposal was so detailed and disaggregated that competitors, suppliers, and market traders potentially may be able to use the information to exploit the registrants' positions in the market. Other

commenters maintained that, in certain limited circumstances, period-end reporting of sensitivity analysis and value at risk amounts also may reveal proprietary information. Of principal proprietary concern were the requirements to disclose market risk information for derivative commodity instruments at both year-end and quarter-end.

After careful consideration of these comments, the Commission has determined to require disclosure of quantitative information about market risk. However, the final disclosure items include the following four provisions to address proprietary concerns. First, the final disclosure items contain two alternatives for providing quantitative information about market risk (i.e., sensitivity analysis and value at risk), which do not require disclosure of detailed information about specific positions held by the registrant at period end. Second, the final disclosure items allow registrants with concerns about reporting fiscal year-end information, to report the average, high, and low sensitivity analysis or value at risk amounts for the reporting period, instead of requiring the reporting of potentially proprietary year-end information. Third, for interim reporting, the final disclosure items require registrants to provide a discussion and analysis of the sources and effects of material changes in market risk information since the end of the preceding fiscal year, rather than requiring that registrants always furnish complete Item 305(a) or Item 9A(a) information when such material changes occur. Fourth, registrants selecting the sensitivity analysis or value at risk disclosure alternatives are not required to provide separate market risk disclosures for any voluntarily selected instruments, positions, or transactions. Instead, registrants selecting the sensitivity analysis and value at risk disclosure alternatives are permitted to present comprehensive market risk disclosures, which reflect the combined market risk exposures inherent in both the required and voluntarily selected instruments, positions, and transactions. Such comprehensive disclosures do not reveal proprietary information about the relative amount of market risk inherent in market risk sensitive instruments and any voluntarily selected instruments, positions, and transactions.

#### 4. Static Disclosures, Dependence on Assumptions

Some commenters criticized the sensitivity analysis and value at risk disclosures as being too dependent on



assumptions. They also commented that sensitivity analysis and value at risk measures are static and may not yield amounts that fairly represent the dynamic nature of market risk.

The Commission has considered those comments and has determined to continue to permit use of both the sensitivity analysis and value at risk disclosure alternatives for the following primary reasons. First, the sensitivity analysis and value at risk disclosure alternatives are the most common and widely accepted methods of measuring net market risk exposures currently available in the market place. Second, while the reported quantitative information depends on assumptions, registrants are required to disclose key assumptions, which should allow investors to assess the quality of those assumptions and evaluate the potential impact of variations in those assumptions on the reported information. Third, an evaluation of reported quantitative information about market risk, over time, should help investors assess the dynamic nature of that risk.

#### 5. Summarized Tabular Information

Some commenters indicated that the proposed tabular presentation of terms and information related to market risk sensitive instruments would produce lengthy and complex disclosures. They also asserted that grouping (i) foreign currency sensitive instruments by functional currency and (ii) other instruments by the common characteristics specified in the proposing release (*e.g.*, fixed or variable rate assets or liabilities, long or short forwards or futures, etc.) would be burdensome for registrants and the resulting information complex to analyze. Those commenters suggested that more summarized information be permitted in the tables. Finally, other commenters suggested that the proposal was unclear as to the information that must be disclosed, particularly with regard to options instruments.

The Commission is concerned that highly summarized tabular information will not allow investors to analyze and develop an understanding of a registrant's market risk exposures. Thus, the grouping requirements in the proposed disclosure items have not been changed substantially in this release. However, the Commission has revised the instructions to the final disclosure items to permit combined disclosure of foreign currency sensitive instruments exposed to different functional currencies, provided that those functional currencies (i) are economically related, (ii) are managed

together for internal risk management purposes, and (iii) have statistical correlations of greater than 75% over each of the past three years. In addition, the Commission has provided instructions to the final disclosure items to require the disaggregated reporting of instruments based on common characteristics only to the extent such disaggregation is material. Finally, the Commission has decided to exempt certain currency swaps and foreign currency denominated debt instruments from disclosure in the foreign currency risk exposure category if the currency swap eliminates all foreign currency exposure in the cash flows of the foreign currency denominated debt instrument. However, both the currency swap and the foreign currency denominated debt instrument still should be disclosed in the interest rate risk exposure category.

With regard to the need for guidance on information to be included in the table, the Commission has clarified in the final disclosure items that the table should provide information about contract terms sufficient to estimate the future cash flows from market risk sensitive instruments, categorized by expected maturity dates. In addition, for disclosures about options in particular, the Commission has made clear in the instructions to the final disclosure items that tabular information on options with dissimilar strike prices should be disclosed separately to help reflect the different market risk exposures inherent in option instruments.

#### 6. Sensitivity Analysis—Multiple Risk Exposures

Commenters requested additional guidance on how to perform the sensitivity analysis calculations for registrants with (i) multiple foreign currency exchange rate exposures and (ii) instruments that are exposed to rate or price changes in more than one market risk exposure category (*e.g.*, interest rate risk and foreign currency rate risk).

In response to those comments, the Commission has added two clarifying instructions to the disclosure items. First, registrants with multiple foreign currency exchange rate exposures should present foreign currency sensitivity analyses that measure the aggregate sensitivity to all changes in foreign currency exchange rate exposures, including the changes in both transactional currency/functional currency exchange rate exposures and functional currency/reporting currency exchange rate exposures.<sup>75</sup> Second, for

sensitivity analysis calculation purposes, registrants with instruments that are exposed to rate or price changes in more than one market risk exposure category should include the instrument in each market risk category to which the instrument is exposed. Similar instructions also were added to the value at risk disclosure requirements.

#### 7. Value at Risk—Contextual Disclosures

To help place reported value at risk amounts in context, the disclosure items in the proposing release specified that registrants should report either (i) the average or range in value at risk amounts for the current reporting period, (ii) the average or range in actual changes in fair values, earnings, or cash flows from market risk sensitive instruments occurring during the current reporting period, or (iii) the percentage of actual changes in fair values, earnings, or cash flows from market risk sensitive instruments that exceeded the reported value at risk amounts during the current reporting period ((i), (ii), and (iii) collectively are referred to as the "contextual value at risk disclosures").

Some commenters suggested that the final disclosure items should encourage, but not require, the contextual value at risk disclosures. Those commenters stated that the Commission would be penalizing registrants for choosing the value at risk disclosure alternative by requiring contextual disclosures that are not required for the other two disclosure alternatives. Other commenters, while supporting the disclosure requirements generally, objected to one or more of the contextual value at risk disclosures.

The Commission acknowledges the concerns of those commenters, but has decided not to change significantly the contextual disclosure requirements because it believes those disclosures provide investors with information that is important in evaluating the reported value at risk amounts. The disclosure items have been modified only to the extent necessary to clarify the contextual disclosure requirements. These contextual disclosures are common elements to value at risk management systems. Similar disclosures are not available for the

dollars (\$US) invests in a deutschmark(DM)-denominated debt security. This division determines that: (i) The French franc (FF) is its functional currency according to FAS 52, (ii) the \$US is its reporting currency, and (iii) the DM is its transactional currency. In preparing the foreign currency sensitivity analysis disclosures, this registrant should report the aggregate potential loss from hypothetical changes in both the DM/FF exchange rate exposure and the FF/\$US exchange rate exposure.

<sup>75</sup> For example, assume a French division of a registrant presenting its financial statements in U.S.

tabular presentation and sensitivity analysis alternatives; thus, comparable contextual disclosures are not required for those alternatives.

#### 8. Value at Risk—Aggregated Values

The proposed disclosure items would have required disclosure of an aggregate value at risk amount across all market risk sensitive instruments. A similar aggregate amount would not have been required for the other two disclosure alternatives.

Some commenters suggested that it may not be practical to require an aggregate value at risk amount because most registrants do not use a single risk measurement method for all market risk exposures. Other commenters suggested that registrants providing an aggregate value at risk amount for all categories of market risk should not be required to disclose separate value at risk amounts for each market risk exposure category.

Recognizing that registrants often do not use the same method internally for managing risk across the different market risk exposure categories within the trading and other than trading portfolios, the final disclosure items encourage, but do not require, reporting of aggregate value at risk (and sensitivity analysis) amounts for the trading and other than trading portfolios. Registrants also should note that they may not report aggregate value at risk amounts for the trading and other than trading portfolios in lieu of the required separate value at risk amounts for each market risk exposure category. Separate value at risk amounts provide information about a registrant's specific market risk exposures, which the Commission believes is useful for investors trying to manage specific risks in their investment portfolios.

#### 9. Model Parameters

In order to enhance the comparability of sensitivity analysis and value at risk disclosures, some commenters from the user community suggested that the Commission specify certain model parameters. In particular, those commenters suggested that the Commission establish several standard stress tests to be used to calculate sensitivity analysis disclosures, such as the greater of a 15% or 100 basis point adverse interest rate shift along the entire yield curve. Those standard stress tests would require measurement of the potential loss from reasonably expected market movements. Other commenters, however, requested that the Commission not specify model parameters at this time to allow the reporting to be responsive to the

ongoing evolution in risk management systems.

Due to these evolving practices, a guiding principle in the proposing release was to provide flexibility in the sensitivity analysis and value at risk market risk disclosure requirements to accommodate different types of registrants, different degrees of market risk exposure, and alternative ways of measuring market risk. The Commission continues to believe such flexibility is necessary at this time and, therefore, is not specifying uniform model parameters for the calculation of sensitivity analysis and value at risk disclosures.

The need for such flexibility, however, should not result in selection of model parameters that are not realistic and meaningful measures of reasonably expected market rate and price changes. Accordingly, the Commission has included guidance in the final disclosure items on certain model parameters that should be used by registrants. In particular, this guidance requires registrants to select both hypothetical changes in market rates or prices for sensitivity analysis and confidence intervals for value at risk that reflect reasonably possible near-term changes in market rates and prices. In this regard, the disclosure items indicate that, absent economic justification for the selection of different model parameters, registrants should use hypothetical changes in market rates or prices that are not less than 10 percent of end of period market rates or prices for sensitivity analysis disclosures and confidence intervals that are 95 percent or higher for value at risk disclosures. In the long-term, as more standard risk management practices and methods of reporting market risk are developed, the Commission anticipates that it will further limit the models, assumptions, and parameters permitted in Items 305(a) and 9A(a) to enhance comparability of reported information.

#### 10. Comparative Information

Many commenters requested that, if a registrant changes its method of providing quantitative information about market risk from one year to the next, it should not be required to provide comparable summarized information for the preceding period because preparing such presentations and analyses using the new method for preceding periods would be burdensome and costly. Moreover, they suggested that the cost associated with providing comparable summarized information for the preceding year may be a sufficient disincentive to prevent

change to a more sophisticated disclosure alternative.

The Commission believes that information about market risk is most useful for investors when compared to one or more prior periods. For such information to be meaningful, the information needs to be prepared on a consistent basis from period-to-period. The Commission also believes that registrants should be able to change methods of preparing market risk information as their risk management practices evolve. To mitigate the costs of preparing prior period market risk disclosures, the final disclosure items provide two alternatives to registrants that change disclosure alternatives, key model characteristics, assumptions, or parameters. First, a registrant may provide summarized comparable information, under the new disclosure method, for the year preceding the current year. Alternatively, in addition to providing disclosure for the current year under the new method, the registrant may provide disclosure for the current year and preceding fiscal year under the method used in the preceding year.

#### 11. Effective Dates

Commenters suggested that time is needed to allow registrants to prepare and implement the new quantitative disclosures about market risk. The Commission agrees with those commenters and, thus, will phase in the amendments over the next several months so that registrants will have time to respond to the new disclosure requirements. For registrants that are likely to have experience with measuring market risk, such as banks, thrifts, and non-bank and non-thrift registrants with market capitalizations on January 28, 1997 in excess of \$2.5 billion, Items 305 and 9A are effective for filings with the Commission that include annual financial statements for fiscal years ending after June 15, 1997. For other registrants, those Items are effective for filings with the Commission that include annual financial statements for fiscal years ending after June 15, 1998. In addition, under Items 305 and 9A, interim information is not required until after the first fiscal year end in which those Items are effective.

#### C. Qualitative Disclosures About Market Risk

##### 1. Proprietary Information

Some commenters expressed concerns that a discussion of primary market risk exposures and how those exposures are managed would be proprietary. The

Commission acknowledges those concerns, but believes that qualitative information about market risk is important to investors. Without the disclosures required by Item 305(b) and Item 9A(b), investors would be unable to understand a registrant's exposures to market risk and unable to place that registrant's market risk management practices within the context of its business. In addition, the qualitative disclosures are not so specific as to require disclosure of the type of information (e.g., current positions) that may harm a registrant's competitive positions. For these primary reasons the Commission has decided to retain the qualitative market risk disclosure requirements.

## 2. Examples of How Market Risks Are Managed

Proposed Items 305(b) and 9A(b) provide examples of possible disclosures regarding how a registrant manages market risk. These examples include a description of the objectives, general strategies, and instruments used to manage market risk. Some commenters inquired whether the description of one or two of these items would be sufficient. Others asked if the examples are intended to be an all-inclusive list of items required by Items 305(b) and 9A(b).

In general, the examples were intended to reflect minimum disclosures that would be necessary to comply with the qualitative market risk disclosure requirements. The examples were neither meant to address all circumstances nor to be all inclusive. The final disclosure items clearly state that the listed items should be addressed within the required disclosures and that registrants also are responsible for providing any additional information necessary to describe completely their primary market risks and how those risks are managed.

### D. Implementation Issues

#### 1. Scope of Disclosures

Several commenters raised issues about the scope of instruments included in the proposed disclosure items. For example, some suggested that information about derivative commodity instruments should not be required because offsetting exposures relating to commodities held or owned were not required. Thus, the disclosures would be presenting only part of registrants' exposure to market risk. Furthermore, they indicated that registrants that hedge commodity exposures could be disclosing more market risk than those that do not participate in hedging

activities, even though they may have less exposure to market risk. Similar arguments were made regarding (i) Hedges of anticipated transactions, foreign currency operating cash flows, and inventories and (ii) issuances of debt to fund property, plant, and equipment. In essence, those commenters suggested that the scope of the disclosure requirements is limited and as a result the information required to be disclosed is incomplete. Some commenters suggested that, to address this issue, the instruments covered by the disclosures be expanded to include all types of instruments with market risk. Other commenters suggested reducing the scope of instruments covered by the disclosures, primarily by eliminating derivative commodity instruments.

The Commission considered expanding the required quantitative disclosures about market risk to include commodity positions and anticipated transactions. However, many internal risk measurement systems currently do not incorporate many commodity positions and anticipated transactions. Thus, the Commission is not requiring the inclusion of these items at this time.

The Commission believes that derivative commodity instruments often have risks similar to other derivatives and can be used to alter significantly a registrant's commodity risk profile by, for example, locking in the price of a significant portion of its future purchases of commodity inventory. Accordingly, the Commission continues to include those instruments within the scope of the final disclosure items. Without including such instruments in the required disclosures, it would be difficult for investors to distinguish, for example, between those registrants that are sensitive to changes in commodity prices from those that are not.

In an effort to make disclosures about market risk more comprehensive, the Commission encourages registrants to include voluntarily commodity positions, anticipated transactions, and other market risk sensitive instruments and positions within their market risk disclosures. When these instruments, transactions, and positions are not included in the quantitative disclosures and, as a result, the disclosures do not fully reflect the net market risk exposures of the registrant, Items 305(a) and 9A(a) require that registrants discuss the limitations of the disclosed market risk information resulting from the absence of those items.

#### 2. The Definition of Financial Instrument

Commenters suggested that the definition of financial instruments be clarified to exclude explicitly financial instruments that the FASB excluded from FAS 107. Financial instruments excluded from FAS 107 disclosures include insurance contracts, lease contracts, and employers' and plans' obligations for pension and other post-retirement obligations. The cash flows in many of these instruments are affected significantly by more than market risk factors, thereby making the quantification of market risk more difficult. The Commission agrees that these instruments should be excluded from the scope of the final disclosure items. Thus, the relevant instructions to Items 305 and 9A indicate that instruments excluded from FAS 107 are excluded from the scope of the final disclosure items. However, registrants are encouraged to include voluntarily such instruments in their market risk disclosures, if such inclusion would make the information more complete and meaningful.

#### 3. The Definition of Derivative Commodity Instrument

In the proposed disclosure items, "derivative commodity instruments" were defined to include commodity futures, commodity forwards, commodity swaps, commodity options, and other commodity instruments with similar characteristics that are reasonably possible to be settled in cash or with another financial instrument. Some commenters indicated that a reasonably possible test would be too difficult to apply in practice. That is, it may be difficult to distinguish between a commodity contract for which settlement in cash is reasonably possible and a contract for which settlement in cash is not reasonably possible. Some commenters suggested that derivative commodity instruments be defined as those that may be settled in cash in the normal course of business. Those commenters also suggested that the definition of derivative commodity instruments include specifically derivative instruments in which cash settlement is based on the net change in value of the commodity contract.

In response to those comments, the Commission has amended the definition of derivative commodity instruments to include commodity futures, commodity forwards, commodity swaps, commodity options, and other commodity instruments with similar characteristics that are permitted by contract or business custom to be settled

in cash or with another financial instrument. In addition, the final disclosure items make clear that settlement in cash includes settlement in cash of the net change in value of the derivative commodity instrument.

#### 4. Small Business Issuers

Some commenters suggested that the disclosure requirements in Items 305 and 9A should apply to all registrants that have material positions in instruments covered by the proposed disclosure items, including small business issuers filing documents with the Commission in accordance with Regulation S-B. Due to cost-benefit concerns, however, the Commission has determined that some experience should be gained with the disclosure items before proposing that they be applied to small business issuers.

#### 5. The Disclosure Threshold

Some commenters suggested that the Commission change the threshold for requiring disclosures of quantitative information about market risk to conform with the disclosure threshold in MD&A. That suggestion was based on a general observation that both MD&A and proposed Items 305 and 9A require disclosure of information about known risks and uncertainties and, therefore, should be subject to the same threshold for determining whether disclosure is required. Those commenters indicated that introducing a new and different disclosure threshold could add unnecessary confusion to the disclosure process.

MD&A addresses a wide array of risks and uncertainties. Thus, the MD&A disclosure threshold (i) is broad, applying to many different types of exposures, not just market risk and (ii) does not provide specific guidance directly relevant to a threshold for disclosure of quantitative market risk information. In addition, MD&A focuses on events that are judged to be reasonably likely of occurring.

In contrast, consistent with many internal risk management systems, Item 305 and Item 9A require reporting of losses from events beyond those deemed reasonably likely of occurring. For example, those disclosure Items require reporting of value at risk information on possible future losses, which, at a minimum, are not expected to be exceeded 95% of the time. Likewise, those disclosure Items require reporting of sensitivity analysis information on possible future losses from reasonably possible, not reasonably likely, near-term changes in market rates and prices. Thus, Item 305 and Item 9A are intended to obtain quantitative

information about market risk that is incremental to the disclosures about reasonably likely risks and uncertainties required by MD&A.

As a result, the Commission has decided to retain the disclosure threshold that was proposed. That threshold provides guidelines that focus on market risk, apply explicitly to quantitative disclosures, and most importantly, require disclosure of losses beyond those deemed reasonably likely of occurring.

#### 6. "Future" Losses

With respect to the disclosure threshold noted above, commenters suggested that the Commission define how far into the future registrants must look to conclude whether or not they may experience material future losses. They suggested replacing the word "future" with either the phrase "near term" as it is defined in AICPA Statement of Position 94-6, "Disclosure of Risks and Uncertainties" ("SOP 94-6") (December 1994) or "one year."

The Commission agrees with the commenters and has limited the time period over which losses in earnings, fair values, and cash flows should be evaluated to the "near term." In the final disclosure items, the Commission defines "near term" to mean a period of time going forward up to one year from the date of the financial statements, which is consistent with the definition in SOP 94-6.

#### 7. Safe Harbor

Nearly all of the commenters favored explicit safe harbor protection for the new disclosure of quantitative and qualitative information about market risk. Commenters did not object to the Commission's proposal to extend the Item 305 and Item 9A safe harbors to all types of issuers and transactions.

Several commenters suggested modifications to the proposed safe harbor. Those commenters argued that the safe harbors should protect all of the qualitative information required by paragraph (b) of Item 305 and Item 9A, and not just statements with respect to future reporting periods provided pursuant to paragraph (b)(1)(iii), as proposed.<sup>76</sup> A few of these commenters provided examples of disclosures responsive to paragraphs (b)(1)(i) and (b)(1)(ii) of Item 305 and Item 9A that they thought could be viewed as being forward looking. As noted above,<sup>77</sup> the rule has been clarified to provide that all statements (other than statements of

historical fact) provided pursuant to paragraphs (b)(1)(i), (b)(1)(iii) and (c) of Items 305 and 9A are "forward looking statements" for purposes of the new safe harbor rules. To the extent that information provided pursuant to paragraph (b)(1)(ii) of Items 305 and 9A includes forward looking statements, those statements would be eligible for safe harbor protection.

Second, most of the commenters remarking on the issue thought that small business issuers voluntarily providing any of the Item 305 and Item 9A disclosures should have the protection of the safe harbor. Under the proposals, the safe harbor would have applied to voluntary disclosures only if all of the quantitative disclosures or all of the qualitative disclosures were provided. In an effort to encourage small business issuers to provide information that they think is appropriate to an understanding of their market risks, Item 10 of Regulation S-B has been changed to extend the Item 305 safe harbor to any Item 305 disclosure that is voluntarily provided by a small business issuer.

Finally, several commenters requested guidance as to whether registrants would have to include "meaningful cautionary statements" in addition to the Item 305 and Item 9A disclosures to obtain the protection of the Item 305 and Item 9A safe harbors. In response to these comments, the Commission has clarified in the rule that, for purposes of the Item 305(a) and 9A(a) quantitative disclosures, a registrant will be deemed to have satisfied the "meaningful cautionary statements" prong of the safe harbors if it satisfies the requirements of those items. In particular, these items require a description of the assumptions underlying, and the limitations of, the disclosure provided. For the remainder of the information required by the new items, registrants desiring to qualify for the "meaningful cautionary statements" prong of the safe harbor will need to consider what information should be given to alert investors to important factors that could cause actual results to differ materially from the information given in the forward looking statements.

#### VII. Certain Findings

Section 23(a) of the Exchange Act<sup>78</sup> requires the Commission, in adopting final rules under the Exchange Act, to consider the anti-competitive effect of such rules, if any, and to balance them against the regulatory benefits that further the purposes of the Exchange Act. Furthermore, Section 2 of the

<sup>76</sup> Item 305(b)(1)(iii) was proposed as Item 305(b)(3).

<sup>77</sup> See section III B.3.

<sup>78</sup> 15 U.S.C. 78w(a).

Securities Act<sup>79</sup> and Section 3 of the Exchange Act,<sup>80</sup> as amended by the recently enacted National Securities Market Improvement Act of 1996 ("Market Improvement Act"),<sup>81</sup> provide that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

As discussed in earlier subsections of this release, the Commission has considered carefully the comments that the Item 305(a) and Item 9A(a) quantitative disclosures of market risk, as originally proposed, might provide information useful to a registrant's competitors. The Commission has determined, however, that quantitative disclosures will be helpful to investors' understanding of a registrant's market risk exposures and that sensitivity analysis and value at risk disclosures normally do not allow readers to ascertain detailed information about positions held by registrants. However, in response to registrants with proprietary concerns about reporting period-end information under the sensitivity and value at risk disclosure alternatives, the final disclosure items allow reporting of the average, high, and low sensitivity analysis or value at risk amounts for the fiscal year, as an alternative to year-end amounts. In addition, the final disclosure items also require registrants filing interim reports to provide a discussion and analysis of the sources and effects of material changes in market risk information since the end most recent preceding fiscal year, rather than requiring, as originally proposed, that registrants always furnish complete Item 305(a) or Item 9A(a) information, when such material changes occur.

The Commission has considered the amendments and new disclosure items discussed in this release in light of the comments received in response to the proposing release and the standards embodied in Section 2 of the Securities Act and Sections 3 and 23(a) of the Exchange Act. The Commission believes that any burdens on competition imposed by the adoption of these amendments and disclosure items are necessary and appropriate in furtherance of the purposes of the Exchange Act. Some commenters suggested Items 305 and 9A could create

incentives for the development of new products that do not trade on exchanges and would not be subject to the new disclosures because of their non-cash-settlement feature. The Commission intends to review the effects of the disclosures on the markets and expects to reconsider the disclosure items after three years. The Commission will be able to address any such concerns at such time. The Commission believes that Items 305 and 9A are necessary and appropriate in the public interest and for the protection of investors because of the need for improved disclosure about market risk to help investors better understand and evaluate a registrant's exposures to market risk.

As described in more detail in the cost-benefit section of this release, the Commission made a number of changes from the rules as proposed to increase flexibility for registrants in providing the required disclosures and keeping the cost of compliance to a minimum, thus promoting efficiency. In addition, by enhancing investor's understanding of registrants' market risk exposures the disclosure items should promote the efficient allocation of capital. Thus, the disclosure items will promote competition, efficiency, and enhance the U.S. capital formation process.

#### VIII. Cost-Benefit Analysis

##### A. Background

In general, Rule 4-08(n), Item 305, and Item 9A, clarify existing standards and rules, include additional instruments within existing standards, and require specific disclosure alternatives for providing quantitative disclosures regarding market risk sensitive instruments. In particular, these provisions include:

1. Enhanced descriptions of accounting policies for derivatives;
2. Quantitative disclosures about market risk; and
3. Additional qualitative disclosures about market risk.

These provisions are being adopted in response to requests from investors and others to provide more meaningful information about market risk sensitive instruments.<sup>82</sup> The expected benefits of these rules and items are to make information about market risk sensitive instruments, including derivatives, more understandable to investors and others. This increased understanding is expected to enhance the ability of investors to make investment decisions and to improve the efficiency of the

markets. The Commission believes these benefits will outweigh the related costs, which are discussed below.

##### B. Descriptions of Accounting Policies for Derivatives

FAS 119 was designed, in part, to help investors and others understand how derivative financial instruments are reported in the financial statements.<sup>83</sup> FAS 119 requires, among other things, disclosure of the policies used to account for derivative financial instruments, pursuant to the requirements of APB 22.<sup>84</sup> However, the scope of FAS 119 is limited to derivative financial instruments and, therefore, it does not apply to other derivative instruments with similar characteristics, such as derivative commodity instruments. In addition, FAS 119 does not provide explicit guidance indicating what must be described in accounting policies footnotes to make the financial statement effects of derivatives more understandable. The SEC staff found that the accounting policies footnotes for derivatives often were too general in nature, not reflecting adequately the choices made by registrants in their accounting for derivatives.

New Rule 4-08(n) requires descriptions of accounting policies for derivative financial instruments and derivative commodity instruments, unless the registrant's derivative activities are not material. Thus, the scope of the amendments is broader than the scope of FAS 119. In addition, to help make clear the impact of derivatives on the financial statements, Rule 4-08(n) makes explicit the items to be disclosed in the accounting policies footnotes.

Rule 4-08(n) is likely to result in a more focused and descriptive discussion of the accounting policies for both derivative financial instruments and derivative commodity instruments. This additional information is likely to result in additional preparation, audit, and printing costs. However, because accounting policies for these instruments are known by registrants and should be known by their auditors, most of the preparation and audit costs are expected to relate to initial compliance with the amendments. These costs, along with expected printing costs, are not estimated to be significant. Other costs, such as ongoing recordkeeping and compliance costs, also are not expected to be significant.

<sup>79</sup> 15 U.S.C. 77b.

<sup>80</sup> 15 U.S.C. 78c.

<sup>81</sup> Pub. L. 104-290, 106, 110 Stat. 3416 (1996).

<sup>82</sup> See notes 22-29, *supra*, for examples of investors, regulators, and other private bodies endorsing or recommending improved quantitative disclosures about market risk.

<sup>83</sup> See FAS 119 ¶ 60.

<sup>84</sup> See FAS 119 ¶ 8. See also note 39, *supra*, for a discussion of the requirements of APB 22.

### C. Quantitative Information About Market Risk

As discussed earlier in this release, under Item 305(a) and Item 9A(a), registrants are required to present quantitative information about market risk. An important aspect of this requirement, from a cost perspective, is that registrants will have the flexibility to choose one or more of three disclosure alternatives (tabular presentation, sensitivity analysis, or value at risk) to provide such quantitative information about market risk.

The Commission believes that, for registrants electing to provide tabular disclosure, much of the required information is currently available. Thus, additional costs relating to recordkeeping are not expected to be significant. While increased reporting and compliance burdens may result, in many cases the information presented in the tabular disclosures is used in managing the business activities of the registrant and may be available at relatively low incremental costs. Further, registrants complying with Securities Act Industry Guide 3,<sup>85</sup> principally financial institutions, already disclose a significant amount of the required information.

Registrants that choose to use either the sensitivity or value at risk disclosure alternatives may incur significant additional costs if they currently do not use these methodologies to manage market risk. In contrast, if registrants currently use sensitivity or value at risk analyses to manage market risk, the Commission believes that any additional costs associated with complying with Item 305(a) or Item 9A(a) are not expected to be significant. The Commission recognizes that, for some registrants, the start-up costs to prepare the quantitative disclosures about market risk may be significant. However, in the near term, the Commission expects that the development of software related to market risk analysis will reduce these costs materially. In addition, the Commission understands that some of the data and the systems needed to develop these analyses recently have been made available at a relatively

moderate cost.<sup>86</sup> Moreover, some registrants are required to prepare such information for regulatory capital measurement purposes. In particular, thrift institutions are required to prepare fair value sensitivity analyses for risk-based capital purposes.<sup>87</sup> Also, banks and bank holding companies with significant exposure to market risk are required to prepare a value at risk analysis for risk-based capital purposes.<sup>88</sup> Thus, the costs associated with the sensitivity and value at risk analyses may vary depending on (i) Whether the registrant currently engages in these analyses for other management or regulatory purposes; and (ii) the particular model and assumptions used in the registrant's calculations. Any registrant that believes the cost of such analyses outweigh the benefits of disclosing them, however, may elect to provide tabular presentation of information about market risk sensitive instruments.

In response to the comment letters, the Commission made several changes in Item 305(a) and Item 9A(a) that should reduce the cost for registrants preparing disclosures of quantitative information about market risk. These changes are described in detail above, under the caption "Response to Comments." In brief, changes that should reduce registrants' costs include:

- Delaying the effective date of the market risk disclosure requirements for banks, thrifts, and non-bank and non-thrift registrants with market capitalizations on January 28, 1997 in excess of \$2.5 billion until filings made with the Commission include annual financial statements for years ending after June 15, 1997. For non-bank and non-thrift registrants with market capitalizations on January 28, 1997 of \$2.5 billion or less, the effective date is delayed until filings with the Commission include annual financial statements for fiscal years ending after June 15, 1998.

- Permitting the use of different quantitative disclosure alternatives for market risks inherent in (1) the trading portfolio, (2) the "other than trading" portfolio, and (3) different market risk exposure categories within each of those portfolios. This often will allow registrants that use different methods to manage different types of market risk to report quantitative information according to the method used for internal risk management purposes, instead of having to conform all disclosures to one disclosure alternative.

- For the tabular presentation alternative, permitting entities to report together (or group) foreign currency sensitive instruments according to functional currencies that are economically related, are managed together for internal risk purposes, and have statistical correlations of greater than 75% over each of the past three years.

- For the tabular presentation alternative, requiring that instruments be reported based on specified common characteristics only if, or to the extent that, such disaggregation provides material information to investors.

- For the tabular presentation alternative, allowing elimination of disclosure in the foreign currency risk exposure category of currency swaps and foreign currency denominated debt instruments, if the currency swap eliminates all foreign currency exposure in the cash flows of the foreign currency denominated debt instrument.

- Encouraging, rather than requiring, that registrants provide aggregate sensitivity analysis and value at risk amounts for the trading and other than trading portfolios.

- When a registrant changes quantitative disclosure methods from one year to the next, providing two alternatives, rather than one, for disclosing comparative, year-to-year information. First, a registrant may restate the prior year's disclosures based on the new alternative that has been selected for the current year. Second, instead of recreating prior records and information in order to prepare restated information, the registrant may report the prior year's disclosures as originally presented and, in addition to disclosing the current year's information in accordance with the new method, disclose the current year's information under the method used in the prior year.

- Specifically excluding from the scope of the disclosure item certain financial instruments that are not required by generally accepted accounting principles to be disclosed at fair value. Such instruments include but are not limited to pension and other post-retirement benefits, insurance contracts, lease contracts, warranty obligations and rights, and minority positions in consolidated enterprises.

- Limiting to one year how far into the future a registrant must look to determine whether it is reasonably possible that it will experience a loss from its derivative and other financial instruments.

The comment letters did not provide empirical or statistical information about the costs to comply with the proposed quantitative disclosures of market risk. After reviewing the anecdotal information in those letters, however, and despite the changes listed above that further reduce compliance costs, the Commission has reconsidered and increased the estimated time that it may take registrants, on average, to prepare and report quantitative information under Items 305(a) and 9A(a). The Commission is increasing to 80 hours the estimated average hours per registrant to comply with Item 305(a) or Item 9A(a). In addition, the

<sup>85</sup> Securities Act Industry Guide 3, "Statistical Disclosure by Bank Holding Companies." Exchange Act Industry Guide 3 is identical to the Securities Act guide. Detailed disclosures are required under Guide 3 of, among other things, the registrant's: (i) Distribution of assets, liabilities and stockholders' equity; interest rates and interest differential; (ii) investment portfolio; (iii) loan portfolio (including types of loans, maturities and sensitivities of loans to changes in interest rates, risk elements, and loans outstanding in foreign countries); (iv) deposits; and (v) short-term borrowings.

<sup>86</sup> See Wall Street Journal, "Morgan Unveils the Way It Measures Market Risk" C1 (October 11, 1994).

<sup>87</sup> See note 48, *supra*.

<sup>88</sup> See Department of the Treasury, Federal Reserve System, and Federal Deposit Insurance Corporation Joint final rule, "Risk-Based Capital Standards: Market Risk," 61 FR 47358 (September 6, 1996).

estimated cost of \$40 per hour has been increased to \$100 per hour because the Commission believes that the levels of professional services that may be needed to prepare the information may be higher than originally expected. The revised overall cost estimate is approximately \$40 million for all registrants complying with the required disclosures of quantitative and qualitative information about market risks.

#### D. Qualitative Information About Market Risk

FAS 119 requires certain qualitative disclosures about the market risk management activities associated with derivative financial instruments held or issued for purposes other than trading. In particular, FAS 119 requires disclosure of "the entity's objectives for holding or issuing the derivative financial instruments, the context needed to understand those objectives, and its general strategies for achieving those objectives."<sup>89</sup> However, as indicated above, these requirements of FAS 119 only apply to certain derivative financial instruments, and the SEC staff has observed that these disclosures typically have been general in nature, providing only limited insight into an entity's overall market risk management activities.

In essence, Items 305(b) and 9A(b) expand certain disclosure requirements set forth in FAS 119 to (1) encompass derivative financial instruments entered into for trading purposes, other financial instruments, and derivative commodity instruments and (2) require registrants to evaluate and describe material changes in their primary risk exposures and their market risk management activities. The Commission believes this will present a more complete discussion of a registrant's exposure to market risks and the way it manages those risks. Because this information is likely to be used by registrants as part of their risk management activities, incremental costs relating to such disclosure are not expected to be significant.

#### E. Small Business Issuers

As noted earlier, the Commission has determined not to amend Regulation S-B<sup>90</sup> to incorporate an item similar to Item 305. Regulation S-B may be used by small business issuers<sup>91</sup> required to register their securities with the Commission. By excluding small business issuers from all but the accounting policies disclosures that are

required by the amendments, the Commission has limited substantially the cost of those proposals for small entities.

#### IX. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis pursuant to the requirements of the Regulatory Flexibility Act,<sup>92</sup> regarding the amendments to Rule 4-08 of Regulation S-X, to Regulation S-K to create Item 305, and the conforming amendments to Forms S-1, S-2, S-4, S-11, and F-4 under the Securities Act, and Rule 14a-3, Schedule 14A and Forms 10, 20-F, 10-Q, and 10-K under the Exchange Act. This section summarizes that analysis. A copy of the final analysis may be obtained by contacting Robert E. Burns, Chief Counsel, Office of the Chief Accountant, U.S. Securities and Exchange Commission, Mail Stop 11-3, 450 Fifth Street, N.W., Washington, D.C. 20549.

The final regulatory flexibility analysis notes that the amendments clarify existing disclosure requirements, include additional instruments within existing disclosure requirements, and require specific disclosure alternatives for providing quantitative information regarding market sensitive instruments. These amendments are intended to provide investors with a clearer understanding of registrants' use of such instruments and the market risks inherent in those instruments.

For purposes of the Securities Act of 1933, the term "small business," as used with reference to a registrant (other than an investment company)<sup>93</sup> for the purposes of the Regulatory Flexibility Act, is defined by Rule 157 as an issuer with total assets on the last day of its most recent fiscal year of \$5 million or less and which is engaged or proposing to engage in an offering of securities that does not exceed \$5 million.<sup>94</sup> For purposes of the Securities Exchange Act of 1934, small business (other than an investment company) is defined in Rule 0-10 to mean issuers having total assets of \$5 million or less as of the end of the most recent fiscal year.<sup>95</sup>

Approximately 1100 Exchange Act reporting companies satisfy the definition of "small business" under Rule 157. As of December 1995, there were approximately 5200 broker-dealers classified as small businesses under the above regulations.

<sup>92</sup> 5 U.S.C. 604.

<sup>93</sup> As noted elsewhere in this release, the amendments do not apply to investment companies.

<sup>94</sup> 17 C.F.R. 230.157.

<sup>95</sup> 17 C.F.R. 240.0-10.

As fully discussed in the analysis and elsewhere in this release, the Commission has determined not to amend Regulation S-B to incorporate an item similar to Items 305 and 9A. By excluding small business issuers from these new disclosure requirements, the Commission has reduced substantially the impact of the amendments on small entities. Nonetheless, the final regulatory flexibility analysis describes various factors, including changes to the disclosure requirements adopted in response to the comments on the proposing release, that reduce compliance costs for all registrants. These factors also are set forth in the *Cost-Benefit Analysis* section of this release.

Rule 4-08 clarifies how the accounting policy disclosure requirements under APB 22 should be applied to derivatives and, therefore, should not place significant additional costs on small entities. The disclosures, however, are likely to result in a more focused and descriptive discussion of the accounting policies for derivatives. Disclosure of this information may result in an increase in costs to prepare and print the disclosures. However, most of the preparation costs are expected to relate to complying initially with the new rule, as the disclosures documenting those policies generally may remain consistent from year to year. These initial costs are not expected to be significant. In addition, because the accounting policies must be known by the registrant in order for the registrant to prepare its financial statements, and should be known by its auditors, no new compliance procedures or recordkeeping is required and there should not be a significant increase, if any, in ongoing compliance costs.

Moreover, the Commission has determined that, due to the existing disclosure requirements for accounting policies under generally accepted accounting principles and the insignificant economic impact of the enhanced accounting policy disclosures under Rule 4-08, it is neither necessary nor appropriate for the Commission to establish for small entities different compliance or reporting timetables, simplified disclosure requirements, performance standards, or an exemption from the disclosure requirement.

Only one request was made for the initial regulatory flexibility analysis, and no comments specifically addressed that analysis. Significant cost-benefit issues raised by commenters in response to the proposing release are discussed under the *Response to Comments* and

<sup>89</sup> See FAS 119 ¶ 11a.

<sup>90</sup> 17 CFR 228.10 *et seq.*

<sup>91</sup> See note 69, *supra*.

*Cost-Benefit Analysis* sections of this release, above.

#### X. Paperwork Reduction Act

The amendments and disclosure items were submitted for review in accordance with the Paperwork Reduction Act of 1995 ("the Act")<sup>96</sup> and were approved by the Office of Management and Budget ("OMB") in accordance with the clearance procedures of that Act.<sup>97</sup> As Regulation S-X, Regulation S-K, and the various forms and rules that are being amended already possess OMB control numbers, new control numbers were not assigned to the collections of information under the amendments. The collection of information requirements under these amendments are mandatory and responses are not confidential. The collections of information are in accordance with 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Also in accordance with the Paperwork Reduction Act, the Commission solicited comment on the compliance burdens associated with the proposals, and received no public comment in response. Comments were received, however, that addressed the general costs and benefits associated with the proposed amendment to disclosure Items 305 and 9A. These comments, and the Commission's response, are discussed in the *Response to Comments* and *Cost-Benefit Analysis* sections, above.

As part of its submission to the OMB under the Paperwork Reduction Act, the Commission estimated that approximately 5000 registrants would disclose quantitative and qualitative information under Item 305 or Item 9A. In view of the factors discussed in the *Cost-Benefit Analysis* section and elsewhere in this release, the Commission recognized that the time required to prepare these disclosures would vary significantly depending on, among other factors, the nature of the registrant's business, its market risk management activities, and other applicable regulatory requirements. The Commission originally estimated that it would take, on average, approximately 40 hours per registrant to prepare such disclosures.

Upon review of the comment letters, the Commission continues to believe that approximately 5000 registrants will provide Item 305 and Item 9A

disclosures. The Commission also continues to believe that many financial services companies will not incur additional expense because they already provide such disclosures. In fact, for some of these companies, their costs may go down as less information may be disclosed. In addition, a significant number of registrants, because of the size or nature of their businesses, do not have a significant number of derivative instruments or do not have complex instruments. For these companies, a simple tabular presentation of debt and similar instruments may suffice. The time and cost to prepare such disclosures should not be significant. For larger commercial corporations, however, the time for preparation and presentation of the required Item 305 or Item 9A information may be more than the Commission initially anticipated. Although no commenter provided statistical or empirical information about the cost to gather, prepare, and disclose such information, several mid to large commercial corporations indicated that they believe they may experience noticeable costs associated with such disclosures. As a result, the Commission is increasing to 80 hours the estimated average hour burden per registrant to comply with Item 305 or Item 9A.

#### XI. Codification Update

The "Codification of Financial Report Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) [47 FR 21028] is updated to:

1. Include a new Section 219, "Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments."
2. Include a new paragraph 219.01 to include the text in topic III.A of this release, "Discussion of Amendments: Disclosure of Accounting Policies for Derivatives."
3. Include a new Section 507, "Disclosure of Quantitative and Qualitative Information About Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments, and Derivative Commodity Instruments."
4. Include a new paragraph 507.01 to include the text in topic II of this release, "Initiatives Regarding Disclosures About Derivatives."
5. Include a new paragraph 507.02 to include the text in topic III.B. of this release, "Discussion of Amendments: Disclosures of Quantitative and Qualitative Information About Market Risk."
6. Include a new paragraph 507.03 to include the text in topic IV of this

release, "Applicability of Amendments."

7. Include a new paragraph 507.04 to include the text in topic V of this release, "Disclosure of the Effects of Derivative Instruments on Reporting Financial Instruments, Commodity Positions, Firm Commitments, and Anticipated Transactions."

The Codification is a separate publication of the Commission. It will not be published in the Federal Register/Code of Federal Regulations System.

#### Statutory Basis

The additions and amendments to the Commission's rules and forms are adopted pursuant to Sections 7, 10, 19, and 27A of the Securities Act of 1933 and Sections 12, 13, 14, 21E, and 23 of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Parts 210, 228, 229, 239, 240, and 249

Accounting, Reporting and recordkeeping requirements, Securities. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

#### **PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975**

1. The general authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77aa(25), 77aa(26), 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 79e(b), 79j(a), 79n, 79t(a), 80a-8, 80a-20, 80a-29, 80a-30, 80a-37a, unless otherwise noted.

2. By amending 210.4-08 by adding paragraph (n) to read as follows:

#### **§ 210.4-08 General notes to financial statements.**

\* \* \* \* \*

(n) *Accounting policies for certain derivative instruments.* Disclosures regarding accounting policies shall include descriptions of the accounting policies used for derivative financial instruments and derivative commodity instruments and the methods of applying those policies that materially affect the determination of financial position, cash flows, or results of operation. This description shall include, to the extent material, each of the following items:

<sup>96</sup> 44 U.S.C. 3501 *et seq.*

<sup>97</sup> 44 U.S.C. 3507.



(1) A discussion of each method used to account for derivative financial instruments and derivative commodity instruments;

(2) The types of derivative financial instruments and derivative commodity instruments accounted for under each method; (3) The criteria required to be met for each accounting method used, including a discussion of the criteria required to be met for hedge or deferral accounting and accrual or settlement accounting (e.g., whether and how risk reduction, correlation, designation, and effectiveness tests are applied);

(4) The accounting method used if the criteria specified in paragraph (n)(3) of this section are not met;

(5) The method used to account for terminations of derivatives designated as hedges or derivatives used to affect directly or indirectly the terms, fair values, or cash flows of a designated item;

(6) The method used to account for derivatives when the designated item matures, is sold, is extinguished, or is terminated. In addition, the method used to account for derivatives designated to an anticipated transaction, when the anticipated transaction is no longer likely to occur; and

(7) Where and when derivative financial instruments and derivative commodity instruments, and their related gains and losses, are reported in the statements of financial position, cash flows, and results of operations.

*Instructions to Paragraph (n)*

1. For purposes of this paragraph (n), derivative financial instruments and derivative commodity instruments (collectively referred to as "derivatives") are defined as follows:

(i) *Derivative financial instruments* have the same meaning as defined by generally accepted accounting principles (see, e.g., Financial Accounting Standards Board ("FASB"), *Statement of Financial Accounting Standards No. 119, "Disclosure about Derivative Financial Instruments and Fair Value of Financial Instruments,"* ("FAS 119") paragraphs 5-7, (October 1994)), and include futures, forwards, swaps, options, and other financial instruments with similar characteristics.

(ii) *Derivative commodity instruments* include, to the extent such instruments are not derivative financial instruments, commodity futures, commodity forwards, commodity swaps, commodity options, and other commodity instruments with similar characteristics that are permitted by contract or business custom to be settled in cash or with another financial instrument. For purposes of this paragraph, settlement in cash includes settlement in cash of the net change in value of the derivative commodity instrument (e.g., net cash settlement based on changes in the price of the underlying commodity).

2. For purposes of paragraphs (n)(2), (n)(3), (n)(4), and (n)(7), the required disclosures should address separately derivatives entered into for trading purposes and derivatives entered into for purposes other than trading. For purposes of this paragraph, *trading purposes* has the same meaning as defined by generally accepted accounting principles (see, e.g., FAS 119, paragraph 9a (October 1994)).

3. For purposes of paragraph (n)(6), *anticipated transactions* means transactions (other than transactions involving existing assets or liabilities or transactions necessitated by existing firm commitments) an enterprise expects, but is not obligated, to carry out in the normal course of business (see, e.g., FASB, *Statement of Financial Accounting Standards No. 80, "Accounting for Futures Contracts,"* paragraph 9, (August 1984)).

4. Registrants should provide disclosures required under paragraph (n) in filings with the Commission that include financial statements of fiscal periods ending after June 15, 1997.

**PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS**

3. The general authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

4. By amending § 228.10 by adding paragraph (g) to read as follows:

**§ 228.10 (Item 10) General.**

(g) *Quantitative and qualitative disclosures about market risk.* The safe harbor provision included in paragraph (d) of Item 305 of Regulation S-K (§ 229.305(d) of this chapter) shall apply to information required by Item 305 of Regulation S-K (§ 229.305 of this chapter) that is voluntarily provided by or on behalf of a small business issuer as defined in Rule 12b-2 of the Exchange Act.

Note to paragraph (g): Such small business issuers are not required to provide the information required by Item 305 of Regulation S-K.

5. By amending § 228.310 by revising the first sentence of Note 2 to read as follows:

**§ 228.310 (Item 310) Financial Statements.**

Notes—1. \* \* \*

2. Regulation S-X (17 CFR 210.1 through 210.12) Form and Content of and Requirements for Financial Statements shall not apply to the preparation of such financial statements, except that the report and qualifications of the independent

accountant shall comply with the requirements of Article 2 of Regulation S-X (17 CFR 210.2), Articles 3-19 and 3-20 (17 CFR 210.3-19 and 210.3-20) shall apply to financial statements of foreign private issuers, the description of accounting policies shall comply with Article 4-08(n) of Regulation S-X (17 CFR 210.4-08(n)), and small business issuers engaged in oil and gas producing activities shall follow the financial accounting and reporting standards specified in Article 4-10 of Regulation S-X (17 CFR 210.4-10) with respect to such activities. \* \* \*

\* \* \* \* \*

**PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K**

6. The general authority citation for Part 229 is revised to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

\* \* \* \* \*

7. By adding § 229.305 to read as follows:

**§ 229.305 (Item 305) Quantitative and qualitative disclosures about market risk.**

(a) *Quantitative information about market risk.* (1) Registrants shall provide, in their reporting currency, quantitative information about market risk as of the end of the latest fiscal year, in accordance with one of the following three disclosure alternatives. In preparing this quantitative information, registrants shall categorize market risk sensitive instruments into instruments entered into for trading purposes and instruments entered into for purposes other than trading purposes. Within both the trading and other than trading portfolios, separate quantitative information shall be presented, to the extent material, for each market risk exposure category (i.e., interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market risks, such as equity price risk). A registrant may use one of the three alternatives set forth in this section for all of the required quantitative disclosures about market risk. A registrant also may choose, from among the three alternatives, one disclosure alternative for market risk

sensitive instruments entered into for trading purposes and another disclosure alternative for market risk sensitive instruments entered into for other than trading purposes. Alternatively, a registrant may choose any disclosure alternative, from among the three alternatives, for each risk exposure category within the trading and other than trading portfolios. The three disclosure alternatives are:

(i)(A)(1) Tabular presentation of information related to market risk sensitive instruments; such information shall include fair values of the market risk sensitive instruments and contract terms sufficient to determine future cash flows from those instruments, categorized by expected maturity dates.

(2) Tabular information relating to contract terms shall allow readers of the table to determine expected cash flows from the market risk sensitive instruments for each of the next five years. Comparable tabular information for any remaining years shall be displayed as an aggregate amount.

(3) Within each risk exposure category, the market risk sensitive instruments shall be grouped based on common characteristics. Within the foreign currency exchange rate risk category, the market risk sensitive instruments shall be grouped by functional currency and within the commodity price risk category, the market risk sensitive instruments shall be grouped by type of commodity.

(4) See the Appendix to this Item for a suggested format for presentation of this information; and

(B) Registrants shall provide a description of the contents of the table and any related assumptions necessary to understand the disclosures required under paragraph (a)(1)(i)(A) of this Item 305; or

(ii)(A) Sensitivity analysis disclosures that express the potential loss in future earnings, fair values, or cash flows of market risk sensitive instruments resulting from one or more selected hypothetical changes in interest rates, foreign currency exchange rates, commodity prices, and other relevant market rates or prices over a selected period of time. The magnitude of selected hypothetical changes in rates or prices may differ among and within market risk exposure categories; and

(B) Registrants shall provide a description of the model, assumptions, and parameters, which are necessary to understand the disclosures required under paragraph (a)(1)(ii)(A) of this Item 305; or

(iii)(A) Value at risk disclosures that express the potential loss in future earnings, fair values, or cash flows of

market risk sensitive instruments over a selected period of time, with a selected likelihood of occurrence, from changes in interest rates, foreign currency exchange rates, commodity prices, and other relevant market rates or prices;

(B)(1) For each category for which value at risk disclosures are required under paragraph (a)(1)(iii)(A) of this Item 305, provide either:

(i) The average, high and low amounts, or the distribution of the value at risk amounts for the reporting period; or

(ii) The average, high and low amounts, or the distribution of actual changes in fair values, earnings, or cash flows from the market risk sensitive instruments occurring during the reporting period; or

(iii) The percentage or number of times the actual changes in fair values, earnings, or cash flows from the market risk sensitive instruments exceeded the value at risk amounts during the reporting period;

(2) Information required under paragraph (a)(1)(iii)(B)(1) of this Item 305 is not required for the first fiscal year end in which a registrant must present Item 305 information; and

(C) Registrants shall provide a description of the model, assumptions, and parameters, which are necessary to understand the disclosures required under paragraphs (a)(1)(iii)(A) and (B) of this Item 305.

(2) Registrants shall discuss material limitations that cause the information required under paragraph (a)(1) of this Item 305 not to reflect fully the net market risk exposures of the entity. This discussion shall include summarized descriptions of instruments, positions, and transactions omitted from the quantitative market risk disclosure information or the features of instruments, positions, and transactions that are included, but not reflected fully in the quantitative market risk disclosure information.

(3) Registrants shall present summarized market risk information for the preceding fiscal year. In addition, registrants shall discuss the reasons for material quantitative changes in market risk exposures between the current and preceding fiscal years. Information required by this paragraph (a)(3), however, is not required if disclosure is not required under paragraph (a)(1) of this Item 305 for the current fiscal year. Information required by this paragraph (a)(3) is not required for the first fiscal year end in which a registrant must present Item 305 information.

(4) If registrants change disclosure alternatives or key model characteristics, assumptions, and

parameters used in providing quantitative information about market risk (e.g., changing from tabular presentation to value at risk, changing the scope of instruments included in the model, or changing the definition of loss from fair values to earnings), and if the effects of any such change is material, the registrant shall:

(i) Explain the reasons for the change; and

(ii) Either provide summarized comparable information, under the new disclosure method, for the year preceding the current year or, in addition to providing disclosure for the current year under the new method, provide disclosures for the current year and preceding fiscal year under the method used in the preceding year.

#### *Instructions to Paragraph 305(a)*

1. Under paragraph 305(a)(1):

A. For each market risk exposure category within the trading and other than trading portfolios, registrants may report the average, high, and low sensitivity analysis or value at risk amounts for the reporting period, as an alternative to reporting year-end amounts.

B. In determining the average, high, and low amounts for the fiscal year under instruction 1.A. of the Instructions to Paragraph 305(a), registrants should use sensitivity analysis or value at risk amounts relating to at least four equal time periods throughout the reporting period (e.g., four quarter-end amounts, 12 month-end amounts, or 52 week-end amounts).

C. Functional currency means functional currency as defined by generally accepted accounting principles (see, e.g., FASB, *Statement of Financial Accounting Standards No. 52, "Foreign Currency Translation"*, ("FAS 52") paragraph 20 (December 1981)).

D. Registrants using the sensitivity analysis and value at risk disclosure alternatives are encouraged, but not required, to provide quantitative amounts that reflect the aggregate market risk inherent in the trading and other than trading portfolios.

2. Under paragraph 305(a)(1)(i):

A. Examples of contract terms sufficient to determine future cash flows from market risk sensitive instruments include, but are not limited to:

- i. Debt instruments—principal amounts and weighted average effective interest rates;
- ii. Forwards and futures—contract amounts and weighted average settlement prices;
- iii. Options—contract amounts and weighted average strike prices;
- iv. Swaps—notional amounts, weighted average pay rates or prices, and weighted average receive rates or prices; and
- v. Complex instruments—likely to be a combination of the contract terms presented in 2.A.i. through iv. of this Instruction;

B. When grouping based on common characteristics, instruments should be categorized, at a minimum, by the following characteristics, when material:

- i. Fixed rate or variable rate assets or liabilities;

- ii. Long or short forwards and futures;
- iii. Written or purchased put or call options with similar strike prices;
- iv. Receive fixed and pay variable swaps, receive variable and pay fixed swaps, and receive variable and pay variable swaps;
- v. The currency in which the instruments' cash flows are denominated;
- vi. Financial instruments for which foreign currency transaction gains and losses are reported in the same manner as translation adjustments under generally accepted accounting principles (see, e.g., FAS 52 paragraph 20 (December 1981)); and
- vii. Derivatives used to manage risks inherent in anticipated transactions;

C. Registrants may aggregate information regarding functional currencies that are economically related, managed together for internal risk management purposes, and have statistical correlations of greater than 75% over each of the past three years;

D. Market risk sensitive instruments that are exposed to rate or price changes in more than one market risk exposure category should be presented within the tabular information for each of the risk exposure categories to which those instruments are exposed;

E. If a currency swap (see, e.g., FAS 52 Appendix E for a definition of currency swap) eliminates all foreign currency exposures in the cash flows of a foreign currency denominated debt instrument, neither the currency swap nor the foreign currency denominated debt instrument are required to be disclosed in the foreign currency risk exposure category. However, both the currency swap and the foreign currency denominated debt instrument should be disclosed in the interest rate risk exposure category; and

F. The contents of the table and related assumptions that should be described include, but are not limited to:

- i. The different amounts reported in the table for various categories of the market risk sensitive instruments (e.g., principal amounts for debt, notional amounts for swaps, and contract amounts for options and futures);
- ii. The different types of reported market rates or prices (e.g., contractual rates or prices, spot rates or prices, forward rates or prices); and
- iii. Key prepayment or reinvestment assumptions relating to the timing of reported amounts.

3. Under paragraph 305(a)(1)(ii):

A. Registrants should select hypothetical changes in market rates or prices that are expected to reflect reasonably possible near-term changes in those rates and prices. In this regard, absent economic justification for the selection of a different amount, registrants should use changes that are not less than 10 percent of end of period market rates or prices;

B. For purposes of instruction 3.A. of the Instructions to Paragraph 305(a), the term *reasonably possible* has the same meaning as defined by generally accepted accounting principles (see, e.g., FASB, *Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies,"* ("FAS 5") paragraph 3 (March 1975));

C. For purposes of instruction 3.A. of the Instructions to Paragraph 305(a), the term

*near term* means a period of time going forward up to one year from the date of the financial statements (see generally AICPA, Statement of Position 94-6, "*Disclosure of Certain Significant Risks and Uncertainties,*" ("SOP 94-6") at paragraph 7 (December 30, 1994));

D. Market risk sensitive instruments that are exposed to rate or price changes in more than one market risk exposure category should be included in the sensitivity analysis disclosures for each market risk category to which those instruments are exposed;

E. Registrants with multiple foreign currency exchange rate exposures should prepare foreign currency sensitivity analysis disclosures that measure the aggregate sensitivity to changes in all foreign currency exchange rate exposures, including the effects of changes in both transactional currency/functional currency exchange rate exposures and functional currency/reporting currency exchange rate exposures. For example, assume a French division of a registrant presenting its financial statements in U.S. dollars (\$US) invests in a deutschmark(DM)-denominated debt security. In these circumstances, the \$US is the reporting currency and the DM is the transactional currency. In addition, assume this division determines that the French franc (FF) is its functional currency according to FAS 52. In preparing the foreign currency sensitivity analysis disclosures, this registrant should report the aggregate potential loss from hypothetical changes in both the DM/FF exchange rate exposure and the FF/\$US exchange rate exposure; and

F. Model, assumptions, and parameters that should be described include, but are not limited to, how *loss* is defined by the model (e.g., loss in earnings, fair values, or cash flows), a general description of the modeling technique (e.g., duration modeling, modeling that measures the change in net present values arising from selected hypothetical changes in market rates or prices, and a description as to how optionality is addressed by the model), the types of instruments covered by the model (e.g., derivative financial instruments, other financial instruments, derivative commodity instruments, and whether other instruments are included voluntarily, such as certain commodity instruments and positions, cash flows from anticipated transactions, and certain financial instruments excluded under instruction 3.C.i. of the General Instructions to Paragraphs 305(a) and 305(b)), and other relevant information about the model's assumptions and parameters, (e.g., the magnitude and timing of selected hypothetical changes in market rates or prices used, the method by which discount rates are determined, and key prepayment or reinvestment assumptions).

4. Under paragraph 305(a)(1)(iii):

A. The confidence intervals selected should reflect reasonably possible near-term changes in market rates and prices. In this regard, absent economic justification for the selection of different confidence intervals, registrants should use intervals that are 95 percent or higher;

B. For purposes of instruction 4.A. of the Instructions to Paragraph 305(a), the term

*reasonably possible* has the same meaning as defined by generally accepted accounting principles (see, e.g., FAS 5, paragraph 3 (March 1975));

C. For purposes of instruction 4.A. of the Instructions to Paragraphs 305(a), the term *near term* means a period of time going forward up to one year from the date of the financial statements (see generally SOP 94-6, at paragraph 7 (December 30, 1994));

D. Registrants with multiple foreign currency exchange rate exposures should prepare foreign currency value at risk analysis disclosures that measure the aggregate sensitivity to changes in all foreign currency exchange rate exposures, including the aggregate effects of changes in both transactional currency/functional currency exchange rate exposures and functional currency/reporting currency exchange rate exposures. For example, assume a French division of a registrant presenting its financial statements in U.S. dollars (\$US) invests in a deutschmark(DM)-denominated debt security. In these circumstances, the \$US is the reporting currency and the DM is the transactional currency. In addition, assume this division determines that the French franc (FF) is its functional currency according to FAS 52. In preparing the foreign currency value at risk disclosures, this registrant should report the aggregate potential loss from hypothetical changes in both the DM/FF exchange rate exposure and the FF/\$US exchange rate exposure; and

E. Model, assumptions, and parameters that should be described include, but are not limited to, how *loss* is defined by the model (e.g., loss in earnings, fair values, or cash flows), the type of model used (e.g., variance/covariance, historical simulation, or Monte Carlo simulation and a description as to how optionality is addressed by the model), the types of instruments covered by the model (e.g., derivative financial instruments, other financial instruments, derivative commodity instruments, and whether other instruments are included voluntarily, such as certain commodity instruments and positions, cash flows from anticipated transactions, and certain financial instruments excluded under instruction 3.C.ii. of the General Instructions to Paragraphs 305(a) and 305(b)), and other relevant information about the model's assumptions and parameters, (e.g., holding periods, confidence intervals, and, when appropriate, the methods used for aggregating value at risk amounts across market risk exposure categories, such as by assuming perfect positive correlation, independence, or actual observed correlation).

5. Under paragraph 305(a)(2), limitations that should be considered include, but are not limited to:

A. The exclusion of certain market risk sensitive instruments, positions, and transactions from the disclosures required under paragraph 305(a)(1) (e.g., derivative commodity instruments not permitted by contract or business custom to be settled in cash or with another financial instrument, commodity positions, cash flows from anticipated transactions, and certain financial instruments excluded under instruction 3.C.ii. of the General Instructions to Paragraphs 305(a) and 305(b)). Failure to

include such instruments, positions, and transactions in preparing the disclosures under paragraph 305(a)(1) may be a limitation because the resulting disclosures may not fully reflect the net market risk of a registrant; and

B. The ability of disclosures required under paragraph 305(a)(1) to reflect fully the market risk that may be inherent in instruments with leverage, option, or prepayment features (e.g., options, including written options, structured notes, collateralized mortgage obligations, leveraged swaps, and options embedded in swaps).

(b) *Qualitative information about market risk.* (1) To the extent material, describe:

(i) The registrant's primary market risk exposures;

(ii) How those exposures are managed. Such descriptions shall include, but not be limited to, a discussion of the objectives, general strategies, and instruments, if any, used to manage those exposures; and

(iii) Changes in either the registrant's primary market risk exposures or how those exposures are managed, when compared to what was in effect during the most recently completed fiscal year and what is known or expected to be in effect in future reporting periods.

(2) Qualitative information about market risk shall be presented separately for market risk sensitive instruments entered into for trading purposes and those entered into for purposes other than trading.

*Instructions to Paragraph 305(b)*

1. For purposes of disclosure under paragraph 305(b), *primary market risk exposures* means:

A. The following categories of market risk: interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market rate or price risks (e.g., equity price risk); and

B. Within each of these categories, the particular markets that present the primary risk of loss to the registrant. For example, if a registrant has a material exposure to foreign currency exchange rate risk and, within this category of market risk, is most vulnerable to changes in dollar/yen, dollar/pound, and dollar/peso exchange rates, the registrant should disclose those exposures. Similarly, if a registrant has a material exposure to interest rate risk and, within this category of market risk, is most vulnerable to changes in short-term U.S. prime interest rates, it should disclose the existence of that exposure.

2. For purposes of disclosure under paragraph 305(b), registrants should describe primary market risk exposures that exist as of the end of the latest fiscal year, and how those exposures are managed.

*General Instructions to Paragraphs 305(a) and 305(b)*

1. The disclosures called for by paragraphs 305(a) and 305(b) are intended to clarify the registrant's exposures to market risk

associated with activities in derivative financial instruments, other financial instruments, and derivative commodity instruments.

2. In preparing the disclosures under paragraphs 305(a) and 305(b), registrants are required to include derivative financial instruments, other financial instruments, and derivative commodity instruments.

3. For purposes of paragraphs 305(a) and 305(b), derivative financial instruments, other financial instruments, and derivative commodity instruments (collectively referred to as "market risk sensitive instruments") are defined as follows:

A. *Derivative financial instruments* has the same meaning as defined by generally accepted accounting principles (see, e.g., FASB, *Statement of Financial Accounting Standards No. 119, "Disclosure about Derivative Financial Instruments and Fair Value of Financial Instruments,"* ("FAS 119") paragraphs 5-7 (October 1994)), and includes futures, forwards, swaps, options, and other financial instruments with similar characteristics;

B. *Other financial instruments* means all financial instruments as defined by generally accepted accounting principles for which fair value disclosures are required (see, e.g., FASB, *Statement of Financial Accounting Standards No. 107, "Disclosures about Fair Value of Financial Instruments,"* ("FAS 107") paragraphs 3 and 8 (December 1991)), except for derivative financial instruments, as defined above;

C.i. Other financial instruments include, but are not limited to, trade accounts receivable, investments, loans, structured notes, mortgage-backed securities, trade accounts payable, indexed debt instruments, interest-only and principal-only obligations, deposits, and other debt obligations;

ii. Other financial instruments exclude employers' and plans' obligations for pension and other post-retirement benefits, substantively extinguished debt, insurance contracts, lease contracts, warranty obligations and rights, unconditional purchase obligations, investments accounted for under the equity method, minority interests in consolidated enterprises, and equity instruments issued by the registrant and classified in stockholders' equity in the statement of financial position (see, e.g., FAS 107, paragraph 8 (December 1991)). For purposes of this item, trade accounts receivable and trade accounts payable need not be considered other financial instruments when their carrying amounts approximate fair value; and

D. *Derivative commodity instruments* include, to the extent such instruments are not derivative financial instruments, commodity futures, commodity forwards, commodity swaps, commodity options, and other commodity instruments with similar characteristics that are permitted by contract or business custom to be settled in cash or with another financial instrument. For purposes of this paragraph, settlement in cash includes settlement in cash of the net change in value of the derivative commodity instrument (e.g., net cash settlement based on changes in the price of the underlying commodity).

4.A. In addition to providing required disclosures for the market risk sensitive instruments defined in instruction 2. of the General Instructions to Paragraphs 305(a) and 305(b), registrants are encouraged to include other market risk sensitive instruments, positions, and transactions within the disclosures required under paragraphs 305(a) and 305(b). Such instruments, positions, and transactions might include commodity positions, derivative commodity instruments that are not permitted by contract or business custom to be settled in cash or with another financial instrument, cash flows from anticipated transactions, and certain financial instruments excluded under instruction 3.C.ii. of the General Instructions to Paragraphs 305(a) and 305(b).

B. Registrants that voluntarily include other market risk sensitive instruments, positions and transactions within their quantitative disclosures about market risk under the sensitivity analysis or value at risk disclosure alternatives are not required to provide separate market risk disclosures for any voluntarily selected instruments, positions, or transactions. Instead, registrants selecting the sensitivity analysis and value at risk disclosure alternatives are permitted to present comprehensive market risk disclosures, which reflect the combined market risk exposures inherent in both the required and any voluntarily selected instruments, position, or transactions. Registrants that choose the tabular presentation disclosure alternative should present voluntarily selected instruments, positions, or transactions in a manner consistent with the requirements in Item 305(a) for market risk sensitive instruments.

C. If a registrant elects to include voluntarily a particular type of instrument, position, or transaction in their quantitative disclosures about market risk, that registrant should include all, rather than some, of those instruments, positions, or transactions within those disclosures. For example, if a registrant holds in inventory a particular type of commodity position and elects to include that commodity position within their market risk disclosures, the registrant should include the entire commodity position, rather than only a portion thereof, in their quantitative disclosures about market risk.

5.A. Under paragraphs 305(a) and 305(b), a materiality assessment should be made for each market risk exposure category within the trading and other than trading portfolios.

B. For purposes of making the materiality assessment under instruction 5.A. of the General Instructions to Paragraphs 305(a) and 305(b), registrants should evaluate both:

i. The materiality of the fair values of derivative financial instruments, other financial instruments, and derivative commodity instruments outstanding as of the end of the latest fiscal year; and

ii. The materiality of potential, near-term losses in future earnings, fair values, and/or cash flows from reasonably possible near-term changes in market rates or prices.

iii. If either paragraphs B.i. or B.ii. in this instruction of the General Instructions to Paragraphs 305(a) and 305(b) are material, the registrant should disclose quantitative and qualitative information about market

risk, if such market risk for the particular market risk exposure category is material.

C. For purposes of instruction 5.B.i. of the General Instructions to Paragraphs 305(a) and 305(b), registrants generally should not net fair values, except to the extent allowed under generally accepted accounting principles (see, e.g., *FASB Interpretation No. 39, "Offsetting of Amounts Related to Certain Contracts"* (March 1992)). For example, under this instruction, the fair value of assets generally should not be netted with the fair value of liabilities.

D. For purposes of instruction 5.B.ii. of the General Instructions to Paragraphs 305(a) and 305(b), registrants should consider, among other things, the magnitude of:

- i. Past market movements;
- ii. Reasonably possible, near-term market movements; and
- iii. Potential losses that may arise from leverage, option, and multiplier features.

E. For purposes of instructions 5.B.ii and 5.D.ii of the General Instructions to Paragraphs 305(a) and 305(b), the term *near term* means a period of time going forward up to one year from the date of the financial statements (see generally SOP 94-6, at paragraph 7 (December 30, 1994)).

F. For the purpose of instructions 5.B.ii. and 5.D.ii. of the General Instructions to Paragraphs 305(a) and 305(b), the term *reasonably possible* has the same meaning as defined by generally accepted accounting principles (see, e.g., FAS 5, paragraph 3 (March 1975)).

6. For purposes of paragraphs 305(a) and 305(b), registrants should present the information outside of, and not incorporate the information into, the financial statements (including the footnotes to the financial statements). In addition, registrants are encouraged to provide the required information in one location. However, alternative presentation, such as inclusion of all or part of the information in Management's Discussion and Analysis, may be used at the discretion of the registrant. If information is disclosed in more than one location, registrants should provide cross-references to the locations of the related disclosures.

7. For purposes of the instructions to paragraphs 305(a) and 305(b), *trading purposes* has the same meaning as defined by generally accepted accounting principles (see, e.g., FAS 119, paragraph 9a (October 1994)). In addition, *anticipated transactions* means transactions (other than transactions involving existing assets or liabilities or transactions necessitated by existing firm commitments) an enterprise expects, but is not obligated, to carry out in the normal course of business (see, e.g., *FASB, Statement of Financial Accounting Standards No. 80, "Accounting for Futures Contracts,"* paragraph 9, (August 1984)).

(c) *Interim periods.* If interim period financial statements are included or are required to be included by Article 3 of Regulation S-X (17 CFR 210), discussion and analysis shall be provided so as to enable the reader to assess the sources and effects of material changes in information that would be

provided under Item 305 of Regulation S-K from the end of the preceding fiscal year to the date of the most recent interim balance sheet.

*Instructions to Paragraph 305(c)*

1. Information required under paragraph (c) of this Item 305 is not required until after the first fiscal year end in which this Item 305 is applicable.

(d) *Safe Harbor.* (1) The safe harbor provided in Section 27A of the Securities Act of 1933 (15 U.S.C. 77z-2) and Section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u-5) ("statutory safe harbors") shall apply, with respect to all types of issuers and transactions, to information provided pursuant to paragraphs (a), (b), and (c) of this Item 305, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of paragraph (d) of this Item 305 only:

(i) All information required by paragraphs (a), (b)(1)(i), (b)(1)(iii), and (c) of this Item 305 is considered *forward looking statements* for purposes of the statutory safe harbors, except for historical facts such as the terms of particular contracts and the number of market risk sensitive instruments held during or at the end of the reporting period; and

(ii) With respect to paragraph (a) of this Item 305, the *meaningful cautionary statements* prong of the statutory safe harbors will be satisfied if a registrant satisfies all requirements of that same paragraph (a) of this Item 305.

(e) *Small business issuers.* Small business issuers, as defined in § 230.405 of this chapter and § 230.12b-2 of this chapter, need not provide the information required by this Item 305, whether or not they file on forms specially designated as small business issuer forms.

*General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e)*

1. Bank registrants, thrift registrants, and non-bank and non-thrift registrants with market capitalizations on January 28, 1997 in excess of \$2.5 billion should provide Item 305 disclosures in filings with the Commission that include annual financial statements for fiscal years ending after June 15, 1997. Non-bank and non-thrift registrants with market capitalizations on January 28, 1997 of \$2.5 billion or less should provide Item 305 disclosures in filings with the Commission that include financial statements for fiscal years ending after June 15, 1998.

2.A. For purposes of instruction 1. of the General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e), *bank registrants and thrift registrants* include any registrant which has control over a depository institution.

B. For purposes of instruction 2.A. of the General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e), a registrant has control over a depository institution if:

i. The registrant directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25% or more of any class of voting securities of the depository institution;

ii. The registrant controls in any manner the election of a majority of the directors or trustees of the depository institution; or

iii. The Federal Reserve Board or Office of Thrift Supervision determines, after notice and opportunity for hearing, that the registrant directly or indirectly exercises a controlling influence over the management or policies of the depository institution.

C. For purposes of instruction 2.B. of the General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e), a depository institution means any of the following:

i. An insured depository institution as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C.A. Sec. 1813 (c));

ii. An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which both accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others and is engaged in the business of making commercial loans.

D. For purposes of instruction 1. of the General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d) and 305(e), *market capitalization* is the aggregate market value of common equity as set forth in General Instruction I.B.1. of Form S-3; provided however, that common equity held by affiliates is included in the calculation of market capitalization; and provided further that instead of using the 60 day period prior to filing referenced in General Instruction I.B.1. of Form S-3, the measurement date is January 28, 1997.

*Appendix to Item 305—Tabular Disclosures*

The tables set forth below are illustrative of the format that might be used when a registrant elects to present the information required by paragraph (a)(1)(i)(A) of Item 305 regarding terms and information about derivative financial instruments, other financial instruments, and derivative commodity instruments. These examples are for illustrative purposes only. Registrants are not required to display the information in the specific format illustrated below. Alternative methods of display are permissible as long as the disclosure requirements of the section are satisfied. Furthermore, these examples were designed primarily to illustrate possible formats for presentation of the information required by the disclosure item and do not purport to illustrate the broad range of derivative financial instruments, other

financial instruments, and derivative commodity instruments utilized by registrants.

**Interest Rate Sensitivity**

The table below provides information about the Company's derivative financial instruments and other financial instruments that are sensitive to changes in interest rates, including interest rate swaps and debt obligations.

For debt obligations, the table presents principal cash flows and related weighted average interest rates by expected maturity dates. For interest rate swaps, the table presents notional amounts and weighted average interest rates by expected (contractual) maturity dates. Notional amounts are used to calculate the contractual payments to be exchanged under the contract. Weighted

average variable rates are based on implied forward rates in the yield curve at the reporting date. The information is presented in U.S. dollar equivalents, which is the Company's reporting currency. The instrument's actual cash flows are denominated in both U.S. dollars (\$US) and German deutschmarks (DM), as indicated in parentheses.

December 31, 19X1

	Expected maturity date							Fair value
	19X2	19X3	19X4	19X5	19X6	There-after	Total	
(US\$ Equivalent in millions)								
<b>Liabilities</b>								
Long-term Debt:								
Fixed Rate (\$US) .....	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX
Average interest rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%
Fixed Rate (DM) .....	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
Average interest rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%
Variable Rate (\$US) .....	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
Average interest rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%
(In millions)								
<b>Interest Rate Derivatives</b>								
Interest Rate Swaps:								
Variable to Fixed (\$US) .....	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX
Average pay rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%
Average receive rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%
Fixed to Variable (\$US) .....	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
Average pay rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%
Average receive rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%

**Exchange Rate Sensitivity**

The table below provides information about the Company's derivative financial instruments, other financial instruments, and firmly committed sales transactions by functional currency and presents such information in U.S. dollar equivalents.<sup>1</sup> The table summarizes information on instruments and transactions that are sensitive to foreign

currency exchange rates, including foreign currency forward exchange agreements, deutschmark (DM)-denominated debt obligations, and firmly committed DM sales transactions. For debt obligations, the table presents principal cash flows and related weighted average interest rates by expected maturity dates. For firmly committed DM-sales transactions, sales amounts are

presented by the expected transaction date, which are not expected to exceed two years. For foreign currency forward exchange agreements, the table presents the notional amounts and weighted average exchange rates by expected (contractual) maturity dates. These notional amounts generally are used to calculate the contractual payments to be exchanged under the contract.

December 31, 19X1

	Expected maturity date							Fair value
	19X2	19X3	19X4	19X5	19X6	There-after	Total	
(US\$ Equivalent in millions)								
<b>On-Balance Sheet Financial Instruments</b>								
\$US Functional Currency <sup>2</sup> :								
Liabilities								
Long-Term Debt:								
Fixed Rate (DM) .....	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX
Average interest rate .....	X.X	X.X	X.X	X.X	X.X	X.X	X.X	.....
Expected maturity or transaction date (US\$ Equivalent in millions)								
<b>Anticipated Transactions and Related Derivatives<sup>3</sup></b>								
\$US Functional Currency:								

<sup>1</sup> The information is presented in U.S. dollars because that is the registrant's reporting currency.

December 31, 19X1

	Expected maturity date						Total	Fair value
	19X2	19X3	19X4	19X5	19X6	There-after		
Firmly committed Sales Contracts (DM) .... Forward Exchange Agreements (Receive \$US/Pay DM):	\$XXX	\$XXX	.....	.....	.....	.....	\$XXX	\$XXX
Contract Amount .....	XXX	XXX	.....	.....	.....	.....	XXX	XXX
Average Contractual Exchange Rate .....	X.X	X.X	.....	.....	.....	.....	X.X	.....

<sup>2</sup> Similar tabular information would be provided for other functional currencies.

<sup>3</sup> Pursuant to General Instruction 4. to Items 305(a) and 305(b) of Regulation S-K, registrants may include cash flows from anticipated transactions and operating cash flows resulting from non-financial and non-commodity instruments.

**Commodity Price Sensitivity**

The table below provides information about the Company's corn inventory and futures contracts that are sensitive to changes in commodity prices, specifically corn prices. For inventory,

the table presents the carrying amount and fair value at December 31, 19x1. For the futures contracts the table presents the notional amounts in bushels, the weighted average contract prices, and the total dollar contract amount by

expected maturity dates, the latest of which occurs one year from the reporting date. Contract amounts are used to calculate the contractual payments and quantity of corn to be exchanged under the futures contracts.

December 31, 19X1

	Carrying amount	Fair value
(In millions)		
On Balance Sheet Commodity Position and Related Derivatives		
Corn Inventory <sup>4</sup> .....	\$XXX	\$XXX
Related Derivatives		
Futures Contracts (Short):		
Contract Volumes (100,000 bushels) .....	XXX	.....
Weighted Average Price (Per 100,000 bushels) .....	\$X.XX	.....
Contract Amount (\$US in millions) .....	\$XXX	\$XXX

<sup>4</sup> Pursuant to General Instruction 4. to Items 305(a) and 305(b) of Regulation S-K, registrants may include information on commodity positions, such as corn inventory.

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

8. The general authority citation for Part 239 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

9. By amending Form S-1 (referenced in § 239.11) by redesignating Items 11(j) through 11(m) as Items 11(k) through 11(n) and adding Item 11(j) to read as follows:

Note—The text of Form S-1 does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form S-1—Registration Statement Under the Securities Act of 1933**

\* \* \* \* \*

**Item 11. Information with Respect to the Registrant**

\* \* \* \* \*

(j) Information required by Item 305 of Regulation S-K (§ 229.305 of this chapter), quantitative and qualitative disclosures about market risk.

\* \* \* \* \*

10. By amending Form S-2 (referenced in § 239.12) by adding paragraph (9) to Item 11(b), removing "and" at the end of Item 12(a)(3)(vii), removing the period at the end of Item 12(a)(3)(viii) and in its place adding "; and", and adding paragraph (ix) to Item 12(a)(3) to read as follows:

Note—The text of Form S-2 does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form S-2—Registration Statement Under the Securities Act of 1933**

\* \* \* \* \*

**Item 11. Information with Respect to the Registrant**

(a) \* \* \*

(b) \* \* \*

(9) Furnish quantitative and qualitative disclosures about market risk required by Item 305 of Regulation S-K (§ 229.305 of this chapter).

\* \* \* \* \*

**Item 12. Incorporation of Certain Information by Reference**

(a) \* \* \*

(3) \* \* \*

(ix) quantitative and qualitative disclosures about market risk as required by Item 305 of Regulation S-K (§ 229.305 of this chapter).

\* \* \* \* \*

11. By amending Form S-11 (referenced in § 239.18) to redesignate Items 30 through 36 as Items 31 through 37 and to add Item 30 to Part I to read as follows:

Note—The text of Form S-11 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S-11—Registration Statement Under the Securities Act of 1933

\* \* \* \* \*

Item 30. Quantitative and Qualitative Disclosures About Market Risk

Furnish the information required by Item 305 of Regulation S-K (§ 229.305 of this chapter).

\* \* \* \* \*

12. By amending Form S-4 (referenced in § 239.25) by removing “and” at the end of Item 12(b)(3)(v) and the period at the end of Item 12(b)(3)(vi) and in its place adding “; and”, adding paragraph (vii) to Item 12(b)(3), removing “and” at the end of Item 13(a)(3)(v) and the period at the end of Item 13(a)(3)(vi) and in its place adding “; and”, adding paragraph (vii) to Item 13(a)(3), removing “and” at the end of Item 14(h) and the period at the end of Item 14(i) and in its place adding “; and”, adding paragraph (j) to Item 14, and adding paragraph (10) to Item 17(b) to read as follows:

Note—The text of Form S-4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S-4—Registration Statement Under the Securities Act of 1933

\* \* \* \* \*

Item 12. Information with Respect to S-2 or S-3 Registrants

\* \* \* \* \*

- (b) \* \* \*
- (3) \* \* \*

(vii) Item 305 of Regulation S-K (§ 229.305 of this chapter), quantitative and qualitative disclosures about market risk.

\* \* \* \* \*

Item 13. Incorporation of Certain Information by Reference

\* \* \* \* \*

- (a) \* \* \*
- (3) \* \* \*

(vii) Item 305 of Regulation S-K (§ 229.305 of this chapter) quantitative and qualitative disclosures about market risk.

\* \* \* \* \*

Item 14. Information with Respect to Registrants Other Than S-3 or S-2 Registrants

\* \* \* \* \*

(j) Item 305 of Regulation S-K (§ 229.305 of this chapter), quantitative and qualitative disclosures about market risk.

\* \* \* \* \*

Item 17. Information with Respect to Companies Other Than S-3 or S-2 Companies

\* \* \* \* \*

- (b) \* \* \*

(10) Item 305 of Regulation S-K (§ 229.305 of this chapter), quantitative and qualitative disclosures about market risk.

\* \* \* \* \*

13. By amending Form F-4 (referenced in § 239.34) to redesignate Item 12(b)(3)(vi) as Item 12(b)(3)(vi)(A), add paragraph (B) to Item 12(b)(3)(vi), redesignate Item 14(g) as Item 14(g)(1), add Item 14(g)(2), redesignate Item 17(b)(4) as Item 17(b)(4)(i), and add Item 17(b)(4)(ii) to read as follows:

Note—The text of Form F-4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F-4—Registration Statement Under the Securities Act of 1933

\* \* \* \* \*

Item 12. Information With Respect to F-2 or F-3 Registrants

\* \* \* \* \*

- (b) \* \* \*
- (3) \* \* \*
- (vi)(A) \* \* \*

(B) Item 9A of Form 20-F, quantitative and qualitative disclosures of market risk.

\* \* \* \* \*

Item 14. Information With Respect to Foreign Registrants Other Than F-2 or F-3 Registrants

\* \* \* \* \*

- (g)(1) \* \* \*

(2) Item 9A of Form 20-F, quantitative and qualitative disclosures of market risk.

\* \* \* \* \*

Item 17. Information With Respect to Foreign Companies Other Than F-2 or F-3 Companies

\* \* \* \* \*

- (b) \* \* \*
- (4)(i) \* \* \*

(b)(4)(ii) Item 9A of Form 20-F, quantitative and qualitative disclosures of market risk.

\* \* \* \* \*

**PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

14. The general authority citation for Part 240 is revised to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

\* \* \* \* \*

15. By amending § 240.14a-3 by adding paragraph (b)(5)(iii) to read as follows:

**§ 240.14a-3 Information to be furnished to security holders.**

\* \* \* \* \*

- (b) \* \* \*
- (5) \* \* \*

(iii) The report shall contain the quantitative and qualitative disclosures about market risk required by Item 305 of Regulation S-K (§ 229.305 of this chapter).

\* \* \* \* \*

16. By amending § 240.14a-101 to remove the word “and” at the end of Item 13(a)(4), redesignate Item 13(a)(5) as Item 13(a)(6), add Item 13(a)(5), add Instruction 6 to Item 13, remove “and” at the end of Item 14(b)(2)(i)(B)(3)(vi) and the period at the end of Item 14(b)(2)(i)(B)(3)(vii) and in its place add “; and”, add paragraph (viii) to Item 14(b)(2)(i)(B)(3), remove “and” at the end of Item 14(b)(2)(ii)(A)(3)(v) and the period at the end of Item 14(b)(2)(ii)(A)(3)(vi) and in its place add “; and”, add paragraph (vii) to Item 14(b)(2)(ii)(A)(3), remove “and” at the end of Item 14(b)(3)(i)(H) and the period at the end of Item 14(b)(3)(i)(I) and in its place add “; and”, add paragraph (J) to Item 14(b)(3)(i), and add Instruction 8 to Item 14 to read as follows:

**§ 240.14a-101 Schedule 14A. Information required in proxy statement.**

\* \* \* \* \*

Item 13. Financial and other information

- (a) *Information required.* \* \* \*

(5) Item 305 of Regulation S-K, quantitative and qualitative disclosures about market risk; and

\* \* \* \* \*

**Instructions to Item 13**

\* \* \* \* \*

6. A registered investment company need not comply with items (a)(2), (a)(3), and (a)(5) of this Item 13.

\* \* \* \* \*



Item 14. Mergers, consolidations, acquisitions and similar matters

\* \* \* \* \*

(b) Information about the registrant and the other person.

\* \* \* \* \*

(2) Information with respect to S-2 or S-3 registrants.

(i) Information required to be furnished. \* \* \*

(B) \* \* \*

(3) \* \* \*

(viii) Item 305 of Regulation S-K (§ 229.305 of this chapter), quantitative and qualitative disclosures about market risk.

(ii) Incorporation of certain information by reference. \* \* \*

(A) \* \* \*

(3) \* \* \*

(vii) Item 305 of Regulation S-K (§ 229.305 of this chapter), quantitative and qualitative disclosures about market risk.

\* \* \* \* \*

(3) Information with respect to registrants other than S-2 or S-3 registrants.

(i) \* \* \*

(J) Item 305 of Regulation S-K (§ 229.305 of this chapter), quantitative and qualitative disclosures about market risk.

\* \* \* \* \*

**Instructions to Item 14**

\* \* \* \* \*

8. A registered management investment company need not comply with items (A), (D), (F), (G), (H), and (J) of paragraph (b)(3)(i) of this Item 14.

\* \* \* \* \*

**PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

17. The authority for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

18. By amending Form 10 (referenced in § 249.210) by revising Item 2 to read as follows:

Note—The text of Form 10 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10—General Form for Registration of Securities

\* \* \* \* \*

Item 2. Financial Information

Furnish the information required by Items 301, 303, and 305 of Regulation S-K (§§ 229.301, 229.303, and 229.305 of this chapter).

\* \* \* \* \*

19. By amending Form 20-F (referenced in § 249.220f) by adding Item 9A to be inserted after Item 9 and before Item 10 in Part I to read as follows:

Note—The text of Form 20-F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20-F—Registration Statement Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934; or Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934; or Transaction Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

\* \* \* \* \*

**Part I**

\* \* \* \* \*

Item 9A. Quantitative and Qualitative Disclosures About Market Risk

(a) *Quantitative information about market risk.* (1) Registrants shall provide, in their reporting currency, quantitative information about market risk as of the end of the latest fiscal year, in accordance with one of the following three disclosure alternatives. In preparing this quantitative information, registrants shall categorize market risk sensitive instruments into instruments entered into for trading purposes and instruments entered into for purposes other than trading purposes. Within both the trading and other than trading portfolios, separate quantitative information shall be presented, to the extent material, for each market risk exposure category (*i.e.*, interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market risks, such as equity price risk). A registrant may use one of the three alternatives set forth below for all of the required quantitative disclosures about market risk. A registrant also may choose, from among the three alternatives, one disclosure alternative for market risk sensitive instruments entered into for trading purposes and another disclosure alternative for market risk sensitive instruments entered into for other than trading purposes. Alternatively, a registrant may choose any disclosure alternative, from among the three alternatives, for each risk exposure category within the trading and other than trading portfolios. The three disclosure alternatives are:

(i)(A)(I) Tabular presentation of information related to market risk sensitive instruments; such information shall include fair values of the market risk sensitive instruments and contract terms sufficient to determine future cash

flows from those instruments, categorized by expected maturity dates.

(2) Tabular information relating to contract terms shall allow readers of the table to determine expected cash flows from the market risk sensitive instruments for each of the next five years. Comparable tabular information for any remaining years shall be displayed as an aggregate amount.

(3) Within each risk exposure category, the market risk sensitive instruments shall be grouped based on common characteristics. Within the foreign currency exchange rate risk category, the market risk sensitive instruments shall be grouped by functional currency and within the commodity price risk category, the market risk sensitive instruments shall be grouped by type of commodity.

(4) See the Appendix to this Item for a suggested format for presentation of this information; and

(B) Registrants shall provide a description of the contents of the table and any related assumptions necessary to understand the disclosures required under paragraph (a)(1)(i)(A) of this Item 9A; or

(ii)(A) Sensitivity analysis disclosures that express the potential loss in future earnings, fair values, or cash flows of market risk sensitive instruments resulting from one or more selected hypothetical changes in interest rates, foreign currency exchange rates, commodity prices, and other relevant market rates or prices over a selected period of time. The magnitude of selected hypothetical changes in rates or prices may differ among and within market risk exposure categories; and

(B) Registrants shall provide a description of the model, assumptions, and parameters, which are necessary to understand the disclosures required under paragraph (a)(1)(ii)(A) of this Item 9A; or

(iii)(A) Value at risk disclosures that express the potential loss in future earnings, fair values, or cash flows of market risk sensitive instruments over a selected period of time, with a selected likelihood of occurrence, from changes in interest rates, foreign currency exchange rates, commodity prices, and other relevant market rates or prices;

(B)(I) For each category for which value at risk disclosures are required under paragraph (a)(1)(iii)(A) of this Item 9A, provide either:

(i) The average, high and low amounts, or the distribution of the value at risk amounts for the reporting period; or

(ii) The average, high and low amounts, or the distribution of actual changes in fair values, earnings, or cash

flows from the market risk sensitive instruments occurring during the reporting period; or

(iii) The percentage or number of times the actual changes in fair values, earnings, or cash flows from the market risk sensitive instruments exceeded the value at risk amounts during the reporting period;

(2) Information required under paragraph (a)(1)(iii)(B)(1) of this Item 9A is not required for the first fiscal year end in which a registrant must present Item 9A information; and

(C) Registrants shall provide a description of the model, assumptions, and parameters, which are necessary to understand the disclosures required under paragraphs (a)(1)(iii) (A) and (B) of this Item 9A.

(2) Registrants shall discuss material limitations that cause the information required under paragraph (a)(1) of this Item 9A not to reflect fully the net market risk exposures of the entity. This discussion shall include summarized descriptions of instruments, positions, and transactions omitted from the quantitative market risk disclosure information or the features of instruments, positions, and transactions that are included, but not reflected fully in the quantitative market risk disclosure information.

(3) Registrants shall present summarized market risk information for the preceding fiscal year. In addition, registrants shall discuss the reasons for material quantitative changes in market risk exposures between the current and preceding fiscal years. Information required by this paragraph (a)(3), however, is not required if disclosure is not required under paragraph (a)(1) of this Item 9A for the current fiscal year. Information required by this paragraph (a)(3) is not required for the first fiscal year end in which a registrant must present Item 9A information.

(4) If registrants change disclosure alternatives or key model characteristics, assumptions, and parameters used in providing quantitative information about market risk (e.g., changing from tabular presentation to value at risk, changing the scope of instruments included in the model, or changing the definition of loss from fair values to earnings), and if the effects of any such change is material, the registrant shall:

(i) Explain the reasons for the change; and

(ii) Either provide summarized comparable information, under the new disclosure method, for the year preceding the current year or, in addition to providing disclosure for the current year under the new method,

provide disclosures for the current year and preceding fiscal year under the method used in the preceding year.

#### Instructions to Item 9A(a)

1. Under Item 9A(a)(1):

A. For each market risk exposure category within the trading and other than trading portfolios, registrants may report the average, high, and low sensitivity analysis or value at risk amounts for the reporting period, as an alternative to reporting year-end amounts.

B. In determining the average, high, and low amounts for the fiscal year under instruction 1.A. of the Instructions to Item 9A(a), registrants should use sensitivity analysis or value at risk amounts relating to at least four equal time periods throughout the reporting period (e.g., four quarter-end amounts, 12 month-end amounts, or 52 week-end amounts).

C. Functional currency means functional currency as defined by generally accepted accounting principles (see, e.g., FASB, *Statement of Financial Accounting Standards No. 52, "Foreign Currency Translation"*, ("FAS 52") paragraph 20 (December 1981)).

D. Registrants using the sensitivity analysis and value at risk disclosure alternatives are encouraged, but not required, to provide quantitative amounts that reflect the aggregate market risk inherent in the trading and other than trading portfolios.

2. Under Item 9A(a)(1)(i):

A. Examples of contract terms sufficient to determine future cash flows from market risk sensitive instruments include, but are not limited to:

i. Debt instruments—principal amounts and weighted average effective interest rates;

ii. Forwards and futures—contract amounts and weighted average settlement prices;

iii. Options—contract amounts and weighted average strike prices;

iv. Swaps—notional amounts, weighted average pay rates or prices, and weighted average receive rates or prices; and

v. Complex instruments—likely to be a combination of the contract terms presented in 2.A.i. through iv. of this Instruction;

B. When grouping based on common characteristics, instruments should be categorized, at a minimum, by the following characteristics, when material:

i. Fixed rate or variable rate assets or liabilities;

ii. Long or short forwards and futures;

iii. Written or purchased put or call options with similar strike prices;

iv. Receive fixed and pay variable swaps, receive variable and pay fixed swaps, and receive variable and pay variable swaps;

v. The currency in which the instruments' cash flows are denominated;

vi. Financial instruments for which foreign currency transaction gains and losses are reported in the same manner as translation adjustments under generally accepted accounting principles (see, e.g., FAS 52 paragraph 20 (December 1981)); and

vii. Derivatives used to manage risks inherent in anticipated transactions;

C. Registrants may aggregate information regarding functional currencies that are economically related, managed together for internal risk management purposes, and have statistical correlations of greater than 75% over each of the past three years;

D. Market risk sensitive instruments that are exposed to rate or price changes in more than one market risk exposure category should be presented within the tabular information for each of the risk exposure categories to which those instruments are exposed;

E. If a currency swap (see, e.g., FAS 52 Appendix E for a definition of currency swap) eliminates all foreign currency exposures in the cash flows of a foreign currency denominated debt instrument, neither the currency swap nor the foreign currency denominated debt instrument are required to be disclosed in the foreign currency risk exposure category. However, both the currency swap and the foreign currency denominated debt instrument should be disclosed in the interest rate risk exposure category; and

F. The contents of the table and related assumptions that should be described include, but are not limited to:

i. The different amounts reported in the table for various categories of the market risk sensitive instruments (e.g., principal amounts for debt, notional amounts for swaps, and contract amounts for options and futures);

ii. The different types of reported market rates or prices (e.g., contractual rates or prices, spot rates or prices, forward rates or prices); and

iii. Key prepayment or reinvestment assumptions relating to the timing of reported amounts.

3. Under Item 9A(a)(1)(ii):

A. Registrants should select hypothetical changes in market rates or prices that are expected to reflect reasonably possible near-term changes in those rates and prices. In this regard, absent economic justification for the selection of a different amount,

registrants should use changes that are not less than 10 percent of end of period market rates or prices;

B. For purposes of instruction 3.A. of the Instructions to Item 9A(a), the term *reasonably possible* has the same meaning as defined by generally accepted accounting principles (see, e.g., FASB, *Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies,"* ("FAS 5") paragraph 3 (March 1975));

C. For purposes of instruction 3.A. of the Instructions to Item 9A(a), the term *near term* means a period of time going forward up to one year from the date of the financial statements (see generally AICPA, *Statement of Position 94-6, "Disclosure of Certain Significant Risks and Uncertainties,"* ("SOP 94-6") at paragraph 7 (December 30, 1994));

D. Market risk sensitive instruments that are exposed to rate or price changes in more than one market risk exposure category should be included in the sensitivity analysis disclosures for each market risk category to which those instruments are exposed;

E. Registrants with multiple foreign currency exchange rate exposures should prepare foreign currency sensitivity analysis disclosures that measure the aggregate sensitivity to changes in all foreign currency exchange rate exposures, including the effects of changes in both transactional currency/functional currency exchange rate exposures and functional currency/reporting currency exchange rate exposures. For example, assume a French division of a registrant presenting its financial statements in U.S. dollars (\$US) invests in a deutschmark(DM)-denominated debt security. In these circumstances, the \$US is the reporting currency and the DM is the transactional currency. In addition, assume this division determines that the French franc (FF) is its functional currency according to FAS 52. In preparing the foreign currency sensitivity analysis disclosures, this registrant should report the aggregate potential loss from hypothetical changes in both the DM/FF exchange rate exposure and the FF/\$US exchange rate exposure; and

F. Model, assumptions, and parameters that should be described include, but are not limited to, how *loss* is defined by the model (e.g., loss in earnings, fair values, or cash flows), a general description of the modeling technique (e.g., duration modeling, modeling that measures the change in net present values arising from selected hypothetical changes in market rates or prices, and a description as to how optionality is addressed by the model),

the types of instruments covered by the model (e.g., derivative financial instruments, other financial instruments, and whether other instruments are included voluntarily, such as certain commodity instruments and positions, cash flows from anticipated transactions, and certain financial instruments excluded under instruction 3.C.ii. of the General Instructions to Items 9A(a) and 9A(b)), and other relevant information about the model's assumptions and parameters (e.g., the magnitude and timing of selected hypothetical changes in market rates or prices used, the method by which discount rates are determined, and key prepayment or reinvestment assumptions).

4. Under Item 9A(a)(1)(iii):

A. The confidence intervals selected should reflect reasonably possible near-term changes in market rates and prices. In this regard, absent economic justification for the selection of different confidence intervals, registrants should use intervals that are 95 percent or higher;

B. For purposes of instruction 4.A. of the Instructions to Item 9A(a), the term *reasonably possible* has the same meaning as defined by generally accepted accounting principles (see, e.g., FAS 5, paragraph 3 (March 1975));

C. For purposes of instruction 4.A. of the Instructions to Item 9A(a), the term *near term* means a period of time going forward up to one year from the date of the financial statements (see generally SOP 94-6, at paragraph 7 (December 30, 1994));

D. Registrants with multiple foreign currency exchange rate exposures should prepare foreign currency value at risk analysis disclosures that measure the aggregate sensitivity to changes in all foreign currency exchange rate exposures, including the aggregate effects of changes in both transactional currency/functional currency exchange rate exposures and functional currency/reporting currency exchange rate exposures. For example, assume a French division of a registrant presenting its financial statements in U.S. dollars (\$US) invests in a deutschmark(DM)-denominated debt security. In these circumstances, the \$US is the reporting currency and the DM is the transactional currency. In addition, assume this division determines that the French franc (FF) is its functional currency according to FAS 52. In preparing the foreign currency value at risk disclosures, this registrant should report the aggregate potential loss from hypothetical changes in both

the DM/FF exchange rate exposure and the FF/\$US exchange rate exposure; and

E. Model, assumptions, and parameters that should be described include, but are not limited to, how *loss* is defined by the model (e.g., loss in earnings, fair values, or cash flows), the type of model used (e.g., variance/covariance, historical simulation, or Monte Carlo simulation and a description as to how optionality is addressed by the model), the types of instruments covered by the model (e.g., derivative financial instruments, other financial instruments, derivative commodity instruments, and whether other instruments are included voluntarily, such as certain commodity instruments and positions, cash flows from anticipated transactions, and certain financial instruments excluded under instruction 3.C.ii. of the General Instructions to Items 9A(a) and 9A(b)), and other relevant information about the model's assumptions and parameters, (e.g., holding periods, confidence intervals, and, when appropriate, the methods used for aggregating value at risk amounts across market risk exposure categories, such as by assuming perfect positive correlation, independence, or actual observed correlation).

5. Under Item 9A(a)(2), limitations that should be considered include, but are not limited to:

A. The exclusion of certain market risk sensitive instruments, positions, and transactions from the disclosures required under Item 9A(a)(1) (e.g., derivative commodity instruments not permitted by contract or business custom to be settled in cash or with another financial instrument, commodity positions, cash flows from anticipated transactions, and certain financial instruments excluded under instruction 3.C.ii. of the General Instructions to Items 9A(a) and 9A(b)). Failure to include such instruments, positions, and transactions in preparing the disclosures under Item 9A(a)(1) may be a limitation because the resulting disclosures may not fully reflect the net market risk of a registrant; and

B. The ability of disclosures required under Item 9A(a)(1) to reflect fully the market risk that may be inherent in instruments with leverage, option, or prepayment features (e.g., options, including written options, structured notes, collateralized mortgage obligations, leveraged swaps, and options embedded in swaps).

(b) *Qualitative information about market risk.* (1) To the extent material, describe:

(i) The registrant's primary market risk exposures;

(ii) How those exposures are managed. Such descriptions shall include, but not be limited to, a discussion of the objectives, general strategies, and instruments, if any, used to manage those exposures; and

(iii) Changes in either the registrant's primary market risk exposures or how those exposures are managed, when compared to what was in effect during the most recently completed fiscal year and what is known or expected to be in effect in future reporting periods.

(2) Qualitative information about market risk shall be presented separately for market risk sensitive instruments entered into for trading purposes and those entered into for purposes other than trading.

#### *Instructions to Item 9A(b)*

1. For purposes of disclosure under Item 9A(b), *primary market risk exposures* means:

A. The following categories of market risk: interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market rate or price risks (e.g., equity price risk); and

B. Within each of these categories, the particular markets that present the primary risk of loss to the registrant. For example, if a registrant has a material exposure to foreign currency exchange rate risk and, within this category of market risk, is most vulnerable to changes in dollar/yen, dollar/pound, and dollar/peso exchange rates, the registrant should disclose those exposures. Similarly, if a registrant has a material exposure to interest rate risk and, within this category of market risk, is most vulnerable to changes in short-term U.S. prime interest rates, it should disclose the existence of that exposure.

2. For purposes of disclosure under Item 9A(b), registrants should describe primary market risk exposures that exist as of the end of the latest fiscal year, and how those exposures are managed.

#### *General Instructions to Items 9A(a) and 9A(b)*

1. The disclosures called for by Items 9A(a) and 9A(b) are intended to clarify the registrant's exposures to market risk associated with activities in derivative financial instruments, other financial instruments, and derivative commodity instruments.

2. In preparing the disclosures under Items 9A(a) and 9A(b), registrants are required to include derivative financial instruments, other financial instruments, and derivative commodity instruments.

3. For purposes of Items 9A(a) and 9A(b), derivative financial instruments, other financial instruments, and

derivative commodity instruments (collectively referred to as "market risk sensitive instruments") are defined as follows:

A. *Derivative financial instruments* has the same meaning as defined by generally accepted accounting principles (see, e.g., FASB, *Statement of Financial Accounting Standards No. 119, "Disclosure about Derivative Financial Instruments and Fair Value of Financial Instruments,"* ("FAS 119") paragraphs 5-7 (October 1994)), and includes futures, forwards, swaps, options, and other financial instruments with similar characteristics;

B. *Other financial instruments* means all financial instruments as defined by generally accepted accounting principles for which fair value disclosures are required (see, e.g., FASB, *Statement of Financial Accounting Standards No. 107, "Disclosures about Fair Value of Financial Instruments,"* ("FAS 107") paragraphs 3 and 8 (December 1991)), except for derivative financial instruments, as defined above;

C.i. Other financial instruments include, but are not limited to, trade accounts receivable, investments, loans, structured notes, mortgage-backed securities, trade accounts payable, indexed debt instruments, interest-only and principal-only obligations, deposits, and other debt obligations;

ii. Other financial instruments exclude employers' and plans' obligations for pension and other post-retirement benefits, substantively extinguished debt, insurance contracts, lease contracts, warranty obligations and rights, unconditional purchase obligations, investments accounted for under the equity method, minority interests in consolidated enterprises, and equity instruments issued by the registrant and classified in stockholders' equity in the statement of financial position (see, e.g., FAS 107, paragraph 8 (December 1991)). For purposes of this item, trade accounts receivable and trade accounts payable need not be considered other financial instruments when their carrying amounts approximate fair value; and

D. *Derivative commodity instruments* include, to the extent such instruments are not derivative financial instruments, commodity futures, commodity forwards, commodity swaps, commodity options, and other commodity instruments with similar characteristics that are permitted by contract or business custom to be settled in cash or with another financial instrument. For purposes of this paragraph, settlement in cash includes settlement in cash of the net change in value of the derivative commodity

instrument (e.g., net cash settlement based on changes in the price of the underlying commodity).

4.A. In addition to providing required disclosures for the market risk sensitive instruments defined in instruction 2. of the General Instructions to Items 9A(a) and 9A(b), registrants are encouraged to include other market risk sensitive instruments, positions, and transactions within the disclosures required under Items 9A(a) and 9A(b). Such instruments, positions, and transactions might include commodity positions, derivative commodity instruments that are not permitted by contract or business custom to be settled in cash or with another financial instrument, cash flows from anticipated transactions, and certain financial instruments excluded under instruction 3.C.ii. of the General Instructions to Items 9A(a) and 9A(b).

B. Registrants that voluntarily include other market risk sensitive instruments, positions and transactions within their quantitative disclosures about market risk under the sensitivity analysis or value at risk disclosure alternatives are not required to provide separate market risk disclosures for any voluntarily selected instruments, positions, or transactions. Instead, registrants selecting the sensitivity analysis and value at risk disclosure alternatives are permitted to present comprehensive market risk disclosures, which reflect the combined market risk exposures inherent in both the required and any voluntarily selected instruments, position, or transactions. Registrants that choose the tabular presentation disclosure alternative should present voluntarily selected instruments, positions, or transactions in a manner consistent with the requirements in Item 9A(a) for market risk sensitive instruments.

C. If a registrant elects to include voluntarily a particular type of instrument, position, or transaction in their quantitative disclosures about market risk, that registrant should include all, rather than some, of those instruments, positions, or transactions within those disclosures. For example, if a registrant holds in inventory a particular type of commodity position and elects to include that commodity position within their market risk disclosures, the registrant should include the entire commodity position, rather than only a portion thereof, in their quantitative disclosures about market risk.

5.A. Under Items 9A(a) and 9A(b), a materiality assessment should be made for each market risk exposure category within the trading and other than trading portfolios.

B. For purposes of making the materiality assessment under instruction 5.A. of the General Instructions to Items 9A(a) and 9A(b), registrants should evaluate both:

- i. The materiality of the fair values of derivative financial instruments, other financial instruments, and derivative commodity instruments outstanding as of the end of the latest fiscal year; and
- ii. The materiality of potential, near-term losses in future earnings, fair values, and cash flows from reasonably possible near-term changes in market rates or prices.
- iii. If either paragraphs B.i. or B.ii. in this instruction of the General Instructions to Items 9A(a) and 9A(b) are material, the registrant should disclose quantitative and qualitative information about market risk, if such market risk for the particular market risk exposure category is material.

C. For purposes of instruction 5.B.i. of the General Instructions to Items 9A(a) and 9A(b), registrants generally should not net fair values, except to the extent allowed under generally accepted accounting principles (see, e.g., *FASB Interpretation No. 39, "Offsetting of Amounts Related to Certain Contracts"* (March 1992)). For example, under this instruction, the fair value of assets generally should not be netted with the fair value of liabilities.

D. For purposes of instruction 5.B.ii. of the General Instructions to Items 9A(a) and 9A(b), registrants should consider, among other things, the magnitude of:

- i. Past market movements;
- ii. Reasonably possible, near-term market movements; and
- iii. Potential losses that may arise from leverage, option, and multiplier features.

E. For purposes of instructions 5.B.ii. and 5.D.ii. of the General Instructions to Items 9A(a) and 9A(b), the term *near term* means a period of time going forward up to one year from the date of the financial statements (see generally SOP 94-6, at paragraph 7 (December 30, 1994)).

F. For the purpose of instructions 5.B.ii. and 5.D.ii. of the General Instructions to Items 9A(a) and 9A(b), the term *reasonably possible* has the same meaning as defined by generally accepted accounting principles (see, e.g., FAS 5, paragraph 3 (March 1975)).

6. For purposes of Items 9A(a) and 9A(b), registrants should present the information outside of, and not incorporate the information into, the financial statements (including the footnotes to the financial statements). In addition, registrants are encouraged to provide the required information in one

location. However, alternative presentation, such as inclusion of all or part of the information in Management's Discussion and Analysis, may be used at the discretion of the registrant. If information is disclosed in more than one location, registrants should provide cross-references to the locations of the related disclosures.

7. For purposes of the instructions to Items 9A(a) and 9A(b), *trading purposes* has the same meaning as defined by generally accepted accounting principles (see, e.g., FAS 119, paragraph 9a (October 1994)). In addition, *anticipated transactions* means transactions (other than transactions involving existing assets or liabilities or transactions necessitated by existing firm commitments) an enterprise expects, but is not obligated, to carry out in the normal course of business (see, e.g., FASB, *Statement of Financial Accounting Standards No. 80, "Accounting for Futures Contracts,"* paragraph 9, (August 1984)).

(c) *Interim periods*. If interim period financial statements are included or are required to be included by Article 3 of Regulation S-X (17 CFR 210), discussion and analysis shall be provided so as to enable the reader to assess the sources and effects of material changes in information that would be provided under Item 9A of Form 20-F from the end of the preceding fiscal year to the date of the most recent interim balance sheet.

#### *Instructions to Item 9A(c)*

1. Information required by paragraph (c) of this Item 9A is not required until after the first fiscal year end in which this Item 9A is applicable.

(d) *Safe Harbor*. (1) The safe harbor provided in Section 27A of the Securities Act of 1933 (15 U.S.C. 77z-2) and Section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u-5) ("statutory safe harbors") shall apply, with respect to all types of issuers and transactions, to information provided pursuant to paragraphs (a), (b), and (c) of this Item 9A, provided that the disclosure is made by an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of this paragraph (d) of this Item 9A only:

(i) All information required by paragraphs (a), (b)(1)(i), (b)(1)(iii), and (c) of this Item 9A is considered *forward looking statements* for purposes of the statutory safe harbors, except for

historical facts such as the terms of particular contracts and the number of market risk sensitive instruments held during or at the end of the reporting period; and

(ii) With respect to paragraph (a) of this Item 9A, the *meaningful cautionary statements* prong of the statutory safe harbors will be satisfied if a registrant satisfies all requirements of that same paragraph (a) of this Item 9A.

(e) *Small business issuers*. Small business issuers, as defined in § 230.405 of this chapter and § 240.12b-2 of this chapter, need not provide the information required by this Item 9A, whether or not they file on forms specially designated as small business issuer forms.

#### *General Instructions to Items 9A(a), 9A(b), 9A(c), 9A(d), and 9A(e)*

1. Bank registrants, thrift registrants, and non-bank and non-thrift registrants with market capitalizations on January 28, 1997 in excess of \$2.5 billion should provide Item 9A disclosures in filings with the Commission that include annual financial statements for fiscal years ending after June 15, 1997. Non-bank and non-thrift registrants with market capitalizations on January 28, 1997 of \$2.5 billion or less should provide Item 9A disclosures in filings with the Commission that include annual financial statements for fiscal years ending after June 15, 1998.

2.A. For purposes of instruction 1. of the General Instructions to Items 9A(a), 9A(b), 9A(c), 9A(d), and 9A(e), *bank registrants and thrift registrants* include any registrant which has control over a depository institution.

B. For purposes of instruction 2.A. of the General Instructions to Items 9A(a), 9A(b), 9A(c), 9A(d), and 9A(e), a registrant has control over a depository institution if:

i. The registrant directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25% or more of any class of voting securities of the depository institution;

ii. The registrant controls in any manner the election of a majority of the directors or trustees of the depository institution; or

iii. The Federal Reserve Board or Office of Thrift Supervision determines, after notice and opportunity for hearing, that the registrant directly or indirectly exercises a controlling influence over the management or policies of the depository institution;

C. For purposes of instruction 2.B. of the General Instructions to Items 9A(a), 9A(b), 9A(c), 9A(d), and 9A(e), a depository institution means any of the following:

i. An insured depository institution as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C.A. Sec. 1813 (c));

ii. An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which both accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others and is engaged in the business of making commercial loans.

D. For purposes of instruction 1. of the General Instructions to Items 9A(a), 9A(b), 9A(c), 9A(d), and 9A(e), *market capitalization* is the aggregate market value of common equity as set forth in General Instruction I.B.1. of Form S-3; provided however, that common equity held by affiliates is included in the calculation of market capitalization; and

provided further that instead of using the 60 day period prior to filing referenced in General Instruction I.B.1. of Form S-3, the measurement date is January 28, 1997.

#### Appendix to Item 9A—Tabular Disclosures

The tables set forth below are illustrative of the format that might be used when a registrant elects to present the information required by paragraph (a)(1)(i)(A) of Item 9A regarding terms and information about derivative financial instruments, other financial instruments, and derivative commodity instruments. These examples are for illustrative purposes only. Registrants are not required to display the information in the specific format illustrated below. Alternative methods of display are permissible as long as the disclosure requirements of the section are satisfied. Furthermore, these examples were designed primarily to illustrate possible formats for presentation of the information required by the disclosure item and do not purport to illustrate the broad range of derivative financial instruments, other financial instruments, and derivative

commodity instruments utilized by registrants.

#### Interest Rate Sensitivity

The table below provides information about the Company's derivative financial instruments and other financial instruments that are sensitive to changes in interest rates, including interest rate swaps and debt obligations. For debt obligations, the table presents principal cash flows and related weighted average interest rates by expected maturity dates. For interest rate swaps, the table presents notional amounts and weighted average interest rates by expected (contractual) maturity dates. Notional amounts are used to calculate the contractual payments to be exchanged under the contract. Weighted average variable rates are based on implied forward rates in the yield curve at the reporting date. The information is presented in U.S. dollar equivalents, which is the Company's reporting currency. The instrument's actual cash flows are denominated in both U.S. dollars (\$US) and German deutschmarks (DM), as indicated in parentheses.

December 31, 19X1

	Expected maturity date							Fair value
	19X2	19X3	19X4	19X5	19X6	There-after	Total	
<b>Liabilities</b>	<b>(US\$ Equivalent in millions)</b>							
Long-term Debt:								
Fixed Rate (\$US) .....	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX
Average interest rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%
Fixed Rate (DM) .....	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
Average interest rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%
Variable Rate (\$US) .....	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
Average interest rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%
<b>Interest Rate Derivatives</b>	<b>(In millions)</b>							
Interest Rate Swaps:								
Variable to Fixed (\$US) .....	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX
Average pay rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%
Average receive rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%
Fixed to Variable (\$US) .....	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
Average pay rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%
Average receive rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%

#### Exchange Rate Sensitivity

The table below provides information about the Company's derivative financial instruments, other financial instruments, and firmly committed sales transactions by functional currency and presents such information in U.S. dollar equivalents.<sup>1</sup> The table summarizes information on instruments and transactions that are sensitive to foreign

currency exchange rates, including foreign currency forward exchange agreements, deutschmark (DM)-denominated debt obligations, and firmly committed DM sales transactions. For debt obligations, the table presents principal cash flows and related weighted average interest rates by expected maturity dates. For firmly committed DM-sales transactions, sales amounts are

presented by the expected transaction date, which are not expected to exceed two years. For foreign currency forward exchange agreements, the table presents the notional amounts and weighted average exchange rates by expected (contractual) maturity dates. These notional amounts generally are used to calculate the contractual payments to be exchanged under the contract.

<sup>1</sup> The information is presented in U.S. dollars because that is the registrant's reporting currency.

December 31, 19X1

	Expected maturity date							Total	Fair value
	19X2	19X3	19X4	19X5	19X6	There-after			
On-Balance Sheet Financial Instruments	(US\$ Equivalent in millions)								
\$US Functional Currency <sup>2</sup> : Liabilities:									
Long-Term Debt:									
Fixed Rate (DM) .....	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	
Average interest rate .....	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	
Anticipated Transactions and Related Derivatives <sup>3</sup>	Expected maturity or transaction date (US\$ Equivalent in millions)								
\$US Functional Currency:									
Firmly committed Sales Contracts (DM) ....	\$XXX	\$XXX	.....	.....	.....	.....	\$XXX	\$XXX	
Forward Exchange Agreements (Receive \$US/Pay DM):									
Contract Amount .....	XXX	XXX	.....	.....	.....	.....	XXX	XXX	
Average Contractual Exchange Rate .....	X.X%	X.X%	.....	.....	.....	.....	X.X%	.....	

<sup>2</sup> Similar tabular information would be provided for other functional currencies.

<sup>3</sup> Pursuant to General Instruction 4. to Items 9A(a) and 9A(b) of Form 20-F, registrants may include cash flows from anticipated transactions and operating cash flows resulting from non-financial and non-commodity instruments.

**Commodity Price Sensitivity**

The table below provides information about the Company's corn inventory and futures contracts that are sensitive to changes in commodity prices, specifically corn prices.

For inventory, the table presents the carrying amount and fair value at December 31, 19x1. For the futures contracts the table presents the notional amounts in bushels, the weighted average contract prices, and the total dollar contract amount by expected

maturity dates, the latest of which occurs one year from the reporting date. Contract amounts are used to calculate the contractual payments and quantity of corn to be exchanged under the futures contracts.

December 31, 19X1

	Carrying amount	Fair value
(In millions)		
On Balance Sheet Commodity Position and Related Derivatives		
Corn Inventory <sup>4</sup> .....	\$XXX	\$XXX
Related Derivatives		
Futures Contracts (Short):		
Contract Volumes (100,000 bushels) .....	XXX	.....
Weighted Average Price (Per 100,000 bushels) .....	\$X.XX	.....
Contract Amount (\$US in millions) .....	\$XXX	\$XXX

<sup>4</sup> Pursuant to General Instruction 4. to Items 305(a) and 305(b) of Regulation S-K, registrants may include information on commodity positions, such as corn inventory.

20. By amending Form 10-Q (referenced in § 249.308a) by removing references to "Items 1 and 2 of Part I of this form" and adding in their place references to "Items 1, 2, and 3 of Part I of this form" in paragraphs 1 and 2 of General Instruction F, adding paragraph 2.c. to General Instruction H and Item 3 to Part I to read as follows:

Note—The text of Form 10-Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10-Q—Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934; or Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

\* \* \* \* \*

*General Instructions*

\* \* \* \* \*

**H. Omission of Information by Certain Wholly-Owned Subsidiaries**

\* \* \* \* \*

2. \* \* \* c. Such registrants may omit the information called for by Item 3 of Part I, Quantitative and Qualitative Disclosures About Market Risk.

\* \* \* \* \*

*Part I—Financial Information*

\* \* \* \* \*

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Furnish the information required by Item 305 of Regulation S-K (§ 229.305 of this chapter).

\* \* \* \* \*

21. By amending Form 10-K (referenced in § 249.310) by adding Item 7A to be inserted after Item 7 and before Item 8 in Part II to read as follows:

Note—The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10-K—Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934; or Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

\* \* \* \* \*

*Part II*

\* \* \* \* \*

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Furnish the information required by Item 305 of Regulation S-K (§ 229.305 of this chapter).

\* \* \* \* \*

Dated: January 31, 1997.

By the Commission.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97-2991 Filed 2-7-97; 8:45 am]

BILLING CODE 8010-01-P



# Federal Register

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Monday  
February 10, 1997

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## Part III

### Department of Housing and Urban Development

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Regulatory Waiver Requests; Notice

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

[Docket No. FR-4098-N-03]

**Notice of Regulatory Waiver Requests  
Granted**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Public notice of the granting of regulatory waivers from July 1, 1996 through September 30, 1996.

**SUMMARY:** Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This notice is the twenty-third in a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this notice is to comply with the requirements of Section 106 of the Reform Act.

**FOR FURTHER INFORMATION CONTACT:** For general information about this notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone 202-708-3055. (This is not a toll-free number.); Hearing-and speech-impaired persons may call HUD's TTY toll-free number at 1-800-877-8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address is set out for the particular item, in the accompanying list of waiver-grant actions.

**SUPPLEMENTARY INFORMATION:** As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (Section 7(q)(3)) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by

publishing a notice in the Federal Register. These notices (each covering the period since the most recent previous notification) shall:

- a. Identify the project, activity, or undertaking involved;
- b. Describe the nature of the provision waived, and the designation of the provision;
- c. Indicate the name and title of the person who granted the waiver request;
- d. Describe briefly the grounds for approval of the request;
- e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD (56 FR 16337, April 22, 1991). This is the twenty-third notice of its kind to be published under Section 106. This notice updates HUD's waiver-grant activity from July 1, 1996 through September 30, 1996.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 91.402 (involving the waiver of a provision in 24 CFR part 91) would come early in the sequence, while waivers of 24 CFR part 990 would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 92.2 and § 92.214(a)(3) would appear sequentially in the listing under § 92.2.) Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between October 1, 1996 through December 31, 1996.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the Appendix that follows this notice.

Dated: January 28, 1997.

Dwight P. Robinson,  
*Acting Secretary.*

Appendix—Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development July 1, 1996 Through September 30, 1996

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly before each set of waivers granted.

For Items 1 Through 33, Waivers Granted for 24 CFR Parts 91, 92, 291, 570, 572, and 576, Contact: Debbie Ann Wills, Field Management Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 451 7th Street, S.W., Room 7152, Washington, D.C. 20410-7000, Telephone: (202) 708-2565. Hearing-and speech-impaired persons may call HUD's TTY toll-free number at 1-800-877-8391.

1. Regulation: 24 CFR 91.402

*Project/Activity:* The Montgomery County/Kettering Consortium of Ohio requested a waiver of 24 CFR 91.402 of the Consolidated Plan regulations to allow the Consortium until FY 1999 to complete the transition of aligning the start of the program year for all its Consortium members.

*Nature of Requirement:* The regulations at 24 CFR 91.402 state that all units of local government that are members of the consortium must be on the same program year for CDBG, HOME, Emergency Shelter Grants (ESG) and Housing Opportunities for Persons with Aids (HOPWA).

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* July 31, 1996.

*Reasons Waived:* The Assistant Secretary found good cause to grant the waiver of the regulations which requires that all Consortium members must have the same program start dates.

2. Regulation: 24 CFR 91.402

*Project/Activity:* The Auburn and King County Consortium of Washington requested a waiver of 24 CFR 91.402 of the Consolidated Plan, to allow the City of Auburn, which is a member of the Consortium, until FY 1999 to complete the transition of the City aligning the start of its program year with the Consortium.

*Nature of Requirement:* The regulations at 24 CFR 91.402, state that all units of local government that are members of the consortium must be on

the same program year for CDBG, HOME, Emergency Shelter Grants (ESG) and Housing Opportunities for Persons with Aids (HOPWA).

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* September 16, 1996.

*Reasons Waived:* The Assistant Secretary found good cause to grant the waiver of the regulations that requires that all consortium members must have the same program start dates.

3. Regulation: 24 CFR 91.520(a)

*Project/Activity:* Hartford, Connecticut, requested an extension of the deadline to submit its annual CDBG performance report to HUD.

*Nature of Requirement:* The regulations, at 24 CFR 91.520(a) of the CDBG regulations, require that each grant recipient submit a performance report to HUD within 90 days after the close of the grantee's program year.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* September 16, 1996.

*Reasons Waived:* The Assistant Secretary determined that failure to grant the requested waiver would adversely affect the purposes of the Act, because the City would not be able to submit a complete and accurate performance report on its 1995 program year.

4. Regulation: 24 CFR 92.2

*Project/Activity:* Knox County, Tennessee, on behalf of Child and Family Services, Inc., requested a waiver of 24 CFR 92.2 regulations that establish the composition of Community Housing Development Organization (CHDO) Boards.

*Nature of Requirement:* The regulations at 24 CFR 92.2 require that one-third of the CHDO Board members must be residents of low-income neighborhoods.

*Granted by:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* August 21, 1996.

*Reasons Waived:* A determination was made that undue hardship would result if the non-profit organization was not designated as a CHDO.

5. Regulation: 24 CFR 92.214(a)(3)

*Project/Activity:* The State of North Dakota requested a waiver of the match provision of the HOME program.

*Nature of Requirement:* The regulations, at 24 CFR 92.214(a)(3) of the HOME regulations, implement the statutory provision that HOME program funds may not be used as a non-federal

matching contribution under any other federal program.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* September 30, 1996.

*Reasons Waived:* Sections 208 and 234 of the Multifamily Property Disposition Reform Act of 1994 authorize HUD to suspend certain statutory and regulatory provisions that would otherwise apply to the use of CDBG and HOME funds, to address the damage in an area that the President has declared a disaster under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

6. Regulation: 24 CFR 92.251

*Project/Activity:* The State of Arkansas requested a waiver to permit a rehabilitation project, which utilizes HOME funds, to use FHA Single Family Minimum Property Requirements in lieu of HQS for its HOME assisted homebuyer activities.

*Nature of Requirement:* The regulations at 24 CFR 92.251 provide that housing assisted with HOME funds meet, at a minimum, HUD housing quality standards (HQS), and provide other minimum standards for substantial rehabilitation and new construction.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* August 22, 1996.

*Reasons Waived:* The waiver was granted because the State does not have the staff capacity to inspect all potential HOME properties for HQS compliance. It would also be difficult to locate qualified inspectors to perform HQS inspections in rural parts of the State. Finally, there would be an added cost on low-income borrowers to pay for a third-party inspection. The waiver was granted because the Assistant Secretary deemed that these factors would adversely affect the purposes of the Act.

7. Regulation: 24 CFR 92.252(a)(5)

*Project/Activity:* Madison, Wisconsin, requested a waiver to 24 CFR 92.252(a)(5), which requires that a HOME assisted project must remain affordable without regard to the term of any mortgage or the transfer of ownership for not less than the applicable affordability period.

*Nature of Requirement:* The HOME regulations, at 24 CFR 92.252(a)(5), state that the project is subject to a ten-year affordability period, which is enforced by a deed restriction.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* August 22, 1996.

*Reasons Waived:* The waiver was granted because the hotel burned to the ground. The primary owners of the hotel determined that the hotel could not be rebuilt with the deed restriction and that they would repay the city the HOME assistance.

8. Regulation: 24 CFR 92.254(a)(ii)(A)

*Project/Activity:* Cook County, Illinois, requested a waiver to 24 CFR 92.254(a)(ii)(A), which requires that housing that is for purchase by a family qualifies as affordable housing only if the housing is subject to minimum periods of resale restrictions or recapture provision of the locality.

*Nature of Requirement:* The HOME regulations, at 24 CFR 92.254(a)(ii)(A), state that a participating jurisdiction must recoup all or a portion of the HOME assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* August 22, 1996.

*Reasons Waived:* The waiver was granted because it was determined the restructuring provisions proposed by Cook County did not adversely affect the purposes of the HOME program.

9. Regulation: 24 CFR 92.258

*Project/Activity:* Sacramento Housing and Redevelopment Agency of Sacramento, California, requested a waiver of 24 CFR 92.258 of the HOME regulations, to waive the 30-year affordability period for low-income homebuyers receiving HOME assistance.

*Nature of Requirement:* The regulations, at 24 CFR 92.258, provide a limitation on the use of HOME funds with FHA mortgage insurance for a period of time equal to the term of the HUD-insured mortgage.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* August 21, 1996.

*Reasons Waived:* The application of § 92.258 of the HOME regulations to the Agency's program would create an undue hardship for the City of Sacramento and its potential homeowners, and adversely affect the purposes of the Act.

10. Regulation: 24 CFR 92.258

*Project/Activity:* The City of Euclid, Ohio, requested a waiver of 24 CFR 92.258 of the HOME regulations to waive the 30-year affordability period for low-income homebuyers receiving HOME assistance.

*Nature of Requirement:* The regulations, at 24 CFR 92.258, provide a limitation on the use of HOME funds with FHA mortgage insurance for a period of time equal to the term of the HUD insured mortgage.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* July 1, 1996.

*Reasons Waived:* The application of § 92.258 of the HOME regulations to the City's program would create an undue hardship for the City of Euclid and its potential homeowners, and adversely affect the purposes of the Act.

11. Regulation: 24 CFR 92.258

*Project/Activity:* Sacramento Housing and Redevelopment Agency of Sacramento, California, requested a waiver of 24 CFR 92.258 of the HOME regulations, to waive the 30-year affordability period for low-income homebuyers receiving HOME assistance.

*Nature of Requirement:* The regulations, at 24 CFR 92.258, provide a limitation on the use of HOME funds with FHA mortgage insurance for a period of time equal to the term of the HUD insured mortgage.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* August 21, 1996.

*Reasons Waived:* The application of § 92.258 of the HOME regulations to the Agency's program would create an undue hardship for the City of Sacramento and its potential homeowners, and adversely affect the purposes of the Act.

12. Regulation: 24 CFR 92.258

*Project/Activity:* The City of Indianapolis, Indiana, requested a waiver of 24 CFR 92.258 of the HOME regulations, to waive the 30-year affordability period for low-income homebuyers receiving HOME assistance.

*Nature of Requirement:* The regulations, at 24 CFR 92.258, provide a limitation on the use of HOME funds with FHA mortgage insurance for a period of time equal to the term of the HUD-insured mortgage.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* September 30, 1996.

*Reasons Waived:* The application of § 92.258 of the HOME regulations to the City's program would create an undue hardship for the City of Indianapolis and its potential homeowners, and adversely affect the purposes of the Act.

13. Regulation: 24 CFR 291.400(a)

*Project/Activity:* The Anoka County Community Action Program requested a

waiver of the 24-month residency for a tenant in a single family property leased under the single family property disposition homeless program.

*Nature of Requirement:* The regulations, at 24 CFR 291.400(a), prohibit a non-profit organization or a community participating in the Single Family Property Disposition Leasing Program from extending a lease to the same tenant for a period beyond 24 months.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* September 16, 1996.

*Reasons Waived:* The waiver will allow a formerly homeless family more time to find permanent housing.

14. Regulation: 24 CFR 570.207

*Project/Activity:* Caryville, Florida, requested a waiver of the CDBG regulation to allow the town to use CDBG to reconstruct the damaged town hall on a new site outside of the 100 year flood plain.

*Nature of Requirement:* The regulations, at 24 CFR 570.207 of the CDBG regulations, prohibit the use of CDBG funds in buildings used for the general conduct of government.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* September 16, 1996.

*Reasons Waived:* Sections 208 and 234 of the Multifamily Property Disposition Reform Act of 1994 authorize HUD to suspend certain statutory and regulatory provisions that would otherwise apply to the use of CDBG and HOME funds, to address the damage in an area that the President has declared a disaster under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

15. Regulation: 24 CFR 570.208(a)(3)

*Project/Activity:* The City of Dallas, Texas requested a waiver of the CDBG regulations at 24 CFR 570.208(a)(3), to permit it to use CDBG funds for American Beauty Flour Mill which is an intown housing program. Thirty-three percent of the units will be set aside for low-and moderate-income persons.

*Nature of Requirement:* The regulations at 24 CFR 570.208(a)(3) require, as a general rule, that CDBG-assisted housing structures principally benefit low-and moderate-income households.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* September 16, 1996.

*Reasons Waived:* The application of the regulations would create undue

hardship and adversely affect the purposes of the Act because it would impede the provision of affordable housing in the central business district. Denial of the request would further affect the City's ability to comply with the court ordered consent decree which directs the City to provide a wider range of low-income housing opportunities throughout the City.

16. Regulation: 24 CFR 570.483(b)(3)

*Project/Activity:* The State of Connecticut, on behalf of the Town of Thompson, requested a waiver of the national objective regulations of the State Community Development Block Grant Program.

*Nature of Requirement:* 24 CFR 570.483(b)(3) of the State CDBG regulations lists the methodology for determining low-and moderate-income benefit for housing activities funded with CDBG funds.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* August 22, 1996.

*Reasons Waived:* The State was granted the waiver to permit the Town to use CDBG funds for acquisition of a mobile home site, which will be occupied by low-and moderate-income residents. The Assistant Secretary determined that failure to grant the requested waiver would adversely affect the purposes of the Act.

17. Regulation: 24 CFR 570.483(b)(3)

*Project/Activity:* The State of Rhode Island requested a waiver of the State CDBG regulations at 24 CFR 570.483(b)(3).

*Nature of Requirement:* The State requested a waiver of the regulations that set the standards for meeting national objectives.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* September 16, 1996.

*Reasons Waived:* The State was granted the waiver to permit the Four Seasons Mobile Home Cooperative to use CDBG funds for acquisition of a mobile home site, which will be occupied by low-and moderate-income residents.

18. Regulation: 24 CFR 572.115(a)(1)

*Project/Activity:* Acorn Housing Corporation of Little Rock, Arkansas, requested a waiver to extend the time permitted for the transfer of HOPE 3 properties to eligible families.

*Nature of Requirement:* The regulations, at 24 CFR 572.115(a)(1), require that units in eligible properties must be transferred to eligible families

within two years of the effective date of the HOPE 3 implementation grant. The HUD field office may approve a request for an extension of a period not to exceed one year of that deadline.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* July 15, 1996.

*Reasons Waived:* Based on progress made in transferring the subject properties, the Assistant Secretary found good cause to extend the property transfer deadline for one year.

19. Regulation: 24 CFR 572.115(a)(1)

*Project/Activity:* The City of Austin, Texas, requested a waiver to extend the time permitted for the transfer of HOPE 3 properties to eligible families.

*Nature of Requirement:* The regulations, at 24 CFR 572.115(a)(1), require that units in eligible properties must be transferred to eligible families within two years of the effective date of the HOPE 3 implementation grant. The HUD field office may approve a request for an extension of a period not to exceed one year of that deadline.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* July 15, 1996.

*Reasons Waived:* Based on progress made in transferring the subject properties, the Assistant Secretary found good cause to extend the property transfer deadline for one year.

20. Regulation: 24 CFR 572.115(a)(1)

*Project/Activity:* Rural Housing Improvement, Inc. of Winchendon, Massachusetts, requested a waiver to extend the time permitted for the transfer of HOPE 3 properties to eligible families.

*Nature of Requirement:* The regulations, at 24 CFR 572.115(a)(1), require that units in eligible properties must be transferred to eligible families within two years of the effective date of the HOPE 3 implementation grant. The HUD field office may approve a request for an extension of a period not to exceed one year of that deadline.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* September 16, 1996.

*Reasons Waived:* Based on progress made in transferring the subject properties, the Assistant Secretary found good cause to extend the property transfer deadline for one year.

21. Regulation: 24 CFR 572.115(a)(1)

*Project/Activity:* The Housing Authority of High Point, North Carolina, requested a waiver to extend the time

permitted for the transfer of HOPE 3 properties to eligible families.

*Nature of Requirement:* The regulations at 24 CFR 572.115(a)(1), require that units in eligible properties must be transferred to eligible families within two years of the effective date of the HOPE 3 implementation grant. The HUD field office may approve a request for an extension of a period not to exceed one year of that deadline.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* July 22, 1996.

*Reasons Waived:* Based on progress made in transferring the subject properties, the Assistant Secretary found good cause to extend the property deadline transfer for one year.

22. Regulation: 24 CFR 572.115(a)(1)

*Project/Activity:* The City of Tucson, Arizona, requested a waiver to extend the time permitted for the transfer of HOPE 3 properties to eligible families.

*Nature of Requirement:* The regulations, at 24 CFR 572.115(a)(1), require that units in eligible properties must be transferred to eligible families within two years of the effective date of the HOPE 3 implementation grant. The HUD field office may approve a request for an extension of a period not to exceed one year of that deadline.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* July 22, 1996.

*Reasons Waived:* Based on progress made in transferring the subject properties, the Assistant Secretary found good cause to extend the property deadline transfer for one year.

23. Regulation: 24 CFR 572.115(a)(1)

*Project/Activity:* Crowley Ridge Development Council of Arkansas requested a waiver to extend the time permitted for the transfer of HOPE 3 properties to eligible families.

*Nature of Requirement:* The regulations, at 24 CFR 572.115(a)(1), require that units in eligible properties must be transferred to eligible families within two years of the effective date of the HOPE 3 implementation grant. The HUD field office may approve a request for an extension of a period not to exceed one year of that deadline.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* September 16, 1996.

*Reasons Waived:* Based on progress made in transferring the subject properties, the Assistant Secretary found good cause to extend the property deadline transfer for one year.

24. Regulation: 24 CFR 572.115(a)(1)

*Project/Activity:* The City of Milwaukee, Wisconsin, requested a waiver to extend the time permitted for the transfer of HOPE 3 properties to eligible families.

*Nature of Requirement:* The regulations, at 24 CFR 572.115(a)(1), require that units in eligible properties must be transferred to eligible families within two years of the effective date of the HOPE 3 implementation grant. The HUD field office may approve a request for an extension of a period not to exceed one year of that deadline.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* September 20, 1996.

*Reasons Waived:* Based on progress made in transferring the subject properties, the Assistant Secretary found good cause to extend the property deadline transfer for one year.

25. Regulation: 24 CFR 576.21

*Project/Activity:* The Government of Puerto Rico requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

*Nature of Requirement:* The Government requested a waiver of the ESG expenditure limitation on essential services.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* July 22, 1996.

*Reasons Waived:* Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act, the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The Government provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

26. Regulation: 24 CFR 576.21

*Project/Activity:* Hennepin County, Minnesota, requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

*Nature of Requirement:* The County requested a waiver of the ESG expenditure limitation on essential services.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* July 22, 1996.

*Reasons Waived:* Under the Stewart B. McKinney Homeless Assistance Act,

amended by the National Affordable Housing Act, the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The County provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

27. Regulation: 24 CFR 576.21

*Project/Activity:* Honolulu County, Hawaii, requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

*Nature of Requirement:* The County requested a waiver of the ESG expenditure limitation on essential services.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* July 22, 1996.

*Reasons Waived:* Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act, the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The County provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

28. Regulation: 24 CFR 576.21

*Project/Activity:* Morris County, New Jersey, requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

*Nature of Requirement:* The County requested a waiver of the ESG expenditure limitation on essential services.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* July 22, 1996.

*Reasons Waived:* Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act, the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The County provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

29. Regulation: 24 CFR 576.21

*Project/Activity:* The State of Massachusetts requested a waiver of the Emergency Shelter Grants Regulations at 24 CFR 576.21.

*Nature of Requirement:* The State requested a waiver of the ESG expenditure limitation on essential services.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* July 22, 1996.

*Reasons Waived:* Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act, the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The State provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

30. Regulation: 24 CFR 576.21

*Project/Activity:* The City of Onondaga, New York, requested a waiver of the Emergency Shelter Grants Regulations at 24 CFR 576.21.

*Nature of Requirement:* The City requested a waiver of the ESG expenditure limitation on essential services.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* August 22, 1996.

*Reasons Waived:* Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act, the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

31. Regulation: 24 CFR 576.21

*Project/Activity:* The Municipality of Caguas, Puerto Rico, requested a waiver of the Emergency Shelter Grants Regulations at 24 CFR 576.21.

*Nature of Requirement:* The City requested a waiver of the ESG expenditure limitation on essential services.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* August 22, 1996.

*Reasons Waived:* Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act, the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

32. Regulation: 24 CFR 576.21

*Project/Activity:* The State of New York requested a waiver of the Emergency Shelter Grants Regulations at 24 CFR 576.21.

*Nature of Requirement:* The State requested a waiver of the ESG expenditure limitation on essential services.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* September 20, 1996.

*Reasons Waived:* Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act, the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The State provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

33. Regulation: 24 CFR 576.55(a)(2)(ii)

*Project/Activity:* Morris County, New Jersey requested a waiver of the Emergency Shelter Grants Regulations at 24 CFR 576.55(a)(2)(ii).

*Nature of Requirement:* The Stewart B. McKinney Homeless Assistance Act requires that each local recipient spend all of its grant amount within 24 months of the date on which the County made the grant amounts available to the County recipient.

*Granted By:* Andrew Cuomo, Assistant Secretary for Community Planning and Development.

*Date Granted:* July 22, 1996.

*Reasons Waived:* The County received a waiver of the 24 month ESG expenditure deadline because it needed to expand the shelter and provide the necessary facilities to accommodate homeless families and handicapped individuals. Therefore, the homeless population would suffer undue hardship without the renovation and

expansion monies from the ESG needed for the expansion and renovation of this facility.

For Items 34 and 35, Waivers Granted for 24 CFR Part 950, Contact: Mr. Dominic Nessi, Deputy Assistant Secretary for Native American Programs, National Office of Native American Programs, 1999 Broadway, Suite 3390, Box 90, Denver, CO 80202, (303) 675-1600, Hearing- and speech-impaired persons may call HUD's TTY toll-free number at 1-800-877-8391.

34. Regulation: 24 CFR 950.455(b)(1)

*Project/Activity:* Conversion of Indian housing units at Fort McDowell Mohave-Apache Housing Authority Indian Housing.

*Nature of Requirement:* Dwelling units must be in "decent, safe and sanitary condition" prior to their conversion from the Rental Program to the Mutual Help Homeownership Opportunity Program.

*Granted By:* Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

*Date Granted:* July 29, 1996.

*Reasons Waived:* This waiver was granted to permit the conversion and subsequent conveyance to homebuyers of the subject dwelling units. The homebuyers have sufficient financial resources to bring the conversion units into decent, safe and sanitary condition without HUD's assistance.

35. Regulation: 24 CFR 950.455(b)(2)

*Project/Activity:* Conversion of Indian housing units at Fort McDowell Mohave-Apache Housing Authority Indian Housing.

*Nature of Requirement:* This regulation requires tenants or other applicants to qualify as homebuyers in order to be eligible for conversion.

*Granted By:* Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

*Date Granted:* July 29, 1996.

*Reasons Waived:* Permits current tenants to qualify for the program despite outstanding tenant accounts receivable because these potential homebuyers now possess the financial capability to maintain the homes that will be conveyed to them.

For Items 36 Through 41, Waivers Granted for 24 CFR Part 990, Contact: Mary Ann Russ, Deputy Assistant Secretary, Office of Public and Assisted Housing Operations, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410, (202) 708-1842 (THIS IS NOT A TOLL-FREE NUMBER). Hearing- and speech-impaired persons

may call HUD's TTY toll-free number at 1-800-877-8391.

36. Regulation: 24 CFR 990.108(b)(2)(iv)

*Project/Activity:* Tennessee Valley Regional Housing Authority. In determining the operating subsidy eligibility, a request was made for funding more than one site in a project approved for non-dwelling use to promote an anti-drug program.

*Nature of Requirement:* The operating subsidy calculation limits funding for units removed from the dwelling rental inventory for economic self-sufficiency or anti-drug programs to one site per project.

*Granted By:* Kevin Emmanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

*Date Granted:* August 14, 1996.

*Reason Waived:* To take into account the size of developments in a housing authority when determining the number of sites funded in a project. Because this was a large project, three additional sites were approved to be used for crafts, educational videos and films, special speakers and programs, adult education classes, and the youth sports program.

37. Regulation: 24 CFR 990.108(b)(2)(iv)

*Project/Activity:* Seattle, WA, Housing Authority. In determining the operating subsidy eligibility, a request was made for funding more than one site in a project approved for non-dwelling use to promote an anti-drug program.

*Nature of Requirement:* The operating subsidy calculation limits funding for units removed from the dwelling rental inventory for economic self-sufficiency or anti-drug programs to one site per project.

*Granted By:* Kevin Emmanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

*Date Granted:* September 23, 1996.

*Reasons Waived:* To take into account the size of developments in a housing authority when determining the number of sites funded in a project. Because this was a large project, four additional sites were approved to be used for Economic Self-Sufficiency and Anti-Drug programs.

38. Regulation: 24 CFR 990.108(e)

*Project/Activity:* Housing Authority of New Orleans, LA.

*Nature of Requirement:* When unit months are lost through combining small units into larger units, they must be removed from the calculation of unit months available in the PFS subsidy calculation.

*Granted By:* Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

*Date Granted:* August 12, 1996.

*Reasons Waived:* Because of problems the HA has experienced filling vacant efficiency units for the elderly, the HA converted them to one-bedroom units which could rent. In order to support the HA's efforts to reduce vacancies, approval was granted for the HA to include the Allowable Expense Level for the number of unit months which would be lost through this conversion in future PFS calculations.

39. Regulation: 24 CFR 990.109

*Project/Activity:* Housing Authority of the City of Oakland, CA. A request was made to permit the Authority to benefit from energy performance contracting for developments which have tenant-paid utilities. The HA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for both PHA-paid and tenant-paid utilities.

*Nature of Requirement:* Under 24 CFR part 990, the Performance Funding System (PFS) energy conservation incentive that relates to energy performance contracting currently applies only to PHA-paid utilities. The OHA has both PHA-paid and tenant-paid utilities.

*Granted By:* Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

*Date Granted:* September 25, 1996.

*Reasons Waived:* The waiver was granted because the OHA presented a sound and reasonable methodology for PHAs with tenant-paid utilities to participate in energy cost reduction incentives that will benefit both PHAs and HUD. The waiver permits the OHA to exclude from its PFS calculation of rental income increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

40. Regulation: 24 CFR 990.109(b)(3)(iv)

*Project/Activity:* Kinsley, Kansas Housing Authority. A request was made to use the HA's actual occupancy rate and recalculate its operating subsidy eligibility.

*Nature of Requirement:* The Regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan to use a projected occupancy percentage of 97%.

*Granted By:* Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

*Date Granted:* August 2, 1996.

*Reasons Waived:* The Kinsley Housing Authority is a small HA which has pursued many vacancy reduction strategies during the past several years. The HA was allowed to use its actual occupancy percentage to prevent undue hardships while it continues its efforts to reduce vacancies.

41. Regulation: 24 CFR 990.109(b)(3)(iv)

*Project/Activity:* Breckenridge, MN, Housing and Redevelopment Authority. A request was made to use the HA's actual occupancy rate of 94% and

recalculate its operating subsidy eligibility.

*Nature of Requirement:* The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan to use a projected occupancy percentage of 97%.

*Granted By:* Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

*Date Granted:* August 28, 1996.

*Reasons Waived:* Breckenridge is a small HA which has pursued many vacancy reduction strategies for the past several years. The HA was allowed to use its actual occupancy percentage to

prevent undue hardships while it continues its efforts to reduce vacancies. The HA was also notified that for its subsequent budget years beginning with 4/1/97, it will be subject to the provisions of the new Vacancy Rule, dated 4/1/96. Therefore, if the HA continues to experience vacancy problems attributable to circumstances or actions beyond its control, it may have to consider its vacant units as being long-term vacancies and eligible only for reduced subsidy.

[FR Doc. 97-3158 Filed 2-7-97; 8:45 am]

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# Federal Register

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Monday  
February 10, 1997

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## Part IV

# Department of Labor

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Office of Labor-Management Standards

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29 CFR Part 215 et al.

Technical Amendments of Rules Relating to Labor-Management Programs, Labor-Management Standards, and Standards of Conduct for Federal Sector Labor Organizations; Final Rule

**DEPARTMENT OF LABOR****Office of Labor-Management Standards,**

**29 CFR Parts 215, 220, 401, 402, 403, 404, 405, 406, 408, 409, 417, 451, 452, 453, 457, 458, 459**

**RIN 1215-AB16**

**Technical Amendments of Rules Relating to Labor-Management Programs, Labor-Management Standards, and Standards of Conduct for Federal Sector Labor Organizations**

**AGENCY:** Office of Labor-Management Standards, Employment Standards Administration, Labor.

**ACTION:** Final Rule.

**SUMMARY:** This document makes a number of technical amendments to Chapters II and IV of the Department of Labor's regulations. These amendments are necessary because of a reorganization within the Department and the enactment of the Congressional Accountability Act of 1995. This document also makes several other technical amendments and corrections.

**EFFECTIVE DATE:** February 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, Room N-5605, Washington, D.C. 20210, (202) 219-7373 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

Secretary's Order No. 5-96 (62 FR 107, January 2, 1997) delegated authority and assigned responsibilities to the Assistant Secretary for Employment Standards, head of the Employment Standards Administration (ESA), which had been previously delegated and assigned to the Assistant Secretary for the American Workplace, head of the Office of the American Workplace (OAW). OAW and the position of Assistant Secretary for the American Workplace have been abolished. The Office of Labor-Management Standards (OLMS), which had been a unit within OAW, is now a unit within ESA. The Office of Labor-Management Programs, which had also been a unit within OAW, has been abolished and the statutory programs for which it had authority and responsibilities have been delegated and assigned to OLMS.

In addition, section 220(a)(1) of the Congressional Accountability Act (CAA), 2 U.S.C. 1351(a), and part 2428 of the implementing regulations, 142

Cong. R. S12062 (daily ed., October 1, 1996), 142 Cong. R. H10369 (daily ed., September 12, 1996), grant the Department jurisdiction over labor organizations covered by the CAA in implementing the standards of conduct provisions of the Civil Service Reform Act of 1980, 5 U.S.C. 7120. Secretary's Order 5-96 (62 FR 107, January 2, 1997) also assigned this jurisdiction to the Assistant Secretary for Employment Standards.

Consequently, the authority and responsibilities of the Assistant Secretary for Employment Standards now include the functions to be performed by the Secretary of Labor under (1) the employee protection provisions of the Federal Transit Law, 49 U.S.C. 5333(b) and related provisions, (2) section 43(d) of the Airline Deregulation Act of 1978, repealed and reenacted at 49 U.S.C. 42101-42103, (3) section 405(a), (b), (c), and (e) of the Rail Passenger Service Act of 1970, 45 U.S.C. 565(a), (b), (c), and (e), (4) the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. 401 *et seq.*; (5) section 1209 of the Postal Reorganization Act of 1970, 39 U.S.C. 1209; (6) the provisions relating to standards of conduct for federal sector labor organizations in the Civil Service Reform Act of 1978, 5 U.S.C. 7120, and the Foreign Service Act of 1980, 22 U.S.C. 4117, and (7) section 220(a)(1) of the Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1), Public Law No. 104-1, 109 Stat. 3.

As a result of this reorganization and the enactment of the CAA, a number of technical amendments to the regulations are necessary. First, the heading for chapter II of title 29 of the Code of Federal Regulations (CFR) is changed from "Office of Labor-Management Programs, Department of Labor" to "Office of Labor-Management Standards, Department of Labor." Second, the authority citation for each part in chapters II and IV of title 29 of the Code of Federal Regulations is amended to replace "Secretary's Order No. 2-93 (58 FR 42578)" with "Secretary's Order No. 5-96 (62 FR 107, January 2, 1997)." Third, the definition of "Assistant Secretary" is changed from "Assistant Secretary for the American Workplace" to "Assistant Secretary for Employment Standards." Fourth, the definition of "Office" is revised to indicate that the Office of Labor-Management Standards is part of the Employment Standards Administration. Finally, a reference to the CAA is added to the authority citations for parts 457-459, which implement the CSRA provisions on standards of conduct for

federal sector labor organizations, and references and pertinent definitions relating to the CAA are added in appropriate sections of parts 457-459 and in section 451.3(a)(4).

Several additional technical amendments are made to the regulations because of a reorganization within OLMS. First, the position of Director, Office of Elections, Trusteeships, and International Union Audits has been abolished. The duties previously assigned to the Director in the regulations are now assigned to the Chief of the Division of Enforcement (DOE) within OLMS. Second, the duties previously assigned to Regional Directors in the regulations are now assigned to District Directors. Accordingly, the definitions of "Director" and "Regional Director" have been replaced with definitions of "Chief, DOE" and "District Director," respectively. Similarly, references to the "Director" and "Regional Directors" have been replaced with references to "Chief, DOE" and "District Directors," respectively.

Two other technical amendments are made in part 220 to reflect an earlier reorganization within the Department by removing references to the Bureau of Labor-Management Relations and Cooperative Programs, an entity which had previously been abolished. Another two technical amendments are made to indicate the citation of final rules which established the current reporting forms for labor organization annual financial reports.

Finally, two technical corrections are being made in order for the regulations to conform with prior regulatory amendments. These corrections should have been made at the time the earlier rules were proposed and issued in final, but were inadvertently omitted from those rules.

First, the regulations are amended at sections 402.5, 403.4(b)(5), and 403.5 to permit a labor organization, which is eligible to file the annual financial report required by the LMRDA on simplified reporting Form LM-4, to also file its terminal report on Form LM-4. Form LM-4, which may be used by very small labor organizations with receipts less than \$10,000, is a new form that was first promulgated in a final rule published in the Federal Register on October 30, 1992, 57 FR 49290, and was revised in a final rule published in the Federal Register on December 21, 1993, 58 FR 67594. The other annual financial reporting forms are Form LM-3, which may be used by labor organizations with up to \$200,000 in annual receipts, and Form LM-2, which may be used by any labor organization.

The regulations currently allow a labor organization which is eligible to file its annual financial report on simplified Form LM-3 to also file its terminal report on that form. Thus, prior to the promulgation of Form LM-4, the regulations permitted a labor organization which was eligible to file a simplified annual financial report to also file its terminal report on that simplified reporting form. However, the final rules which promulgated and revised Form LM-4 inadvertently neglected to amend other provisions in the regulations to allow a labor organization eligible to use Form LM-4 for its annual financial report to also use Form LM-4 for its terminal report. The technical correction in this rule allowing very small labor organizations to file a terminal financial report on Form LM-4 will correct that inadvertent omission.

Second, the regulations implementing the standards of conduct for federal sector unions are amended at section 458.30 by deleting the last sentence. Section 458.30, which generally follows LMRDA section 401(h), 29 U.S.C. 481(h), currently provides that when a local union officer is charged with serious misconduct and the union does not have an adequate procedure for removing that officer, the union must follow an adequate procedure which is defined in the regulations implementing LMRDA section 401(h). The last sentence of the current section 458.30 further provides that a local union which does have an adequate officer removal procedure in its constitution and bylaws must follow that procedure.

The requirement set forth in this last sentence of section 458.30 follows the Department's former interpretation of the LMRDA which had been set forth in the regulations implementing LMRDA section 401(h) at subpart B of 29 CFR part 417. However, after an appellate court rejected this interpretation of the LMRDA, the Department amended subpart B of 29 CFR part 417 to eliminate the provision requiring a union to follow the adequate officer removal procedure in its constitution and bylaws. That final rule was published in the Federal Register on December 21, 1994, 59 FR 65714.

Under the standards of conduct provisions of the Civil Service Reform Act and the Foreign Service Act at 5 U.S.C. 7120(d) and 22 U.S.C. 4117(d), respectively, and the implementing regulations at 29 CFR 458.1, the standards of conduct regulations are to conform to the requirements of the LMRDA and court decisions issued thereunder. However, the final rule of December 21, 1994 inadvertently

neglected to amend the standards of conduct regulations to conform to the amendment which was made to the LMRDA regulations pursuant to a court decision. The technical correction made in this rule will correct that inadvertent omission by deleting the last sentence of section 458.30.

This rule also corrects a typographical error in section 458.30 by changing the cross-reference to the LMRDA regulations from the incorrect “§ 417.2(e)” to the correct “§ 417.2(b).”

#### Publication in Final

The undersigned has determined that this rulemaking need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553. The portion of this rulemaking that reflects agency organization, procedure, and practice is exempt under section 553(b)(A) of the APA. For the portion of this rulemaking that makes amendments required by statute and technical amendments and corrections, there is good cause for finding that notice and public procedure is unnecessary and contrary to the public interest, pursuant to section 553(b)(B) of the APA.

#### Effective Date

The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication since this rule is technical and nonsubstantive, merely reflects agency organization, practice, and procedure, and makes amendments required by statute and technical amendments and corrections. Therefore, these amendments shall be effective upon publication. See 5 U.S.C. 553(d).

#### Administrative Requirements

##### A. Executive Order 12866

The Department of Labor has determined that this rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not (1) have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues arising out of legal

mandates, the President's priorities, or the principles set forth in Executive Order 12866.

##### B. Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, pertaining to regulatory flexibility analysis do not apply. See 5 U.S.C. 601(2). Therefore, a regulatory flexibility analysis is not required.

##### C. Paperwork Reduction Act

This rule contains no additional information collection requirements. The information collection requirements in the regulations to which this rule makes technical amendments have been approved by the Office of Management and Budget (OMB control number 1215-0188).

##### D. Small Business Regulatory Enforcement Fairness Act

The Department has determined that this final rule is not a “major rule” requiring prior approval by the Congress and the President pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804), because it is not likely to result in (1) an annual effect on the economy of \$100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Further, since the Department has determined, for good cause, that publication of a proposed rule and solicitation of comments on this rule is not necessary, under 5 U.S.C. 808(2), this final rule is effective immediately upon publication as stated previously in this notice.

##### E. Unfunded Mandates Reform Act

For purposes of Section 2 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, as well as Executive Order 12875 (58 FR 58093, October 28, 1993), this rule does not include any federal mandate that may result in increased expenditures by State, local and tribal governments, or increased expenditures by the private sector of more than \$100 million.

List of Subjects

29 CFR Part 215

Grant administration; Grants—transportation; Labor-management relations; Labor unions; Mass transportation.

29 CFR Part 220

Labor, Airline employees, Air carriers.

29 CFR Parts 401, 417, 451, and 452

Labor unions.

29 CFR Parts 402, 403, 404, and 408

Labor unions, Reporting and recordkeeping requirements.

29 CFR 405 and 406

Labor-management relations, Reporting and recordkeeping requirements.

29 CFR 409

Insurance companies, Reporting and recordkeeping requirements.

29 CFR Part 453

Labor unions, Surety bonds.

29 CFR Parts 457, 458, and 459

Labor unions, Reporting and recordkeeping requirements, Administrative practice and procedure.

Adoption of Amendments of Regulations

In consideration of the foregoing, the Office of Labor-Management Standards, Employment Standards Administration, Department of Labor hereby amends Chapters II and IV of title 29 of the Code of Federal Regulations as set forth below.

**CHAPTER II—OFFICE OF LABOR-MANAGEMENT STANDARDS, DEPARTMENT OF LABOR**

1. The heading of Chapter II is revised to read "Office of Labor-Management Standards, Department of Labor."

**PART 215—GUIDELINES, SECTION 5333(b), FEDERAL TRANSIT LAW**

2. The authority citation for part 215 is revised to read as follows:

Authority: Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

**PART 220—AIRLINE EMPLOYEE PROTECTION PROGRAM**

3. The authority citation for part 220 is revised to read as follows:

Authority: Section 43(f) of the Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1750-1753 (49 U.S.C. 1552); Secretary's Order No. 1-79, 44 FR 13093; Secretary's Order No. 5-96 62 FR 107, January 2, 1997.

**§ 220.04 [Amended]**

4. Section 220.04 is amended by removing the words "Deputy Under Secretary for Labor-Management Relations and Cooperative Programs, Bureau of Labor-Management Relations and Cooperative Programs (BLMRCP)" from the introductory text and adding in their place the words "Assistant Secretary for Employment Standards."

**§ 220.26 [Amended]**

5. Section 220.26(c) is amended by removing the words "Bureau of Labor-Management Relations and Cooperative Programs, room N-5416" and adding in their place the words "Division of Statutory Programs, Office of Labor-Management Standards."

**CHAPTER IV—OFFICE OF LABOR-MANAGEMENT STANDARDS, DEPARTMENT OF LABOR**

**PART 401—MEANING OF TERMS USED IN THIS SUBCHAPTER**

6-7. The authority citation for part 401 is revised to read as follows:

Authority: Secs. 3, 208, 301, 401, 402, 73 Stat. 520, 529, 530, 532, 534 (29 U.S.C. 402, 438, 461, 481, 482); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997; § 401.4 also issued under sec. 320 of Title III of the Bankruptcy Reform Act of 1978, Pub. L. 95-598, 92 Stat. 2678.

8. Section 401.18 is revised to read as follows:

**§ 401.18 Office.**

*Office* means the Office of Labor-Management Standards, Employment Standards Administration, United States Department of Labor.

9. Section 401.19 is revised to read as follows:

**§ 401.19 Assistant Secretary.**

*Assistant Secretary* means the Assistant Secretary of Labor for Employment Standards, head of the Employment Standards Administration.

**PART 402—LABOR ORGANIZATION INFORMATION REPORTS**

10. The authority citation for part 402 is revised to read as follows:

Authority: Secs. 201, 207, 208, 73 Stat. 524, 529 (29 U.S.C. 431, 437, 438); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

11. Section 402.5 is amended by adding a new paragraph (c) to read as follows:

**§ 402.5 Terminal reports.**

\* \* \* \* \*

(c) Labor organizations which qualify to use Form LM-4, the Labor Organization Annual Report, pursuant

to §§ 403.4 and 403.5 of this chapter may file the terminal report called for in this section on Form LM-4. The report must be signed by the president and treasurer, or corresponding principal officers, of the labor organization.

**PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS**

12. The authority citation for part 403 is revised to read as follows:

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

13. Section 403.3 is amended by adding a note at the end of the text to read as follows:

**§ 403.3 Form of annual financial report—detailed report.**

\* \* \* \* \*

Note: Form LM-2 was revised at 58 FR 67594, December 21, 1993.

**§ 403.4 [Amended]**

14. Section 403.4(b)(5) is amended by adding the words "or LM-4, as may be appropriate," after the words "on Form LM-3".

15. Section 403.4 is further amended by adding a note at the end of the text to read as follows:

**§ 403.4 Simplified annual reports for smaller labor organizations.**

\* \* \* \* \*

Note: Forms LM-3 and LM-4 were revised at 58 FR 67594, December 21, 1993.

**§ 403.5 [Amended]**

16. Section 403.5(a) is amended by removing the words "on Form LM-2 or Form LM-3" and adding the words "on Form LM-2, LM-3, or LM-4," in their place.

**PART 404—LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORTS**

17. The authority citation for part 404 is revised to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

**PART 405—EMPLOYER REPORTS**

18. The authority citation for part 405 is revised to read as follows:

Authority: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

**PART 406—REPORTING BY LABOR RELATIONS CONSULTANTS AND OTHER PERSONS, CERTAIN AGREEMENTS WITH EMPLOYERS**

19. The authority citation for part 406 is revised to read as follows:

Authority: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

**PART 408—LABOR ORGANIZATION TRUSTEESHIP REPORTS**

20. The authority citation for part 408 is revised to read as follows:

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

**PART 409—REPORTS BY SURETY COMPANIES**

21. The authority citation for part 409 is revised to read as follows:

Authority: Secs. 207, 208, 211; 79 Stat. 888; 88 Stat. 852 (29 U.S.C. 437, 438, 441); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

**PART 417—PROCEDURE FOR REMOVAL OF LOCAL LABOR ORGANIZATION OFFICERS**

22. The authority citation for part 417 is revised to read as follows:

Authority: Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

23. In § 417.2, paragraph (a) is revised to read as follows:

**§ 417.2 Definitions.**

(a) *Chief, DOE* means the Chief of the Division of Enforcement within the Office of Labor-Management Standards.

\* \* \* \* \*

**§§ 417.4, 417.16 [Amended]**

24. Part 417 is amended by removing the word "Director" and adding, in its place, the term "Chief, DOE" in the following places:

- (a) Section 417.4(a);
- (b) Section 417.4(b) in three places; and
- (c) Section 417.16(a) in two places.

**PART 451—LABOR ORGANIZATIONS AS DEFINED IN THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959**

25. The authority citation for part 451 is revised to read as follows:

Authority: Secs. 3, 208, 401, 73 Stat. 520, 529, 532 (29 U.S.C. 402, 438, 481); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

**§ 451.3 [Amended]**

26. Section 451.3(a)(4) is amended by adding a new sentence in the parenthetical statement, after the sentence which ends with the words "5 U.S.C. 7120 and 22 U.S.C. 4117, respectively," to read as follows: "In addition, labor organizations subject to the Congressional Accountability Act of 1995 are subject to the standards of conduct provisions of the Civil Service Reform Act pursuant to 2 U.S.C. 1351(a)(1)."

**PART 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959**

27. The authority citation for part 452 is revised to read as follows:

Authority: Secs. 401, 402, 73 Stat. 532, 534 (29 U.S.C. 481, 482); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

**PART 453—GENERAL STATEMENT CONCERNING THE BONDING REQUIREMENTS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959**

28. The authority citation for part 453 is revised to read as follows:

Authority: Sec. 502, 73 Stat. 536; 79 Stat. 888 (29 U.S.C. 502); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

**PART 457—GENERAL**

29. The authority citation for part 457 is revised to read as follows:

Authority: 5 U.S.C. 7120, 7134; 22 U.S.C. 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

30. A new footnote is added at the end of § 457.1 to read as follows:

**§ 457.1 Purpose and scope.**

\* \* \* \* \*

<sup>1</sup> Pursuant to section 220(a)(1) of the Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1), labor organizations covered by that statute are subject to the standards of conduct provisions of the Civil Service Reform Act, 5 U.S.C. 7120, and are therefore subject to the regulations in this subchapter. Regulations implementing the Congressional Accountability Act were issued at 142 Cong. R. S12062 (daily ed., October 1, 1996) and 142 Cong. R. H10369 (Daily ed., September 12, 1996).

31. Section 457.10 is revised to read as follows:

**§ 457.10 CSRA; FSA; CAA; LMRDA.**

*CSRA* means the Civil Service Reform Act of 1978; *FSA* means the Foreign Service Act of 1980; *CAA* means the Congressional Accountability Act of 1995; *LMRDA* means the Labor-

Management Reporting and Disclosure Act of 1959, as amended.

32. Section 457.11 is revised to read as follows:

**§ 457.11 Agency, employee, labor organization, dues, Department, activity, employing office.**

*Agency, employee, labor organization, and dues*, when used in connection with the CSRA, have the meanings set forth in 5 U.S.C. 7103. *Employee, labor organization, and dues*, when used in connection with the FSA, have the meanings set forth in 22 U.S.C. 4102; *Department*, when used in connection with the FSA, means the Department of State, except that with reference to the exercise of functions under the FSA with respect to another agency authorized to utilize the Foreign Service personnel system, such term means that other agency. *Covered employee, employee, employing office, and agency*, when used in connection with the CAA, have the meanings set forth in 2 U.S.C. 1301 and 1351(a)(2). *Activity* means any facility, organizational entity, or geographical subdivision or combination thereof of any agency or employing office.

33. Section 457.12 is revised to read as follows:

**§ 457.12 Authority; Board.**

*Authority* means the Federal Labor Relations Authority as described in the CSRA, 5 U.S.C. 7104 and 7105. *Board*, when used in connection with the FSA, means the Foreign Service Labor Relations Board as described in the FSA, 22 U.S.C. 4106(a). "Board," when used in connection with the CAA, means the Board of Directors of the Office of Compliance as described in 2 U.S.C. 1301 and 1381(b).

34. Section 457.13 and its footnote are revised to read as follows:

**§ 457.13 Assistant Secretary.**

*Assistant Secretary* means the Assistant Secretary of Labor for Employment Standards, head of the Employment Standards Administration.<sup>2</sup>

<sup>2</sup> Pursuant to Secretary of Labor's Order No. 5-96 (62 FR 107, January 2, 1997), the Assistant Secretary for Employment Standards has the responsibility and authority for implementing the standards of conduct provisions of the CSRA and the FSA.

35. Section 457.14 is revised to read as follows:

**§ 457.14 Standards of conduct for labor organizations.**

*Standards of conduct for labor organizations* shall have the meaning as set forth in the CSRA, 5 U.S.C. 7120, and the FSA, 22 U.S.C. 4117, and as

amplified in part 458 of this subchapter. The standards of conduct provisions of the CSRA and the regulations in this subchapter are applicable to labor organizations covered by the CAA pursuant to 2 U.S.C. 1351(a)(1).

36. Section 457.15 is revised to read as follows:

**§ 457.15 District Director.**

*District Director* means the Director of a district office within the Office of Labor-Management Standards.

37. Section 457.16 is revised to read as follows:

**§ 457.16 Chief, DOE.**

*Chief, DOE* means the Chief of the Division of Enforcement within the Office of Labor-Management Standards.

**PART 458—STANDARDS OF CONDUCT**

38. The authority citation for part 458 is revised to read as follows:

Authority: 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 5-96 62 FR 107, January 2, 1997.

39. Section 458.30 is revised to read as follows:

**§ 458.30 Removal of elected officers.**

When an elected officer of a local labor organization is charged with serious misconduct and the constitution and bylaws of such organization do not provide an adequate procedure meeting the standards of § 417.2(b) of this chapter for removal of such officer, the

labor organization shall follow a procedure which meets those standards.

**§§ 458.50, 458.51, 458.52, 458.56, 458.57, 458.59, 458.60, 458.61, 458.64, 458.66, 458.67, 458.79 [Amended]**

40. In 29 CFR part 458, remove the words "Regional Director" and add, in their place, the words "District Director" in the following places:

- (a) Section 458.50(b);
- (b) Section 458.51;
- (c) Section 458.52;
- (d) Section 458.56;
- (e) Section 458.57;
- (f) Section 458.58;
- (g) Section 458.59;
- (h) Section 458.60;
- (i) Section 458.61;
- (j) Section 458.64(a);
- (k) Section 458.66(b) in two places;
- (l) Section 458.66(c) in three places;
- (m) Section 458.67 introductory text; and
- (n) Section 458.79.

**§§ 458.50, 458.51, 458.52, 458.64, 458.65, 458.66, 458.67, 458.79 [Amended]**

41. In 29 CFR part 458, remove the word "Director" and add, in its place, the term "Chief, DOE" in the following places:

- (a) Section 458.50(a);
- (b) Section 458.51;
- (c) Section 458.52;
- (d) Section 458.64(b);
- (e) Section 458.64(c);
- (f) Section 458.65(a);
- (g) Section 458.65(c);
- (h) Section 458.66(a) in two places;
- (i) Section 458.66(c) in three places;

(j) Section 458.67 in two places; and  
(k) Section 458.79.

42. Section 458.92 is revised to read as follows:

**§ 458.92 Compliance with decisions and orders of the Assistant Secretary.**

When remedial action is ordered, the respondent shall report to the Assistant Secretary, within a specified period, that the required remedial action has been effected. When the Assistant Secretary finds that the required remedial action has not been effected, he shall refer the matter for appropriate action to the Federal Labor Relations Authority (in the case of labor organizations covered by the CSRA), the Foreign Service Labor Relations Board (in the case of labor organizations covered by the FSA), or the Board of Directors of the Office of Compliance (in the case of labor organizations covered by the Congressional Accountability Act).

**PART 459—MISCELLANEOUS**

43. The authority citation for part 459 is revised to read as follows:

Authority: 5 U.S.C. 7120, 7134; 22 U.S.C. 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

Signed in Washington, D.C. this 31st day of January, 1997.

Bernard E. Anderson,

*Assistant Secretary for Employment Standards.*

[FR Doc. 97-3096 Filed 2-7-97; 8:45 am]

BILLING CODE 4510-86-P

**Federal Register**

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Monday  
February 10, 1997

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**Part V**

**Department of  
Housing and Urban  
Development**

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**24 CFR Part 18**

**Indemnification of Department of Housing  
and Urban Development Employees; Final  
Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 18**

[Docket No. FR-4143-F-01]

RIN 2501-AC34

**Indemnification of Department of Housing and Urban Development Employees**

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

**SUMMARY:** This final rule adds a new part 18 to title 24 of the Code of Federal Regulations. The provisions of this rule parallel provisions adopted by other departments and agencies, including the Departments of Justice (28 CFR part 50), Treasury (31 CFR part 3), Interior (43 CFR part 22), Education (34 CFR part 60), and Health and Human Services (45 CFR part 36). The rule permits indemnification of HUD employees in appropriate circumstances, as determined by the Secretary.

EFFECTIVE DATE: March 12, 1997.

**FOR FURTHER INFORMATION CONTACT:** Sam E. Hutchinson, Associate General Counsel for Human Resources, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C., 20410, (202) 708-0888. (This is not a toll-free number.) Hearing-impaired or speech-impaired individuals may access the voice telephone listed in this rule by calling the Federal Information Relay Service during working hours at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** HUD does not at present have a published policy regarding indemnification of Department employees who are sued in their individual capacities as a result of conduct taken within the scope of their employment. Lawsuits against Federal employees in their individual capacities have occurred since the Supreme Court decision in *Bivins v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

The potential for adverse judgments against a Federal employee for actions taken within the scope of employment is detrimental to both the individual employee and the Federal government. The prospect of personal liability and the uncertainty as to what conduct may result in a lawsuit against the employee personally tend to intimidate all employees, to impede creativity, and to stifle initiative and decisive action. Employees' fears of personal liability affect government operations, decisionmaking, and policy determinations.

The Department believes that lawsuits against federal employees in their individual capacities seriously hinder the effective functioning of the Department. A published statement of HUD policy regarding indemnification of its employees will help alleviate this problem.

HUD policy permits, but does not require, the Department to indemnify a Department employee who suffers an adverse judgment, or other monetary award, provided that the conduct giving rise to the award was taken within the scope of employment and indemnification is in the interest of the United States, as determined by the Secretary or designee, in his or her discretion. The policy also permits the Department to settle a personal damage claim against a Department employee. Absent exceptional circumstances, the Department will not settle a personal damage claim before entry of an adverse judgment. A notification procedure which should be followed by an employee sued in his or her individual capacity is provided. Questions regarding representation of the employee will be determined by the Department of Justice. Any payment, either to indemnify or settle, is contingent upon the availability of appropriated funds of the Department.

These regulations apply to actions pending against Department employees as of the effective date of the regulations and to actions commenced after that date.

**Other Matters***Justification for Final Rule*

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that public procedure is impracticable, unnecessary, and contrary to the public interest. This rule makes clear the Department's policy that, at its discretion, the Department may indemnify a Department employee who suffers an adverse judgment, or other monetary award, provided that the conduct giving rise to the award was taken within the scope of employment,

and indemnification is in the interest of the United States, as determined by the Secretary or designee.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies set forth in this final rule do not have Federalism implications and, thus, are not subject to review under the Order. Nothing in the rule implies any preemption of State or local law, nor does any provision of the rule disturb the existing relationship between the Federal Government and State and local governments.

*Executive Order 12606, The Family*

The General Counsel, as the designated Official under Executive Order 12606, The Family, has determined that this final rule does not have significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. This rule applies to actions pending against Department employees only.

*Environmental Finding*

This notice is categorically excluded from the requirements of 24 CFR part 50, the HUD regulations which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). [See 24 CFR 50.19(b)(3).] This notice does not require environmental review because it does not alter physical conditions in a manner or to an extent that would require review under NEPA or the other laws and authorities cited at § 50.4.

*Regulatory Flexibility*

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary by his approval of publication of this final rule hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities. This rule applies to actions pending against Department employees only.

**List of Subjects in 24 CFR Part 18**

Civil proceedings, Claims, Congressional proceedings, Criminal proceedings, Federal employees, Indemnification, Judgments, Litigation, Subpoenas, Verdicts.

Accordingly, 24 CFR subtitle A is amended by adding a new part 18 to read as follows:

**PART 18—INDEMNIFICATION OF HUD EMPLOYEES**

Authority: 5 U.S.C. 301; 42 U.S.C. 3535(d).



**§ 18.1 Policy.**

(a) The Department of Housing and Urban Development may indemnify, in whole or in part, a Department employee (which for the purpose of this part includes a former Department employee) for any verdict, judgment or other monetary award which is rendered against any such employee, provided the Secretary or his or her designee determines that:

(1) The conduct giving rise to the verdict, judgment or award was taken within the scope of his or her employment with the Department; and

(2) Such indemnification is in the interest of the United States.

(b) The Department of Housing and Urban Development may settle or compromise a personal damage claim against a Department employee by the payment of available funds, at any time, provided the Secretary or his or her designee determines that:

(1) The alleged conduct giving rise to the personal damage claim was taken within the scope of employment; and

(2) That such settlement or compromise is in the interest of the United States.

(c) Absent exceptional circumstances, as determined by the Secretary or his or her designee, the Department will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment or monetary award.

(d) When an employee of the Department becomes aware that an action has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee should

immediately notify his or her supervisor that such an action is pending. The supervisor shall promptly notify the head of his or her operating component and the Associate General Counsel for Litigation and Fair Housing Enforcement, if the supervisor is located at headquarters, or Field Assistant General Counsel—who shall promptly notify the Associate General Counsel for Litigation and Fair Housing Enforcement—if the supervisor is located in the field. As used in this section, the term “principal operating component” means an office in the Department headed by an Assistant Secretary, the General Counsel, the Inspector General, or an equivalent departmental officer who reports directly to the Secretary. Questions regarding representation of the employee will be determined by the Department of Justice pursuant to 28 CFR 50.15 (Representation of Federal officials and employees by Department of Justice attorneys or by private counsel furnished by the Department in civil, criminal, and congressional proceedings in which Federal employees are sued, subpoenaed, or charged in their individual capacities).

(e) The employee may, thereafter, request indemnification to satisfy a verdict, judgment or monetary award entered against the employee or to compromise a claim pending against the employee. The employee shall submit a written request, with appropriate documentation including a copy of the verdict, judgment, award or other order or settlement proposal, in a timely manner to the head of the employee's principal operating component. The head of the employee's principal

operating component shall submit the written request and accompanying documentation, together with a recommended disposition of the request, in a timely manner to the General Counsel.

(f) The General Counsel shall seek the views of the Department of Justice on the request. Where the Department of Justice has rendered a decision denying representation of the employee pursuant to 28 CFR 50.15, the General Counsel shall seek the concurrence of the Department of Justice on the request. If the Department of Justice does not concur in the request, the General Counsel shall so advise the employee and no further action on the employee's request shall be taken.

(g) In all instances except those where the Department of Justice has non-concurred in the request, the General Counsel shall forward for decision to the Secretary or his or her designee the employee's request, the recommendation of the head of the employee's principal operating component, the views of the Department of Justice, and the General Counsel's recommendation.

(h) Any payment under this part, either to indemnify a Department employee or to settle a personal damage claim, is contingent upon the availability of appropriated funds of the Department that are permitted by law to be utilized for this purpose.

Dated: January 28, 1997.

Dwight P. Robinson,

*Acting Secretary.*

[FR Doc. 97-3241 Filed 2-7-97; 8:45 am]

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# Reader Aids

Federal Register

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<sup>6</sup>No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

<sup>1</sup>Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup>The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup>The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup>No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

<sup>5</sup>No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.