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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.

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 62, No. 152
Thursday, August 7, 1997

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1901, 1951, and 4284

RIN 0570–AA20

Rural Cooperative Development Grants

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) revises its regulations published previously under Rural Technology and Cooperative Development Grants (RTCDG). This action is necessary to comply with the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) (Pub. L. 104–127), which removed ''technology'' from RTCDG, thereby directing the focus of the program specifically to cooperative development. The 1996 Act also clarified that public bodies were not eligible applicants, and modified application requirements and applicant selection criteria. This action will comply with legislation which authorizes grants for establishing and operating centers for rural cooperative development. Exhibit A will be removed since it contains administrative material. The intended effect of this action is to improve the economic condition of rural areas through cooperative development.

EFFECTIVE DATE: August 7, 1997.

FOR FURTHER INFORMATION CONTACT: James E. Haskell, Assistant Deputy Administrator, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250. Telephone (202) 720–8460.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this final rule in conformance with Executive Order 12866. The Office of Management and Budget has determined that it is not a ''significant regulatory action.''

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RBS has determined that this action does not constitute a major federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11, must be exhausted before bringing suit in court challenging action taken under this rule unless these regulations specifically allow bringing suit at an earlier time.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.771 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. RBS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

National Performance Review

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

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. Under section 202 of the UMRA, RBS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. 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.

Regulatory Flexibility Act

The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program. The removal of ''technology'' from RTCDG substantially narrows the scope of this program. No provision of this rule requires action on the part of small businesses not required of large businesses. This rule requires no action on the part of any applicant not previously required by an applicant. Therefore, a Regulatory Impact Analysis was not completed.

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this regulation were previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0570–0006, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no

persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations. This final rule does not impose any new information or recordkeeping requirements from those approved by OMB.

Background

The RTCDG program was established by rule on August 12, 1994, (59 FR 41386–98) and was authorized by section 310B(f) through (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. § 1932). The 1996 Act removed ''technology'' from RTCDG, thereby directing the focus of the program specifically to cooperative development. The 1996 Act also clarified that public bodies were not eligible applicants, and modified application requirements and applicant selection criteria. The primary objective of the Rural Cooperative Development Grant (RCDG) program is to improve the economic condition of rural areas through cooperative development. The program is administered through Rural Development State Offices acting on behalf of RBS. RBS is one of the successors of the Rural Development Administration pursuant to the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354).

Discussion of Public Comments

RBS published a proposed rule in the **Federal Register** on March 26, 1997, (62 FR 14354) and asked for comments on or before April 25, 1997. The Agency received a total of eight comments. The commenters represented the National Cooperative Business Association, Rocky Mountain Farmers Union, North Dakota Association of Rural Electric Cooperatives and North Dakota Association of Telephone Cooperatives, the Federation of Southern Cooperatives/Land Assistance Fund (two commenters), North Dakota State University, Washington State University, and the North Dakota Farmers Union. One respondent did not comment directly on the proposed rule but, instead strongly supported the comments submitted by another commenter.

Six respondents were concerned about the definition of ''cooperative development'' under § 4284.504 which includes the language ''* * * promote the development of new services and products * * * new processes * * * or new enterprises * * *'' The respondents felt this definition should be clarified to indicate that the activities undertaken by a cooperative need not be completely different from those undertaken by other cooperatives. They also felt this definition should more clearly define activities involved in cooperative development, including technical assistance and development of business plans. The agency agrees with these comments and has changed the definition of ''cooperative development'' accordingly.

Several respondents suggested that under § 4284.516, which provides that grant funds may not be used to duplicate current services or replace or substitute support previously provided, may preclude centers from working on projects already underway. The agency understands and appreciates this concern and the fact that cooperative development is a long term process. The intent of the wording in this section is not to preclude centers from working on projects already underway. The agency did not modify this section, but will remain cognizant of the respondents' concern.

Most of the respondents felt the definition of ''project'' under § 4284.504 was ambiguous in drawing a distinction between what a center is and what a project is. A few of these respondents suggested that the definition should clarify that a center does projects and uses federal funds to engage in those projects. The agency agrees, and has modified the definition of ''project'' to provide that clarity. The clarification is also used under § 4284.527(e) to change from grant to project.

Five respondents suggested that the provisions addressing grant purposes under § 4284.515 should be clarified to indicate that eligible activities of centers assisted under the program must be linked to the development of cooperatives. Four of these respondents further suggested that each provision (a through e) should end with the words ''for the purpose of cooperative development'' after the word ''center.'' While the agency feels the proposed rule is adequate in focusing the program on cooperative development, it has modified § 4284.515 in the manner suggested.

The provision requiring applicants to file a ''Request for Environmental Information'' under § 4284.527(b)(3) for each project identified in their plans that involve grants to provide financial assistance to third-party recipients drew comments from six respondents. They felt the provision was unduly burdensome for applicants because cooperative development projects have potential impacts in many areas so the cost of gathering such information to complete this form would greatly exceed any possible benefits. The agency feels the information contained in the ''Request for Environmental Information'' is legally required and therefore § 4284.527(b)(3) has been retained in the final rule.

Six respondents felt the provision requiring applicants to collect evidence of support from each affected governmental unit under the preapplications portion of § 4284.528(a)(2)(v) is unduly burdensome for applicants. This rule was not amended because all affected governmental bodies should be on record as supporting the project. The time spent documenting this support will be worth the time spent in order to avoid misunderstandings later.

Two respondents thought the selection criteria under § 4284.540 were satisfactory. Other respondents did not comment on this section.

One respondent did not comment on any of the provisions in the proposed rule, but instead requested information about the program.

The provision addressing subsequent grants under § 4284.574 received comments from five respondents. Each suggested the provision be clarified to state that a second application need not be filed for assistance under the program to be awarded for the following year. The agency did not modify this provision since it currently states that, ''If it is determined to be in the best interests of the program, preference may be given to a project or projects for an additional grant in the immediately succeeding year.''

A definition for ''regionally operated'' has been added and definitions for ''Urbanized area'' and ''Urbanizing area'' have been slightly modified to make them consistent with ''Rural and rural area.''

Internal management procedures have been removed from the regulations but will appear in internal agency instructions.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553, good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register** because the appropriations allocated to the program must be expended before the end of Fiscal Year 1997, and there is a critical need—recognized by both the Executive and Legislative Branches—to immediately assist rural America through the development of self-help cooperative organizations.

List of Subjects

7 CFR Part 1901

Civil rights, Compliance reviews, Fair housing, Minority groups.

7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

7 CFR Part 4284

Business and industry, Grant programs—Housing and community development, Rural areas.

Accordingly, chapters XVIII and XLII, title 7, Code of Federal Regulations, are amended as follows:

PART 1901—PROGRAM-RELATED INSTRUCTIONS

1. The authority citation for part 1901, subpart E, continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 40 U.S.C. 442, 42 U.S.C. 1480, 42 U.S.C. 2942.

Subpart E—Civil Rights Compliance Requirements *C*

§ 1901.204 [Amended]

2. Section 1901.204 is amended in paragraph (a)(27) by removing the words ''Technology and.''

PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 42 U.S.C. 1480.

Subpart E—[Revised]

4. The title of subpart E is amended by revising the word ''Insured'' to read ''Direct.''

§ 1951.201 [Amended]

5. Section 1951.201 is amended in the first sentence by revising the word ''Insured'' to read ''Direct'' and by revising the words ''Rural Technology and'' to read ''Rural.''

PART 4284—GRANTS

6. The authority citation for part 4284 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 16 U.S.C. 1005.

Subpart F—Rural Cooperative Development Grants

7. Part 4284, subpart F is revised to read as follows:

Subpart F—Rural Cooperative Development Grants

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Subpart F—Rural Cooperative Development Grants

§ 4284.501 Purpose.

(a) This subpart outlines the Rural Business-Cooperative Service's (RBS) policies and authorizations and contains procedures to provide grants for cooperative development in rural areas.

(b) Grants will be made available to nonprofit corporations and institutions of higher education for the purpose of establishing and operating centers for rural cooperative development.

(c) Copies of all forms and Instructions referenced in this subpart are available in the RBS National Office or any Rural Development State Office.

§ 4284.502 Policy.

The grant program will be used to facilitate the creation or retention of jobs in rural areas through the development of new rural cooperatives, value-added processing, and rural businesses.

§ 4284.503 [Reserved]

§ 4284.504 Definitions.

Agency—Rural Business-Cooperative Service (RBS) or a successor agency.

Approval official—Any authorized agency official.

Center—The entity established or operated by the grantee for rural cooperative development.

Cooperative—A user-owned and controlled business from which benefits are derived and distributed equitably on the basis of use.

Cooperative development—The startup, expansion, or operational improvement of a cooperative to promote development in rural areas of services and products, processes that can be used in the production of products, or enterprises that can add value to on-farm production through processing or marketing activities. Development activities may include, but are not limited to, technical assistance, research services, educational services, and advisory services. Operational improvement includes making the cooperative more efficient or better managed.

Economic development—The growth of an area as evidenced by increases in total income, employment opportunities, decreased outmigration of populations, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Nonprofit institution—Any organization or institution, including an accredited institution of higher education, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Project—A planned undertaking by a center which utilizes the funds provided to it to promote economic development in rural areas through the creation and enhancement of cooperatives.

Public body—Any state, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or Indian tribe on federal or state reservations or other federally recognized Indian tribe in rural areas.

RBS—The Rural Business-Cooperative Service, an agency of the United States Department of Agriculture, or a successor agency.

Regionally operated—A regionally operated program includes programs that cover or are eligible to cover two or more counties.

Rural and rural area—Includes all territory of a state that is not within the outer boundary of any city having a population of 50,000 or more and its immediately adjacent urbanized and urbanizing areas.

Rural Development—Rural Development mission area.

Servicing office—Any Rural Development State Office.

State—Any of the 50 States, the District of Columbia, the

Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subcenter—A unit of a center acting under the same direction as and having a purpose consistent with that of the center.

Urbanized area—An area immediately adjacent to a city having a population of 50,000 or more with a population density of more than 100 persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States which, for general social and economic purposes, constitutes a single community and has a boundary contiguous with that of the city. Such community may be incorporated or unincorporated to extend from the contiguous boundaries to recognizable open country, less densely settled areas, or natural boundaries such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. Outer boundaries of an incorporated community extend at least to its legal boundaries. Cities which may have a contiguous border with another city, but are located across a river from such city, are recognized as a separate community.

Urbanizing area—A community with a population density of more than 100 persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States, which is not now, or within the foreseeable future not likely to be, clearly separate from and independent of a city of 50,000 or more population and its immediately adjacent urbanized areas. A community is considered ''separate'' when it is separated from the city and its immediately adjacent urbanized area by open country, less densely settled areas, or natural barriers such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall not be considered as an area to determine if a community is separate. A community is considered ''independent'' when its social (*e.g.*, government, educational, health, and recreational facilities) and economic structure (*e.g.*, business, industry, tax base, and employment opportunities) are not primarily dependent on the city and its immediately adjacent urbanized areas.

§ 4284.505 Applicant eligibility.

(a) Grants may be made to nonprofit corporations and institutions of higher education. Grants may not be made to public bodies.

(b) An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. RBS grant funds may not be used to satisfy the judgment.

§§ 4284.506—4284.514 [Reserved]

§ 4284.515 Grant purposes.

Grant funds may be used to pay up to 75 percent of the costs for carrying out relevant projects. Applicant's contribution may be in cash or in-kind contribution in accordance with parts 3015 and 3019 of this title and must be from nonfederal funds except that a loan from another federal source can be used for the applicant's contribution. Grant funds may be used for, but are not limited to, the following purposes:

(a) Applied research, feasibility, environmental and other studies that may be useful to individuals, cooperatives, small businesses, and other similar entities in rural areas served by the center for the purpose of cooperative development.

(b) Collection, interpretation, and dissemination of principles, facts, technical knowledge, or other information that may be useful to individuals, cooperatives, small businesses, and other similar entities in rural areas served by the center for the purpose of cooperative development.

(c) Providing training and instruction for individuals, cooperatives, small businesses, and other similar entities in rural areas served by the center for the purpose of cooperative development.

(d) Providing loans and grants to individuals, cooperatives, small businesses, and other similar entities in rural areas served by the center for the purpose of cooperative development in accordance with this subpart.

(e) Providing technical assistance, research services, and advisory services to individuals, cooperatives, small businesses, and other similar entities in rural areas served by the center for the purpose of cooperative development.

§ 4284.516 Ineligible grant purposes.

Grant funds may not be used to:

(a) Pay more than 75 percent of relevant project or administrative costs;

(b) Duplicate current services or replace or substitute support previously provided;

(c) Pay costs of preparing the grant application package;

(d) Pay costs incurred prior to the effective date of the grant;

(e) Pay for building construction, the purchase of real estate or vehicles, improving or renovating office space, or the repair or maintenance of privately-owned property;

(f) Fund political activities; or

(g) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

§§ 4284.517—4284.526 [Reserved]

§ 4284.527 Other considerations.

(a) *Civil rights compliance requirements*. All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin as outlined in part 1901, subpart E of this title. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability; the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and title III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability by private entities in places of public accommodations.

(b) *Environmental requirements*—(1) *General applicability*. Unless specifically modified by this section, the requirements of part 1940, subpart G of this title apply to this subpart. For example, the Agency's general and specific environmental policies contained in §§ 1940.303 and 1940.304 of this title must be complied with. Although the purpose of the grant program established by this subpart is to improve business, industry, and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important environmental resources of rural areas such as important farmland and forest lands, prime rangelands, wetland, and flood plains. Prospective recipients of grants, therefore, must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans and projects that minimize the potential to adversely impact on the environment.

(2) *Technical assistance.* An application for a project exclusively involving technical assistance is generally excluded from the environmental review process by § 1940.310(e)(1) of this title. However, as further specified in § 1940.333 of this title, the grantee of a technical assistance grant, in the process of providing technical assistance, must consider and generally document within their plans the potential environmental impacts of the plan and recommendations provided to the recipient of the technical assistance.

(3) *Applications for grants to provide other than technical assistance to third-party recipients.* As part of the preapplication, the applicant must provide a complete ''Request for Environmental Information,'' for each project specifically identified in its plan to provide other than technical assistance to third parties who will undertake eligible projects with such assistance. The Agency will review the preapplication, supporting materials, and the required ''Request for Environmental Information'' and assess the impact of the preapplication. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects that can be identified at this time from the information submitted. Because the Agency's approval of this type of grant application does not constitute a commitment to the use of grant funds for any identified third-party projects (see § 4284.541), no public notification requirements will apply to the preapplication. After the grant is approved, each third-party project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in part 1940, subpart G of this title prior to the Agency providing its consent to the grantee to assist the third-party project. If the preapplication reflects only one project which is specifically identified as the third-party recipient for financial assistance, the Agency may proceed directly to the appropriate environmental assessment for the third-party recipient with public notification as required. The applicant must be advised that if the recipient or project changes after the grant is approved, the project to be assisted under the grant will undergo the applicable environmental review and public notification requirements.

(c) *Government-wide debarment and suspension (non-procurement) and requirements for drug-free workplace.* Persons who are disbarred or suspended are excluded from federal assistance and benefits including grants under this subpart. Grantees must certify that they will provide a drug-free workplace.

(d) *Restrictions on lobbying.* All grants must comply with the lobbying restrictions contained in part 3018 of this title.

(e) *Excess capacity or transfer of employment.* If a proposed project has financial assistance from all sources for more than $1 million and will increase direct employment by more than 50 employees, the applicant will be requested to provide written support for an Agency determination that the proposal will not result in a project which is calculated to, or likely to, result in the transfer of any employment or business activity from one area to another. This limitation will not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations.

(f) *Management assistance.* Grant recipients will be supervised, as necessary, to ensure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this subpart will be administered under, and are subject to, parts 3015, 3017, 3019, and 3051 of this title, as appropriate, and established RBS guidelines.

(g) *Uniform Relocation Assistance and Real Property Acquisition Policies Act.* All projects must comply with the requirements contained in part 21 of this title.

(h) *Flood or mudslide hazard area precautions.* If the grantee financed project is in a flood or mudslide area, flood or mudslide insurance must be obtained through the National Flood Insurance Program.

(i) *Termination of federal requirements.* Once the grantee has provided assistance with project loans in an amount equal to the grant provided by RBS, the requirements imposed on the grantee shall not be applicable to any new projects thereafter financed from the RCDG funds. Such new projects shall not be considered as being derived from federal funds. The purposes of such new projects, however, shall be consistent with these regulations.

(j) *Intergovernmental review.* Grant projects are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. A loan fund established in whole, or in part, with grant funds will also be considered a project for the purpose of intergovernmental review as well as the specific projects funded with grant funds from the RCDG funds. For each project to be assisted with a grant under this subpart and which the state has elected to review under their intergovernmental review process, the state point of contact must be notified. Notification, in the form of a project description, can be initiated by the grantee. Any comments from the state must be included with the grantee's request to use RBS grant funds for the specific project. Prior to the RBS decision on the request, compliance with requirements of intergovernmental consultation must be demonstrated for each project. These requirements should be completed in accordance with ''Intergovernmental Review of Department of Agriculture Programs and Activities,'' part 3015, subpart V of this title.

§4284.528 Application processing.

(a) *Preapplications.* (1) Applicants will file an original and one copy of an ''Application for Federal Assistance (For Non-construction),'' with the appropriate Rural Development State Office.

(2) All preapplications shall be accompanied by:

(i) evidence of applicant's legal existence and authority to perform the proposed activities under the grant.

(ii) the latest financial information to show the applicant's financial capacity to carry out the project. At a minimum, the information should include a balance sheet and an income statement. A current audited report is preferred where one is reasonably obtainable.

(iii) an estimated breakdown of total costs, including costs to be funded by the applicant or other identified sources. Certification must be provided from the applicant that its matching share to the project is available and will be used for the project. The matching share must meet the requirements of parts 3015 and 3019 of this title as applicable. Certifications from an authorized representative of each source of funds must be provided indicating that funds are available and will be used for the proposed project.

(iv) a budget and description of the accounting system to be used.

(v) the area to be served, identifying within that area each governmental unit (*i.e.,* town, county, etc.) affected by the proposed project. Evidence of support and concurrence from each affected governmental unit must be provided by

either a resolution or a written statement from the chief elected local official.

(vi) a listing of cooperative businesses to be assisted or created.

(vii) applicant's experience with similar projects, including experience of key staff members and persons who will be providing the proposed services and managing the project.

(viii) the number of months duration of the project and the estimated time it will take from grant approval to beginning of service.

(ix) the method and rationale used to select the areas or businesses that will receive the service.

(x) a brief description of how the work will be performed and whether organizational staff, consultants or contractors will be used.

(xi) an evaluation method to be used by the applicant to determine if objectives of the proposed activity are being accomplished.

(xii) a brief plan that contains the following provisions and describes how the applicant will meet these provisions:

(A) A provision that substantiates how the applicant will effectively serve rural areas in the United States.

(B) A provision that the primary objective of the applicant will be to improve the economic condition of rural areas by promoting development of new cooperatives or improvement of existing cooperatives.

(C) Supporting data from established official independent sources along with any explanatory documentation.

(D) A description of the activities that the applicant will carry out to accomplish such objective.

(E) A description of the proposed activities to be funded under this subpart.

(F) A description of the contributions that the applicant's proposed activities are likely to make to the improvement of the economic conditions of the rural areas served by the applicant.

(G) Provisions that the applicant, in carrying out its activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the federal, state, and local governments.

(H) Provisions that the applicant will consult with any college or university administering Extension Service programs and cooperate with such college or university in the coordination of the center's activities and programs.

(I) Provisions that the applicant will take all practicable steps to develop continuing sources of financial support for the center, particularly from sources in the private sector.

(J) Provisions for:

(*1*) monitoring and evaluating its activities; and

(*2*) accounting for money received and expended by the applicant under this subpart.

(K) Provisions that the applicant will provide for the optimal application of cooperative development in rural areas, especially those areas adversely affected by economic conditions, such that local economic conditions can be improved through cooperative development.

(xiii) the agreement proposed to be used between the applicant and the ultimate recipients, if grant funds are to be used for the purpose of making loans or grants to individuals, cooperatives, small businesses, and other similar entities (ultimate recipients) in rural areas for eligible purposes under this subpart. This agreement should include the following:

(A) An assurance that the responsibilities of the grantee, as a recipient of grant funds under this subpart, are passed on to the ultimate recipient and the ultimate recipient understands its responsibilities to comply with the requirements contained in this subpart and parts 3015 and 3019 of this title, as applicable.

(B) Provisions that the ultimate recipient will comply with debarment and suspension requirements contained in part 3017 of this title and will execute a ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''

(C) Provisions that the ultimate recipient will execute an ''Equal Opportunity Agreement,'' and an ''Assurance Agreement.''

(D) Documentation that the ultimate recipient understands its responsibilities to the applicant.

(E) Documentation that the applicant understands its responsibilities in monitoring the ultimate recipient's activities under the grant and the applicant's plan for such monitoring.

(F) Documentation, when other references or sources of information are used, along with copies, if possible, that provides dates, addresses, page numbers and explanations of how interpretations are made to substantiate that such things as economically distressed conditions do exist.

(G) Narrative addressing all items in §4284.540(a) of this subpart regarding grant selection criteria.

(b) *Applications.* Upon notification that the applicant has been selected for funding, the following will be submitted to Rural Development by the applicant:

(1) Proposed scope of work, detailing the proposed activities to be accomplished and timeframes for completion of each activity.

(2) Other information requested by RBS to make a grant award determination.

(c) *Applicant response.* If the applicant fails to submit the application and related material by the date shown on the invitation for applications, Rural Development may discontinue consideration of the preapplication.

§§ 4284.529–4284.539 [Reserved]

§ 4284.540 Grant selection criteria.

Grants will be awarded under this subpart on a competitive basis. The priorities described in this paragraph will be used by RBS to rate preapplications. RBS review of preapplications will include the complete preapplication package submitted to the Rural Development State Office. Points will be distributed according to ranking as compared with other preapplications on hand. All factors will receive equal weight with points awarded to each factor on a 5, 4, 3, 2, 1 basis depending on the applicant's ranking compared to other applicants.

(a) Preference will be given to applications that:

(1) demonstrate a proven track record in administering a nationally coordinated, regionally or State-wide operated project;

(2) demonstrate previous expertise in providing technical assistance in rural areas;

(3) demonstrate the ability to assist in the retention of business, facilitate the establishment of cooperatives and new cooperative approaches, and generate employment opportunities that will improve the economic conditions of rural areas;

(4) demonstrate the ability to create horizontal linkages among businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets;

(5) commit to providing technical assistance and other services to underserved and economically distressed rural areas of the United States;

(6) commit to providing greater than a 25 percent matching contribution with private funds and in-kind contributions;

(7) evidence transferability or demonstration value to assist rural areas outside of project area; and

(8) demonstrate that any cooperative development activity is consistent with positive environmental stewardship.

(b) Each preapplication for assistance will be carefully reviewed in accordance

with the priorities established in this section. A priority rating will be assigned to each preapplication. Preapplications selected for funding will be based on the priority rating assigned each preapplication and the total funds available. All preapplications submitted for funding should contain sufficient information to permit RBS to complete a thorough priority rating.

§ 4284.541 Grant approval, fund obligation, grant closing, and third-party financial assistance.

The grantee will execute all documents required by RBS to make a grant under this subpart. By accepting the grant, the grantee agrees to comply with parts 3015 and 3019 of this title.

§§ 4284.542–4284.556 [Reserved]

§ 4284.557 Fund disbursement.

Grants will be disbursed as follows:

(a) A ''Request for Advance or Reimbursement,'' will be completed by the applicant and submitted to Rural Development not more frequently than monthly. Payments will be made by electronic funds transfer pursuant to the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

(b) The grantee's share in the cost of the project will be disbursed in advance of grant funds or on a pro-rata distribution basis with grant funds during the disbursement period.

§ 4284.558 Reporting.

A ''Financial Status Report,'' and a project performance activity report will be required of all grantees on a quarterly calendar basis. A final project performance report will be required with the last ''Financial Status Report.'' The final report may serve as the last quarterly report. The final report must include a final evaluation of the project. Grantees must constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees are to submit an original of each report to Rural Development. The project performance reports shall include, but not be limited to, the following:

(a) A comparison of actual accomplishments to the objectives established for that period;

(b) Reasons why established objectives (if any) were not met;

(c) Problems, delays, or adverse conditions which will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(d) Objectives and timetable established for the next reporting period.

§§ 4284.559–4284.570 [Reserved]

§ 4284.571 Audit requirements.

The grantee will provide an audit report in accordance with §1942.17 of this title. Audits must be prepared in accordance with general accounting principles and standards using the publication, ''Standards for Audit of Governmental Organizations, Programs, Activities and Functions.''

§ 4284.572 Grant servicing.

Grants will be serviced in accordance with part 1951, subpart E of this title.

§ 4284.573 Programmatic changes.

The grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope or budget can result in suspension or termination of grant funds.

§ 4284.574 Subsequent grants.

Subsequent grants will be processed in accordance with the requirements contained in this subpart. Cooperative development projects receiving assistance under this program will be evaluated one year after assistance is received. If it is determined to be in the best interests of the program, preference may be given to a project or projects for an additional grant in the immediately succeeding year.

§ 4284.575 Grant suspension, termination, and cancellation.

Grants may be canceled by RBS by written notice. Grants may be suspended or terminated for cause or convenience in accordance with parts 3015 and 3019 of this title, as applicable.

§§ 4284.576–4284.586 [Reserved]

§ 4284.587 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart, if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest.

§§ 4284.588–4284.599 [Reserved]

§ 4284.600 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0006. You are not required to respond to this collection of information unless it displays a valid OMB control number.

Dated: July 30, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–20738 Filed 8–6–97; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–25–AD; Amendment 39–10094, AD 97–11–51 R1]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Pratt & Whitney PW2000 series turbofan engines. This action revises telegraphic AD T97–11–51 that currently supersedes AD 97–09–01 by correcting errors in the Serial Number (S/N) tables, and removing the McDonnell Douglas C–17 aircraft from the applicability section, as a different model engine is installed on McDonnell Douglas C–17 aircraft. In addition, that telegraphic AD clarifies that inspections must be performed prior to rework, and clarifies that new parts do not need to be reworked prior to installation, but must be reworked at the next shop visit. Finally, that telegraphic AD makes minor editorial changes for clarity without changing meaning or intent. This action relaxes the compliance intervals for rework and provides relieving requirements. This amendment is prompted by industry input and resulting changes by the manufacturer to the inspection program that would provide relief to operators while maintaining an equivalent level of safety. The actions specified by this AD are intended to prevent fracture of the first stage high pressure turbine (HPT) disk, resulting in a possible uncontained engine failure and damage to the aircraft.

DATES: August 7, 1997.

The incorporation by reference of certain publications listed in the regulations was approved by the Director of the Federal Register as of May 10, 1997.

Comments for inclusion in the Rules Docket must be received on or before October 6, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–25–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Fisher, Aerospace Engineer, Engine Certificate Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7149, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On May 12, 1997, the Federal Aviation Administration (FAA) issued telegraphic airworthiness directive (AD) T97–11–51, applicable to Pratt & Whitney (PW) PW2000 series turbofan engines, which supersedes AD 97–09–01 by correcting errors in the Serial Number (S/N) tables, and removing the McDonnell Douglas C–17 aircraft from the applicability section, as a different model engine is installed on McDonnell Douglas C–17 aircraft. In addition, that AD clarifies that inspections must be informed prior to rework, and clarifies that new parts do not need to be reworked prior to installation, but must be reworked at the next shop visit. Finally, that AD makes minor editorial changes for clarity without changing meaning or intent. That action was prompted by comments from the manufacturer received in response to AD 97–09–01 that require the FAA to issue immediate changes and corrections to the compliance section prior to initiating the inspection and rework program described in the AD 97–09–01. Airworthiness directive 97–09–01 was prompted by reports of two uncontained disk failures resulting from a fir tree lug fracturing, that subsequently released two blades and a fir tree lug, that penetrated the engine high pressure turbine (HPT) case. That condition, if not corrected, could result in fracture of the first stage HPT disk, resulting in a possible uncontained engine failure and damage to the aircraft.

Since the issuance of that telegraphic AD, the FAA has received changes from the manufacturer to the inspection program that would provide relief to operators while maintaining an equivalent level of safety.

The FAA has reviewed and approved the technical contents of PW Service Bulletin (SB) No. PW2000 72–588, Revision 1, dated March 31, 1997, and Original, dated February 17, 1997, that describe procedures for inspections for cracks in the forward face of the first stage HPT disk at the base of the fir tree lug at the outer diameter (OD) snap fillet radius where the side plates mate with the disk utilizing an eddy current inspection technique, and PW Alert Service Bulletin (ASB) No. PW2000 A72–592, dated March 18, 1997, that describes procedures for rework to the forward and aft faces of the first stage HPT disk OD snap fillet radii at the base of the fir tree lug.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD revises telegraphic AD T97–11–51 to relax the compliance intervals for rework and provide relieving requirements by adding an optional double independent eddy current inspection. The actions are required to be accomplished in accordance with the service documents described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket Number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–25–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–11–51 R1 Pratt & Whitney: Amendment 39–10094. Docket No. 97–ANE–25–AD. Revises AD T97–11–51.

Applicability: Pratt & Whitney (PW) PW2000 series turbofan engines, with first stage high press turbine (HPT) disk assembly, Part Numbers (P/N) 1A5921, 1B2671, and 1B3621, installed. These engines are installed on but not limited to Boeing 757 series and Ilyushin IL–96 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the first stage HPT disk, resulting in a possible uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Prior to further flight, for first stage HPT disks that are accessible in the shop, on the effective date of this AD, as defined in paragraph (k)(2) of this AD, and that have not been eddy current inspected in accordance with the Accomplishment Instructions of PW Service Bulletin (SB) No. PW2000 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997, perform eddy current inspection (ECI) of the first stage HPT disks for cracks in the forward face of the disk at the base of the fir tree lug at the outer diameter (OD) snap fillet radius where the side plants mate with the disk, in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997.

(b) For first stage HPT disks that are identified by serial number (S/N) in Table 1 of this AD, and have not been eddy current inspected in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997, accomplish the following:

TABLE 1

L82270	M68538	N11397	N54412	P36638	P91935	R28848
L82271	M68539	N11398	N54413	P36639	R28552	R28901
L82272	M68540	N11399	N54414	P36805	R28553	R28903
L82356	M68541	N11400	N54415	P36806	R28554	R28904
L82649	M68696	N11401	N54416	P37113	R28555	R28905
L82650	M68697	N11402	N54417	P37114	R28612	R28906
L83308	M68698	N11403	N54418	P37115	R28613	R28907
L83309	M68699	N11404	N54419	P37116	R28614	R28908
L83310	M68700	N11405	N55114	P37117	R28615	R28909
L83311	M68701	N11406	N55115	P37118	R28617	R28913
L83312	M68702	N11407	N55116	P37324	R28618	R28914
M15709	M68703	N12830	N55117	P37325	R28680	R28915
M15710	M68915	N12831	P00624	P37326	R28681	R28933
M15718	M68916	N12832	P00625	P37327	R28682	R28934
M42710	M68917	N12833	P00626	P37328	R28683	R28935
M42711	M68918	N12834	P00627	P37348	R28684	R28936
M42768	M68919	N12835	P00628	P37349	R28685	R28937
M42769	M68997	N12836	P00788	P37351	R28686	R28951
M42770	M68998	N12838	P00812	P37352	R28687	R28952
M42771	M69000	N12839	P00813	P37353	R28711	R28953
M43103	M69001	N12840	P00814	P37354	R28712	R28954
M43104	M85382	N12841	P00815	P90203	R28713	R28955
M43105	M85383	N12842	P00816	P90204	R28714	R28956
M43396	M85384	N12843	P00817	P90205	R28715	S16633
M43397	M85385	N12844	P00818	P90206	R28716	S16634
M43398	M85386	N12845	P00986	P90207	R28718	S16636
M43399	M85387	N12846	P00987	P90208	R28719	S16637
M43400	N09764	N12847	P01018	P90209	R28720	S16638
M43401	N09765	N12848	P01457	P90210	R28752	S16639
M43409	N09766	N54390	P36249	P90211	R28753	S16641
M43410	N09767	N54391	P36250	P90212	R28755	S16642
M43411	N09768	N54392	P36251	P90385	R28756	S16643
M68250	N09769	N54393	P36252	P90386	R28757	S16645
M68251	N09770	N54395	P36253	P90387	R28758	S16646
M68252	N09771	N54396	P36254	P90388	R28761	S16647
M68253	N09772	N54397	P36255	P90389	R28800	S16648
M68254	N09773	N54398	P36256	P90390	R28801	S16649
M68255	N09774	N54399	P36258	P91685	R28802	S16650
M68256	N09775	N54400	P36259	P91686	R28803	S16651
M68344	N09776	N54401	P36306	P91687	R28804	S16658
M68345	N09777	N54402	P36307	P91688	R28805	S16659
M68346	N09778	N54403	P36308	P91854	R28806	S16660
M68347	N11389	N54404	P36309	P91855	R28807	S16662
M68348	N11390	N54405	P36310	P91856	R28808	S16666
M68349	N11391	N54406	P36311	P91857	R28809	S16678
M68350	N11392	N54407	P36312	P91867	R28810	S16687

TABLE 1—Continued

M68536	N11393	N54408	P36378	P91931	R28811	
M68537	N11394	N54409	P36634	P91932	R28812	
	N11395	N54410	P36636	P91933	R28813	
	N11396	N54411	P36637	P91934	R28847	

(1) For disks that have accumulated 10,000 or more cycles since new (CSN) on the effective date of this AD, accomplish the following:

(i) Perform an inspection for cracks and rework within 1,600 CIS after the effective date of this AD in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997, or

Note 2: Throughout this AD, Pratt & Whitney ASB No. PW2000 A72–592, dated March 18, 1997, describes returning the part to designated overhaul shops for modifications. The modifications described in that ASB are performed by the overhaul shops and include inspections prior to and after rework.

(ii) Perform a double independent inspection for cracks, as defined in paragraph (k)(3) of this AD, within 1,600 cycles in service (CIS) after the effective date of this AD, in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997.

(iii) If the disk is double inspected in accordance with paragraph (b)(1)(ii) of this AD, then inspect the disk for cracks and rework at the next shop visit after the completion of the double inspection, but not to exceed 4,000 CIS since the double inspection, in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997.

(2) For disks that have accumulated less than 10,000 CSN on the effective date of this AD, accomplish the following:

(i) Perform an inspection for cracks and rework at the next shop visit after the effective date of this AD, or 11,600 CSN, whichever occurs first, in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997, or

(ii) Perform a double independent inspection for cracks, as defined in paragraph (k)(3) of this AD, at the next shop visit after the effective date of this AD, not to exceed 11,600 CSN, in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997.

(iii) If the disk is double inspected in accordance with paragraph (b)(2)(ii) of this AD, then inspect the disk for cracks and rework at the next shop visit after the completion of the double inspection, but not to exceed 4,000 CIS since the double inspection, in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997.

(c) For first stage HPT disks that are identified by S/N in Table 2 of this AD, and that have not been eddy current inspected in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997, accomplish the following:

TABLE 2

D301AA0011	S16682	S16713	S16746	S16780
D301AA0032	S16683	S16715	S16747	S16783
S16652	S16684	S16716	S16748	S16787
S16654	S16685	S16717	S16749	S16795
S16655	S16688	S16718	S16750	
S16656	S16689	S16719	S16751	
S16657	S16690	S16720	S16752	
S16661	S16691	S16721	S16753	
S16663	S16692	S16723	S16756	
S16664	S16693	S16724	S16757	
S16665	S16694	S16725	S16758	
S16667	S16695	S16727	S16760	
S16668	S16697	S16728	S16761	
S16669	S16698	S16730	S16762	
S16670	S16699	S16731	S16763	
S16671	S16700	S16732	S16765	
S16672	S16701	S16733	S16766	
S16673	S16702	S16735	S16768	
S16674	S16703	S16738	S16769	
S16675	S16705	S16739	S16772	
S16676	S16707	S16741	S16773	
S16677	S16708	S16742	S16774	
S16679	S16709	S16743	S16775	
S16680	S16710	S16744	S16776	
S16681	S16712	S16745	S16777	

(1) For disks that have accumulated 7,000 or more CSN on the effective date of this AD, accomplish the following:

(i) Perform an inspection for cracks and rework within 800 CIS after the effective date of this AD in accordance with PS ASB No. PW2000 A72–592, dated March 18, 1997, or

(ii) Perform a double independent inspection for cracks, as defined in paragraph (k)(3) of this AD, within 800 CIS after the effective date of this AD, in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997.

(iii) If the disk is double inspected in accordance with paragraph (c)(1)(ii) of this AD, then inspect the disk for cracks and rework at the next shop visit after the completion of the double inspection, but not to exceed 4,000 CIS since the double inspection, in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997.

(2) For disks that have accumulated less then 7,000 CSN on the effective date of this AD, accomplish the following:

(i) Perform an inspection for cracks and rework at the next shop visit after the effective date of this AD, or 7,800 CSN, whichever occurs first, in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997, or

(ii) Perform a double independent inspection for cracks, as defined in paragraph (k)(3) of this AD, at the next shop visit after the effective date of this AD, not to exceed 7,800 CSN, in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997.

(iii) If the disk is double inspected in accordance with paragraph (c)(2)(ii) of this AD, then inspect the disk for cracks and rework at the next shop visit after the completion of the double inspection, but not to exceed 4,000 CIS since the double inspection, in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997.

(d) For first stage HPT disks that are identified by S/N in Table 3 of this AD, and that have not been eddy current inspected in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997, accomplish the following:

TABLE 3

D301AA0002	D301AA0094	D301AA0371	DKLBA78442	DKLBA78551	DKLBA78661
D301AA0003	D301AA0095	D301AA0372	DKLBA78443	DKLBA78552	DKLBAH8318
D301AA0004	D301AA0096	D301AA0375	DKLBA78444	DKLBA78553	DKLBAH8319
D301AA0005	D301AA0098	D301AA0376	DKLBA78446	DKLBA78554	DKLBAH8320
D301AA0006	D301AA0101	D301AA0377	DKLBA78448	DKLBA78557	DKLBAH8321
D301AA0008	D301AA0102	D301AA0379	DKLBA78449	DKLBA78558	DKLBAH8322
D301AA0009	D301AA0103	D301AA0380	DKLBA78453	DKLBA78559	DKLBAH8323
D301AA0010	D301AA0104	D301AA0381	DKLBA78454	DKLBA78560	DKLBAH8324
D301AA0013	D301AA0105	D301AA0382	DKLBA78455	DKLBA78561	DKLBAH8325
D301AA0015	D301AA0106	D301AA0383	DKLBA78456	DKLBA78562	DKLBAH8327
D301AA0018	D301AA0107	D301AA0384	DKLBA78457	DKLBA78564	DKLBAH8328
D301AA0019	D301AA0108	D301AA0386	DKLBA78458	DKLBA78568	DKLBAH8329
D301AA0020	D301AA0110	D301AA0387	DKLBA78459	DKLBA78569	DKLBAH8330
D301AA0021	D301AA0111	D301AA0388	DKLBA78465	DKLBA78575	DKLBAH8331
D301AA0022	D301AA0114	D301AA0390	DKLBA78467	DKLBA78577	DKLBAH8332
D301AA0023	D301AA0118	D301AA0391	DKLBA78468	DKLBA78578	DKLBAH8333
D301AA0024	D301AA0121	D301AA0392	DKLBA78469	DKLBA78579	DKLBAH8336
D301AA0025	D301AA0123	E301AA0393	DKLBA78472	DKLBA78580	DKLBAH8337
D301AA0027	D301AA0124	E301AA0394	DKLBA78475	DKLBA78581	DKLBAH8339
D301AA0028	D301AA0125	D301AA0395	DKLBA78482	DKLBA78582	DKLBAH8340
D301AA0029	D301AA0127	D301AA0396	DKLBA78483	DKLBA78584	DKLBAH8343
D301AA0031	D301AA0129	D301AA0399	DKLBA78484	DKLBA78585	DKLBAH8344
D301AA0033	D301AA0130	D301AA0401	DKLBA78485	DKLBA78587	DKLBAH8346
D301AA0034	D301AA0131	D301AA0402	DKLBA78486	DKLBA78589	DKLBAH8347
D301AA0035	D301AA0132	D301AA0403	DKLBA78487	DKLBA78590	DKLBAH8348
D301AA0038	D301AA0133	D301AA0404	DKLBA78488	DKLBA78593	DKLBAH8349
D301AA0039	D301AA0135	D301AA0406	DKLBA78489	DKLBA78594	DKLBAH8350
D301AA0040	D301AA0137	D301AA0407	DKLBA78490	DKLBA78596	DKLBAH8351
D301AA0041	D301AA0138	D301AA0408	DKLBA78491	DKLBA78598	DKLBAH8352
D301AA0042	D301AA0140	D301AA0412	DKLBA78492	DKLBA78600	DKLBAH8353
D301AA0044	D301AA0141	D301AA0414	DKLBA78493	DKLBA78601	DKLBAH8354
D301AA0045	D301AA0144	D301AA0415	DKLBA78496	DKLBA78603	DKLBAH8355
D301AA0046	D301AA0145	D301AA0416	DKLBA78497	DKLBA78604	DKLBAH8356
D301AA0047	D301AA0146	D301AA0418	DKLBA78498	DKLBA78605	DKLBAH8357
D301AA0048	D301AA0147	D301AA0419	DKLBA78500	DKLBA78606	DKLBAH8360
D301AA0049	D301AA0148	D301AA0420	DKLBA78502	DKLBA78607	DKLBAH8361
D301AA0050	D301AA0149	D301AA0421	DKLBA78503	DKLBA78609	DKLBAH8362
D301AA0051	D301AA0150	D301AA0422	DKLBA78504	DKLBA78610	DKLBAH8364
D301AA0052	D301AA0151	D301AA0423	DKLBA78505	DKLBA78611	DKLBAH8365
D301AA0053	D301AA0152	D301AA0424	DKLBA78506	DKLBA78613	DKLBAM0972
D301AA0054	D301AA0154	D301AA0425	DKLBA78507	DKLBA78614	DKLBAM0973
D301AA0055	D301AA0156	D301AA0426	DKLBA78508	DKLBA78615	S16778
D301AA0056	D301AA0157	D301AA0427	DKLBA78509	DKLBA78616	S16782
D301AA0057	D301AA0159	D301AA0428	DKLBA78510	DKLBA78617	S16784
D301AA0059	D301AA0161	D301AA0431	DKLBA78512	DKLBA78618	S16786
D301AA0061	D301AA0163	D301AA0432	DKLBA78514	DKLBA78620	S16789
D301AA0062	D301AA0164	D301AA0434	DKLBA78515	DKLBA78622	S16790
D301AA0064	D301AA0165	D301AA0435	DKLBA78517	DKLBA78625	S16792
D301AA0065	D301AA0166	D301AA0437	DKLBA78518	DKLBA78627	S16793
D301AA0066	D301AA0167	D301AA0438	DKLBA78519	DKLBA78628	S16798
D301AA0067	D301AA0171	D301AA0439	DKLBA78520	DKLBA78632	S16800
D301AA0068	D301AA0174	D301AA0440	DKLBA78521	DKLBA78633	S16802
D301AA0069	D301AA0175	D301AA0443	DKLBA78522	DKLBA78635	S16803
D301AA0070	D301AA0177	D301AA0444	DKLBA78524	DKLBA78636	S16804
D301AA0071	D301AA0179	D301AA0445	DKLBA78525	DKLBA78638	S16805
D301AA0072	D301AA0180	D301AA0446	DKLBA78526	DKLBA78639	S16806
D301AA0074	D301AA0182	D301AA0447	DKLBA78527	DKLBA78640	S16807
D301AA0075	D301AA0187	D301AA0449	DKLBA78528	DKLBA78642	S16808
D301AA0077	D301AA0189	D301AA0450	DKLBA78529	DKLBA78644	S16810
D301AA0080	D301AA0198	DKLBA78421	DKLBA78530	DKLBA78645	S16811
D301AA0081	D301AA0201	DKLBA78423	DKLBA78531	DKLBA78646	S16814
D301AA0082	D301AA0205	DKLBA78427	DKLBA78533	DKLBA78648	S16815
D301AA0083	D301AA0358	DKLBA78429	DKLBA78534	DKLBA78649	S16816
D301AA0084	D301AA0359	DKLBA78431	DKLBA78536	DKLBA78650	S16818
D301AA0085	D301AA0360	DKLBA78432	DKLBA78537	DKLBA78651	S16819
D301AA0086	D301AA0361	DKLBA78433	DKLBA78538	DKLBA78652	S16821
D301AA0087	D301AA0362	DKLBA78434	DKLBA78540	DKLBA78653	S16822

TABLE 3—Continued

D301AA0088	D301AA0363	DKLBA78435	DKLBA78541	DKLBA78654	S16824
D301AA0089	D301AA0364	DKLBA78436	DKLBA78542	DKLBA78655	S16825
D301AA0090	D301AA0367	DKLBA78437	DKLBA78543	DKLBA78656	S16827
D301AA0091	D301AA0368	DKLBA78438	DKLBA78544	DKLBA78657	S16829
D301AA0092	D301AA0369	DKLBA78439	DKLBA78545	DKLBA78658	S16831
D301AA0093	D301AA0370	DKLBA78441	DKLBA78550	DKLBA78660	S16832

(1) For disks that have accumulated 7,000 or more CSN on the effective date of this AD accomplish the following:

(i) Perform an inspection for cracks and rework within 1,100 CIS after the effective date of this AD in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997, or

(ii) Perform a double independent inspection for cracks, as defined in paragraph (k)(3) of this AD, within 1,100 CIS after the effective date of this AD, in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997.

(iii) If the disk is double inspected in accordance with paragraph (d)(1)(ii) of this AD, then inspect the disk for cracks and rework at the next shop visit after the completion of the double inspection, but not to exceed 2,450 CIS since the double inspection, in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997.

(2) For disks that have accumulated less than 7,000 CSN on the effective date of this AD, accomplish the following:

(i) Perform an inspection for cracks and rework at the next shop visit after the effective date of this AD, or 8,100 CSN, whichever occurs first, in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997, or

(ii) Perform a double independent inspection for cracks, as defined in paragraph (k)(3) of this AD, at the next shop visit after the effective date of this AD, not to exceed 8,100 CSN, in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997.

(iii) If the disk is double inspected in accordance with paragraph (d)(2)(ii) of this AD, then inspect the disk for cracks and rework at the next shop visit after the completion of the double inspection, but not to exceed 2,450 CIS since the double inspection, in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997.

(e) For disks that have been inspected in accordance with PW SB No. PW2000, 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997, but not reworked in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997, inspect for cracks and rework in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997, at the next shop visit when the part is accessible, as defined in paragraph (k)(2) of this AD, or 4,000 CIS since last ECI in accordance with PW SB No. PW2000 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997, whichever occurs first.

(f) Prior to further flight, remove and replace disks with cracks. Disks with cracks cannot be reworked.

(g) If reworked, reidentify the disk in accordance with the Accomplishment Instructions of PW ASB No. PW2000 A72–592, dated March 18, 1997.

(h) For all first stage HPT disks that have been reworked in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997, inspect in accordance with PW Engine Manual, P/N 1A6231, Section 72–52–02, Inspection Check 04, at each subsequent shop visit when the disk is accessible, as defined in paragraph (k)(2) of this AD, not to exceed 6,000 CIS since last inspection.

(i) The following cyclic life limits apply to disks that are reworked in accordance with the Accomplishment Instructions of PW ASB No. PW2000 A72–592, dated March 18, 1997:

(1) Disks that have accumulated less than 5,000 CSN upon rework may accumulate an additional 10,000 CIS following rework, and then must be retired from service.

(2) Disks that have accumulated 5,000 CSN or more upon rework may remain in service to the full 15,000 CSN published life limit, and then must be retired from service.

(3) Except as provided in paragraph (1) of this AD, no alternative life limits may be approved for disks reworked in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997.

(j) Operators may install new, unused first stage HPT disks without inspection and rework in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997, but must inspect and rework those disks at the next shop visit when the disk is accessible, as defined in paragraph (k)(2) of this AD, or 6,500 CSN, whichever occurs first, in accordance with PW ASB No. PW2000 A72–592, dated March 18, 1997, as defined in paragraphs (b) through (d), and (f) through (i) of this AD.

(k) For the purpose of this AD, the following definitions apply:

(1) A shop visit is defined as an engine removal where engine maintenance, prior to reinstalling the engine, entails separation of pairs of mating major engine flanges or the removal of a disk, hub, or spool.

(2) An accessible disk is defined as a disk that is in the shop, has been removed from the HPT module, separated from the rotor, and debladed.

(3) A double independent inspection is defined as having two independent qualified inspectors perform a complete ECI of the disk in accordance with the inspection requirements described in the Accomplishment Instructions of PW SB No. PW2000 72–588, Revision 1, dated March 31, 1997, or Original, dated February 17, 1997. Each inspector shall perform an independent calibration of the ECI equipment prior to performing the ECI in accordance with that SB.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(n) The actions required by this AD shall be accomplished in accordance with the following PW service documents:

Document No.	Pages	Revision	Date
SB No. PW2000			
72–588	1	1	March 31, 1997.
	2	Original	February 17, 1997.
	3–12	1	March 31, 1997.
NDIP–899	1–23	A	March 25, 1997.
	38	Original	February 17, 1997.
Total pages: 36			
SB No. PW2000			

Document No.	Pages	Revision	Date
72–588	1–12	Original	February 17, 1997.
	38	Original	February 17, 1997.
NDIP–899	1–23	Original	February 16, 1997.
Total pages: 36			
ASB No. PW2000			
A72–592	1–16	Original	March 18, 1997.
Total pages: 16			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(o) This amendment becomes effective on August 7, 1997.

Issued in Burlington, Massachusetts, on July 25, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–20784 Filed 8–6–97; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1033

Display of Control Numbers for Collections of Information Under the Paperwork Reduction Act

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Paperwork Reduction Act of 1995 requires the Commission to display the control numbers assigned by the Office of Management and Budget to standards and regulations containing ''collections of information.'' As used in the Paperwork Reduction Act, a ''collection of information'' includes any requirement for recordkeeping, reporting, or providing information to the public. The Commission is amending Part 1033 to include the control numbers for all currently approved collections of information in standards and regulations enforced by the Commission.

DATES: This amendment shall become effective on August 7, 1997.

FOR FURTHER INFORMATION CONTACT: Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980, extension 2216.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Commission enforces many standards and regulations that require manufacturers and importers to compile and maintain records, to report information to the Commission, or to make information available to the public. These requirements are ''collections of information'' as that term is used in the Paperwork Reduction Act of 1995 (PRA) at 44 U.S.C. 3502(3).

The PRA requires the Commission to obtain approval from the Office of Management and Budget (OMB) of all collections of information and to display the control number assigned by OMB for each collection of information. *See* 44 U.S.C. 3506.

In 1983, the Commission issued Part 1033 to display the control numbers assigned by OMB for each regulation enforced by the Commission containing a collection of information. Since 1983, the Commission has issued several standards and regulations containing collections of information that have been approved by OMB. For this reason, the Commission is amending Part 1033 to list all regulations containing collections of information currently approved by OMB and the control numbers for those regulations.

The amendment issued below is a rule of agency organization, procedure, or practice, and for that reason is not subject to provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553(b) and (c), requiring publication of a notice of proposed rulemaking and opportunity for public comment. This amendment is not a substantive rule, and for that reason the requirements of section 553(d) of the APA, 5 U.S.C. 553(d), for a delayed effective date of at least 30 days are not applicable. Consequently, this amendment shall become effective on the date of publication in the **Federal Register**.

List of Subjects in 16 CFR Part 1033

Reporting and recordkeeping requirements.

Conclusion

Therefore, pursuant to the authority of section 3506(c)(1) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(1) the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter A, Part 1033 to read as follows:

PART 1033—DISPLAY OF CONTROL NUMBERS FOR COLLECTION OF INFORMATION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority for part 1033 is revised to read as follows:

Authority: 44 U.S.C. 3506(c)(1); 5 U.S.C. 553.

2. Section 1033.2 is revised to read as follows:

§ 1033.2 Display of control numbers.

The following rules enforced by the Consumer Product Safety Commission containing collections of information are listed with the control numbers assigned by the Office of Management and Budget:

Part or section of title 16 Code of Federal Regulations	Currently assigned OMB control No.
Part 1019	3041–0003
Part 1204	3041–0006
Part 1509	3041–0012
Part 1508	3041–0013
Part 1632	3041–0014
Part 1210	3041–0016
Part 1630, 1631	3041–0017
Sections 1500.18(a)(6), 1500.86(a)(4)	3041–0019
Part 1209	3041–0022
Parts 1610, 1611	3041–0024
Parts 1615, 1616	3041–0027
Part 1505	3041–0035
Part 1406	3041–0040
Part 1205	3041–0091
Part 1211	3041–0125

(44 U.S.C. 3506(c)(1); 5 U.S.C. 553)

Dated: August 1, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–20725 Filed 8–6–97; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Securities Representing Investment of Customer Funds Held in Segregated Accounts by Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is amending Rules 1.23 and 1.25 to allow futures commission merchants (''FCMs'') to make direct transfers into segregated accounts of permissible, unencumbered securities of the types set forth in Section 4d(2) of the Commodity Exchange Act (''Act'') and Rule 1.25 promulgated thereunder. This will provide FCMs a more efficient means to increase or decrease their residual interest in funds segregated for the benefit of commodity customers than heretofore permitted. In addition, the revised rules will permit FCMs to deposit the proceeds from the sale or maturity of any such investments directly into a nonsegregated bank account, provided that the FCM maintains a sufficient residual financial interest in the funds segregated for commodity customers to assure that all of an FCM's obligations to its customers are covered. The Commission's expectation is that these rule changes will reduce the number of transactions required to manage an FCM's segregated cash and securities balances, thus reducing operating costs for the industry. To assure that there will be a clear audit trail for the increased types of permitted transactions, Rule 1.27 also is being amended to require that the description of the investment securities, required by the rule, includes the security identification number developed by the Committee on Uniform Security Identification Procedures (''CUSIP Number''). Also, Rule 1.25 is being amended to require identification, in the record of investments required to be maintained by Rule 1.27, of the manner in which the proceeds from the sale or maturity of any segregated securities are disposed of.

EFFECTIVE DATE: September 8, 1997.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Jr., Chief Accountant, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets (''Division''), Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Investment of Customers' Segregated Funds

At all times, an FCM is required to have sufficient funds in segregation to meet its obligations to customers. As a consequence, to protect against a customer account going into deficit, an FCM must deposit funds of its own to cover any customer account deficits, and such funds must remain in segregation until more funds are remitted to the FCM by the customers who hold such deficit accounts. Thus, maintaining an adequate cushion of its own in segregation is a part of routine FCM funds management operations. FCM operational funding needs often dictate that any unneeded excess funds in segregation be moved so that they can be used in other aspects of the firm's operations. Therefore, prudent and efficient funds management typically requires an FCM to make frequent transfers of funds into and out of segregation.

Prior to these rule changes, FCMs were only allowed to increase or decrease their interest in customers' segregated funds by direct transfers of cash. That is, securities owned by the FCM and held in a non-segregated account could not be transferred to a segregated account. Moreover, to assure an audit trail, if an FCM wished to move funds represented by securities into segregation, the securities had to be sold and the cash proceeds transferred into a segregated account. The FCM could, then, use the segregated cash to purchase more securities that would be held in segregation. The effect of these requirements was that any segregated securities, except for securities purchased and specifically owned and deposited by individual customers, always had to be purchased with cash from a segregated cash account. Likewise, the proceeds from any sale of segregated securities always had to be deposited into a segregated account, even if there was no longer a need for the funds to be in segregation. That is, such funds could only be moved to a non-segregated account after the securities were converted to cash and the cash had been deposited into a segregated account.

On March 21, 1997, the Commission published for comment proposed amendments to Rules 1.23, 1.25, and 1.27.[1] The proposed changes would permit FCMs to transfer their own unencumbered securities from a non-segregated account directly into a customer segregated safekeeping account. This would enable an FCM to increase the amount of funds segregated for the benefit of commodity customers more quickly and economically. To be eligible for direct transfer, such securities were required to be unencumbered and to qualify as permitted investments of customer funds under Rule 1.25. The proposed rule amendments also would permit an FCM to transfer such securities from a segregated customer safekeeping account directly to the FCM's own non-segregated account, to the extent the FCM had excess funds available in segregation. The 30-day public comment period on the proposed rule changes expired on April 21, 1997. The Commission received one written comment letter on this proposal from the Joint Audit Committee (''JAC'').[2] The JAC raised two issues.

First, JAC suggested that Rule 1.25 be amended by removing the requirement contained in the rule that the proceeds from any sale of segregated securities be redeposited into a segregated account. JAC indicated that by eliminating this restriction, FCMs would be able to sell segregated securities directly out of the segregated account and deposit the funds to a non-segregated account. Since it was the Commission's aim to permit cash and securities to be treated the same way, thus reducing the number of transactions required to administer segregated funds and reduce transaction costs, the Commission agrees with this suggestion. Therefore, to adopt the JAC's suggestion, Rule 1.25 is further amended in two respects: 1) the requirement to deposit the proceeds from the sale of segregated securities to a segregated account is eliminated; and 2) a requirement to identify, in the record of investments required to be maintained by Rule 1.27, the manner in which the proceeds from the sale or maturity of any segregated securities are disposed of, is added to the rule. That is, if proceeds are not redeposited in a segregated account, the record must

[1] *See* 62 FR 13564 (March 21, 1997).

[2] JAC is comprised of representatives from each commodity exchange and National Futures Association which coordinate the industry's audit and ongoing surveillance activities to promote a uniform framework of self-regulation.

reflect that the proceeds were deposited to an identified non-segregated account.

These changes to the rules are achieved without any sacrifice of the audit trail related to segregated funds transfers. Also, the rules do not impose any significant costs or other undue burdens upon FCMs, because the additional information required to be maintained by the rule should be available to FCMs in the internal records they already maintain.

The Commission's proposed amendment to Rule 1.23 would have modified the restrictions to allow the transfer of the types of securities set forth in Rule 1.25 between segregated and nonsegregated accounts. These proposed changes would permit transfers between segregated and non-segregated accounts, whether made in cash or securities, to be treated the same way. Therefore, the Commission has determined to adopt the amendment to Rule 1.23 as originally proposed, but to add the amendment to Rule 1.25 to assure that the Rule 1.23 rule changes achieve the desired result.

In its second comment, JAC pointed out that the proposed amendments to Rules 1.23 and 1.25 would restrict the transfer of securities to those held in a segregated safekeeping account with a bank or trust company. JAC's original request for the proposed rule change was to allow FCMs the ability to transfer segregated securities held by any permitted segregation depository, including contract market clearing organizations and other FCMs. The Commission agrees. Therefore, the final amendments to Rules 1.23 and 1.25, as adopted, refer to securities held in segregated safekeeping at any permitted custodian of segregated funds, that is a bank, trust company, contract market clearing organization, or another FCM. It should be noted that clearing organizations and FCMs ultimately deposit customer funds in a segregated safekeeping account with a bank or trust company.[3] In this connection the Commission notes that to be considered properly segregated, pursuant to the Act and the rules promulgated thereunder, securities must be held in safekeeping.

For purposes of Rules 1.26, 1.27, 1.28 and 1.29, all permissible investments, when deposited into segregated accounts, will be deemed to be securities and obligations which represent investments of customers' funds until such time as the FCM withdraws or otherwise disposes of such investments.

Also, the Commission is adopting as proposed amendments to Rule 1.27, which require FCMs to maintain records of permissible investments held in segregated accounts. Rule 1.27 now will require the record to include the CUSIP number of such securities as a part of the description of such investments, and Rule 1.25 will require the FCM's record to indicate if securities were liquidated and the non-segregated account where the proceeds were transferred. The Commission is not adopting any other changes to Rule 1.27, but wants to remind FCMs that Rule 1.27 requires them to include in the investments record, among other information, the name of the person through whom such investments were made and the name of the person to or through whom such investments were disposed of. Therefore, this record should identify permissible investments owned by the FCM which were deposited into segregation and any investments withdrawn from segregation and deposited in the FCM's own account. Securities owned by the FCM, used to meet its segregation requirements, must be identified as customer securities and properly segregated, whether physically deposited or deposited by book entry.

The Commission also invited comments on whether custodians for these purposes should be limited to banks and trust companies not affiliated with the FCM. The Commission asked this question, in part, as a follow-up to issues raised during the Barings crisis. Many firms had deposited their cash with affiliates of the Barings bank, which in turn used the Barings bank as a depository for those assets. During the Barings crisis, these firms found that their assets, notwithstanding some interpretations that the segregation laws in the United Kingdom impose a complete trust on customer funds, would not necessarily be considered segregated for their benefit in any impending liquidation in bankruptcy of the Barings group. In this connection, the Commission notes that the International Organisation of Securities Commissions issued guidance on client asset protection, which is contained in a report published in August 1996, that recommends to regulatory authorities that they should: ''. . . carefully consider the circumstances in which authorised firms may be permitted to meet the requirements of a client asset protection regime by holding client assets with a related custodian.''

In this connection, the only commenter, the JAC, stated that such a limitation on affiliated depositories would not seem warranted. In most jurisdictions, funds in securities held in safekeeping can be separated from funds amenable to the claims of a creditor of the custodian, as well as a creditor of the FCM. Amendments added to the Act in 1968, to impose the requirement to segregate directly on the custodian, are intended to achieve that effect.[4] The adoption of the rules in this release is intended to facilitate maintaining segregated funds in the form of securities. The Commission, therefore, believes that there is no compelling reason to impose a condition, at this time, that such funds be held at non-affiliated custodians. The Commission notes that it intends to keep this conclusion under review. This is because legislative and regulatory changes in the U.S. or in other countries, developments in risk assessment systems or cooperative arrangements with domestic and/or international regulators and encountering new types of custodianship problems in connection with a failed firm could at some future time suggest that the Commission consider a change in its current rules and policies in this connection.

Under the Act, an FCM may segregate commodity customers' funds at a bank or trust company, another registered FCM, or a clearing organization of a contract market. Each of these depositories is, itself, required by the Act to treat and deal with such funds as belonging to the FCM's customers and not as the FCM's own funds. Each of these persons is also liable under the Act for any misuse of, or failure to segregate, such funds. Such liability accrues whether or not the depository is related to the FCM. When customer funds are deposited with another FCM or contract market clearing organization, the funds, ultimately, are deposited

[3] In proposing these rule amendments, the Commission noted that their adoption would also require the Division to revise Financial and Segregation Interpretation No. 7, which includes the following statement:

Under Regulations 1.23 and 1.25 such obligations must be: (1) purchased with money deposited in an account used for the deposit of customers' funds; (2) made through such an account; and (3) the proceeds from any sale of such obligations must be redeposited in such an account. Thus, all additions to and withdrawals from customer segregated funds which represent topping up by the FCM to cover actual or expected customer deficits must be in the form of cash.

1 Comm. Fut. L. Rep. (CCH) ¶ 7117, at 7124 (July 23, 1980).

The Division will delete this text from the interpretation shortly and will publish an amended interpretation on its Internet web site (http://www.cftc.gov) and request Commerce Clearing Housng to publish the revised interpretation in the Commodity Futures Law Reporter.

[4] Pub. L. No. 90–258, § 6, 82 Stat. 26, 28 (1968), now codified as the concluding paragraph of § 4d(2) of the Act, 7 U.S.C. 6d(2) (1994).

with a bank or trust company by such FCM or clearing organization.

With respect to net capital compliance issues, the Commission's staff has previously informally advised the Joint Audit Committee and individual registrants that deposits of funds with affiliates would be deemed by staff to be returns of capital by an FCM and, therefore, such deposits could not be treated as regulatory capital by an FCM, unless such funds represented either: (1) Funds segregated or set aside in safekeeping under the Commission's rules for commodity or foreign futures or foreign options customers; (2) funds held pursuant to the Securities and Exchange Commission's customer protection rules (17 CFR 240.15c3–3); or (3) amounts to be used for normal operating expenses. The Commission is in agreement with that policy and does not believe any additional limitation needs to be imposed at this time. Unusually large amounts of cash held in segregation will be reviewed as part of Commission and SRO audit programs.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect registered FCMs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with RFA.[5] The Commission previously determined that registered FCMs are not small entities for the purpose of the RFA.[6]

Further, the amendments discussed herein do not impose any significant new burdens upon FCMs. These amendments facilitate the use of firm-owned obligations to enhance funds segregated for commodity customers by allowing the direct transfer of said obligations into and out of segregated accounts. As a result, the Commission anticipates that adoption of the amendments will reduce the burden of compliance with segregation requirements by FCMs. Accordingly, when these rule amendments were proposed, the Chairperson, on behalf of the Commission, certified, pursuant to 5 U.S.C. 605(b), that the rule amendments would not have a significant economic impact on a substantial number of small entities. The Commission, nonetheless, invited comment from any registered FCM that believed these rules would have a significant impact on its operations, but none was received.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, May 13, 1995) (''PRAct'') imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information, as defined by the PRAct. While these rule amendments have no burden, the group of rules (3038–0024) of which the rules proposed to be amended are a part has the following burden:

Average burden hours per response.....18.00
Number of Respondents 1,662.00
Frequency of response.....19.00

Copies of the OMB approved information collection package associated with these rules may be obtained from the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and Recordkeeping requirements, Segregation requirements.

In consideration of the foregoing and pursuant to the authority contained in the Act and, in particular, Sections 4d, 4g and 8a (5) thereof, 7 U.S.C. 6d, 6g and 12a(5), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.23 is revised to read as follows:

§ 1.23 Interest of futures commission merchant in segregated funds; additions and withdrawals.

The provision in section 4d(2) of the Act and the provision in § 1.20(c), which prohibit the commingling of customer funds with the funds of a futures commission merchant, shall not be construed to prevent a futures commission merchant from having a residual financial interest in the customer funds, segregated as required by the Act and the rules in this part and set apart for the benefit of commodity or option customers; nor shall such provisions be construed to prevent a futures commission merchant from adding to such segregated customer funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type set forth in § 1.25, as it may deem necessary to ensure any and all commodity or option customers' accounts from becoming undersegregated at any time. The books and records of a futures commission merchant shall at all times accurately reflect its interest in the segregated funds. A futures commission merchant may draw upon such segregated funds to its own order, to the extent of its actual interest therein, including the withdrawal of securities held in segregated safekeeping accounts held by a bank, trust company, contract market clearing organization or other futures commission merchant. Such withdrawal shall not result in the funds of one commodity and/or option customer being used to purchase, margin or carry the trades, contracts or commodity options, or extend the credit of any other commodity customer, option customer or other person.

3. Section 1.25 is revised to read as follows:

§ 1.25 Investment of customer funds.

No futures commission merchant and no clearing organization shall invest customer funds, except in obligations of the United States, in general obligations of any State or of any political subdivision thereof, or in obligations fully guaranteed as to principal and interest by the United States. This shall not prohibit a futures commission merchant from directly depositing unencumbered securities, of the type specified in this section, which it owns for its own account, into a segregated safekeeping account or from transferring any such securities from a segregated account to its own account, up to the extent of its residual financial interest in customers' segregated funds; *provided, however,* that such investments, transfers of securities, and disposition of proceeds from the sale or maturity of such securities are recorded in the record of investments, required to be maintained by § 1.27. All such securities may be segregated in safekeeping only with a bank, trust company, clearing organization of a contract market, or other registered futures commission merchant. Furthermore, for purposes of §§ 1.25, 1.26, 1.27, 1.28 and 1.29, investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into such a segregated account shall be considered

[5] 47 FR 18618–18621 (April 30, 1982).
[6] 47 FR 18619–18620.

customer funds until such investments are withdrawn from segregation.

4. Section 1.27 is amended by revising paragraphs (a)(4) and (b)(2) to read as follows:

§ 1.27 Record of investments.

(a) * * *

(4) A description of the obligations in which such investments were made, including the CUSIP numbers;

* * * * *

(b) * * *

(2) A description of such documents, including the CUSIP numbers; and

* * * * *

Issued in Washington D.C. on July 28, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–20766 Filed 8–6–97; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. IC–22775, IS–1095; File No. S7–7–96]

RIN 3235–AG61

Exemption for the Acquisition of Securities During the Existence of An Underwriting or Selling Syndicate

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to the rule under the Investment Company Act of 1940 that permits an investment company that is related to certain participants in an underwriting to purchase securities during an offering, if certain conditions are met. The amendments increase the percentage of an underwriting that investment companies having the same investment adviser may purchase in reliance on the rule, and expand the scope of the rule to include securities of certain foreign and domestic issuers that are not registered with the Commission under the Securities Act of 1933. The amendments respond to changes in the investment company and underwriting industries that have occurred since the rule last was substantively amended in 1979.

EFFECTIVE DATE: The rule amendments will become effective October 6, 1997.

FOR FURTHER INFORMATION CONTACT: C. Hunter Jones, Special Counsel, Office of Regulatory Policy, or Nadya B. Roytblat, Assistant Director, Office of Investment Company Regulation, Division of Investment Management, at (202) 942–0690, U.S. Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 10–2, Washington, D.C. 20549.

Requests for formal interpretive advice should be directed to the Office of Chief Counsel at (202) 942–0659, Division of Investment Management, U.S. Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting amendments to rule 10f–3 (17 CFR 270.10f–3) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act'').

Table of Contents

Executive Summary

The Commission is adopting amendments to rule 10f–3 under the Investment Company Act. Rule 10f–3 provides an exemption from section 10(f), which prohibits any registered investment company (''fund'') from purchasing securities for which an underwriter having certain relationships with the fund (''affiliated underwriter'') is acting as a principal underwriter during the existence of an underwriting or selling syndicate for the securities. The amendments are intended to provide funds with additional flexibility, consistent with the protection of investors, to make investments that may be in the best interests of investors.

The amendments will permit a fund subject to the rule, together with other funds that have the same investment adviser, to purchase, during the existence of an underwriting or selling syndicate:

- Up to 25% of the principal amount of an offering;
- Securities of foreign issuers or of domestic reporting issuers in an ''Eligible Foreign Offering''; and
- Certain securities that are exempt from registration and are eligible for resale pursuant to rule 144A under the Securities Act of 1933 (''Securities Act'').

The Commission is not adopting the amendment that would have permitted a fund subject to the rule to purchase municipal securities in a group sale (*i.e.*, a purchase for which all members of an underwriting syndicate, including the affiliated underwriter, receive credit). Rather, in light of the comments, the Commission has concluded that there is insufficient justification at this time to alter the treatment of group sales of municipal securities under rule 10f–3.

I. Background

A. Introduction

Section 10(f) of the Investment Company Act was designed to address one of the major abuses noted in the period before enactment of the Investment Company Act—the use of funds by underwriters that controlled these funds as a ''dumping ground'' for unmarketable securities.[1] An underwriter could, for example, ''dump'' unmarketable securities on its controlled fund, either by causing the fund to purchase the securities from the underwriter itself, or by encouraging the fund to purchase securities from another member of the underwriting syndicate. Fund assets also could be used to absorb the risks of an underwriting in more subtle ways, such as by facilitating price stabilization in connection with an underwriting.

Section 10(f) prohibits any fund from purchasing any security for which an affiliated underwriter is acting as a principal underwriter,[2] during the existence of an underwriting or selling syndicate for that security.[3] Congress

[1] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 76th Cong., 3d Sess. 35 (1940) (statement of Commissioner Healy).

[2] ''Principal underwriter'' is defined in section 2(a)(29) of the Investment Company Act [15 U.S.C. 80a–2(a)(29)] to mean (in relevant part) an underwriter who, in connection with a primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer, (B) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate, or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

[3] Section 10(f) [15 U.S.C. 80a–10(f)] prohibits a fund from purchasing a security during the

Continued

recognized that section 10(f), by prohibiting all purchases by a fund having the specified relationships with an underwriter (''affiliated fund'') during the existence of the underwriting or selling syndicate, could be overly broad. Thus, Congress gave the Commission specific authority to exempt persons from that prohibition when an exemption would be consistent with the protection of investors.[4]

In 1958, the Commission used its exemptive authority under section 10(f) to adopt rule 10f–3.[5] The rule currently permits a fund to purchase securities in a transaction that otherwise would violate section 10(f) if, among other things, (i) the securities either are registered under the Securities Act or are municipal securities, (ii) the offering involves a ''firm commitment'' underwriting,[6] (iii) the fund and all other funds advised by the same investment adviser do not in the aggregate purchase more than the greater of 4% of the principal amount of the securities being offered or $500,000 (but in no event greater than 10% of the offering) (the ''percentage limit''), (iv) the fund does not use more than 3% of its assets to purchase the securities, (v) the fund purchases the securities from a member of the syndicate other than the affiliated underwriter, (vi) the fund purchases the securities at a price not more than the public offering price prior to the end of the first day on which the securities are offered, and (vii) the fund's directors have adopted procedures for purchases made in reliance on the rule and regularly review fund purchases to determine whether they comply with these procedures.[7] The conditions of rule 10f–3 are designed to ensure that a purchase by a fund from a syndicate in which an affiliated underwriter is participating is consistent with the protection of fund investors.

B. Proposed Amendments to Rule 10f–3

On March 21, 1996, the Commission issued a release proposing amendments to rule 10f–3 (''Proposing Release'').[8] The proposed amendments to rule 10f–3 were intended to respond to concerns that the dramatic growth in the fund industry, combined with increasing concentration in the underwriting industry, and increasing business affiliations between funds and underwriters, had made the percentage limit too restrictive. The Proposing Release also noted that these trends have caused more funds to be subject to the prohibitions of section 10(f).[9]

The proposed amendments were designed to balance these concerns with the need for funds to have more flexibility to purchase securities when their affiliated underwriters are members of syndicates. The proposed amendments would have eased some of the restrictions of the rule to take into account fundamental changes in the industry, while preserving those parts of the rule that continue to protect investors.

The Commission received 18 comment letters on the proposed amendments to rule 10f–3. Commenters were supportive of the direction of the proposed amendments; many urged the Commission to further loosen the restrictions imposed by the rule. The Commission is adopting amendments to rule 10f–3 with a number of changes from the amendments as proposed, in view of the issues raised by commenters.[10]

II. Discussion

A. Quantity Limitations

1. Percentage of Offering Purchased

Rule 10f–3 limits the amount of securities that affiliated funds may purchase during the existence of an underwriting or selling syndicate. As discussed in the Proposing Release, the purpose of the percentage limit is to provide an indication that a significant portion of an offering is being purchased by persons other than a single affiliated fund complex.[11]

The percentage limit in rule 10f–3 currently prohibits funds advised by the same investment adviser from purchasing, in the aggregate, more than 4% of the principal amount of the offering, or $500,000, whichever is greater, but in no event more than 10% of the offering.[12] The Proposing Release noted that the current percentage limit appears to be more restrictive than necessary for the protection of fund investors. As a result, the percentage limit may impose unnecessary costs. Affiliated funds that are limited to purchasing 4% of an offering, if they wish to purchase more than that amount, must wait until the underwriting or selling syndicate terminates, and purchase the securities in the secondary market. This delay can cause these funds to pay a significantly higher price for the securities and incur significant additional transaction costs.[13] Thus, funds that are restricted

existence of an underwriting or selling syndicate if a principal underwriter of the security is an officer, director, member of an advisory board, investment adviser, or employee of the fund, or is a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person. As noted above, for purposes of this release, a person that falls within one of these categories is referred to as an ''affiliated underwriter,'' even though the Investment Company Act defines the term ''affiliated person'' to include a broader set of relationships. *See* section 2(a)(3) of the Investment Company Act [15 U.S.C. 80a–2(a)(3)]. Similarly, this release refers to a fund that is subject to section 10(f) as a result of its relationship with an ''affiliated underwriter,'' as an ''affiliated fund.''

[4] Section 10(f) authorizes the Commission to exempt, by rule or order, conditionally or unconditionally, ''any transaction or classes of transactions from any of the provisions [of section 10(f)], if and to the extent that such exemption is consistent with the protection of investors.'' By contrast, section 6(c) of the Investment Company Act [15 U.S.C. 80a–6(c)] authorizes the Commission more generally to exempt persons, securities, or transactions from provisions of the Investment Company Act if ''necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions'' of the Investment Company Act.

[5] *See* Adoption of Rule N–10F–3 Permitting Acquisition of Securities of Underwriting Syndicate Pursuant to Section 10(f) of the Investment Company Act of 1940, Investment Company Act Release No. 2797 (Dec. 2, 1958) [23 FR 9548 (Dec. 10, 1958)]. The rule codified the conditions of orders that the Commission had granted prior to 1958 exempting certain funds from section 10(f) to permit them to purchase specific securities.

[6] A ''firm commitment'' underwriting, for purposes of rule 10f–3, is one in which the underwriters are committed to purchase all of the securities being offered, if the underwriters purchase any of the securities being offered. *See* amended rule 10f–3(b)(5) [17 CFR 270.10f–3(b)(5)].

[7] The provisions of rule 10f–3 are similar to provisions permitting limited affiliated transactions by persons subject to section 406 of the Employee Retirement Income Security Act of 1974 (''ERISA'') [29 U.S.C. 1106] and by banks subject to section 23B of the Federal Reserve Act [12 U.S.C. 371c–1]. *See* Prohibited Transaction Class Exemption 75–1 (Oct. 24, 1975) (Department of Labor class exemption permitting purchases in limited circumstances, subject to conditions similar to rule 10f–3); section 23B(b) of the Federal Reserve Act [12 U.S.C. 371c–1(b)] (prohibiting a bank or its subsidiary from purchasing, as principal or fiduciary, securities from underwriting syndicates in which an affiliate of the bank participates, but permitting acquisitions of such securities if a majority of the bank's independent directors have approved the acquisition in advance).

[8] Exemption for the Acquisition of Securities During the Existence of an Underwriting Syndicate, Investment Company Act Release No. 21838 (Mar. 21, 1996) [61 FR 13630 (Mar. 27, 1996)].

[9] *See* Proposing Release, *supra* note 8, at nn.9–20 and accompanying text; *see also* Jack Willoughby, Fortify'*40—or Fight,* **Institutional Investor,** Jan. 1997, at 15–16 (noting increasing affiliation between fund management and securities underwriting firms).

[10] The amendments also add headings to the text of rule 10f–3 in order to make the rule more understandable and usable. In addition, the title of the rule has been changed to ''Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate'' to conform to the language of section 10(f).

[11] *See* Proposing Release, *supra* note 8, at n.14 and accompanying text.

[12] Rule 10f–3(d).

[13] In many instances, particularly in the equity market, the price of a security increases, sometimes dramatically, after an initial public offering. *See, e.g.*, I Louis Loss & Joel Seligman, Securities Regulation 333 n.28 (1989); Jonathan A. Shayne &

by the percentage limit of rule 10f–3 might not be able to purchase desirable securities at prices that would benefit their portfolios.[14] In addition, because compliance with the percentage limit is based on purchases by all funds with the same investment adviser, the percentage limit presents particular problems for fund complexes that have several funds that might have an interest in purchasing the security.[15]

In response to these concerns and changes in the industry, the Commission proposed to amend the percentage limit to permit funds relying on the rule to purchase up to the greater of 10% of the principal amount of an offering, or $1 million, but in no event more than 15% of the offering.[16] Commenters generally agreed with the reasons for raising the percentage limit. Most commenters stated that the percentage limit should be significantly higher than that proposed, and many suggested that the percentage limit be eliminated entirely. No commenter suggested that the current percentage limit be retained or lowered. Commenters differed, however, on the appropriate percentage limit.[17]

The Commission continues to believe that the percentage limit provides assurance that a significant portion of an offering will be purchased by persons other than a single fund complex affiliated with an underwriter, and should continue to be a component of the protections afforded by rule 10f–3. At the same time, the constraints of the percentage limit appear to be more restrictive on funds than they have been in the past, as a result of the growth in the fund industry and the increasing importance of funds as purchasers of securities.[18] These effects have been particularly acute for municipal bond funds.[19]

Subsequent to the Commission's adoption of the current percentage limit in 1979, fund ownership of securities increased substantially, both in absolute levels and as a percentage of total securities owned by all securityholders.[20] Given the consistent, dramatic growth in fund assets, and in light of the Commission's administrative experience with rule 10f–3 as well as the protections provided by the rule's other conditions, the Commission believes that adopting a percentage limit higher than the proposed limit is appropriate.[21]

The Commission has amended rule 10f–3 to provide a 25% limit on the principal amount of an offering that affiliated funds may purchase. A percentage limit of 25% of the principal amount of an offering should provide assurance that a significant portion of the offering is being distributed to investors not affiliated with the funds, while affording significant relief to purchasing funds compared to the percentage limit currently imposed in rule 10f–3. The Commission believes that a 25% limit would prevent a single fund complex affiliated with an underwriter from purchasing the majority of an offering, and should provide some assurance that purchasers other than one or two fund complexes affiliated with the underwriters are purchasing securities in the offering.[22] The Commission recognizes that this limit is significantly below that suggested by many industry commenters. The Commission is unconvinced at this time, however, that the case for raising the percentage limit higher has been made persuasively by commenters.

2. Percentage of Fund Assets

Rule 10f–3 currently prohibits a fund from using more than 3% of its assets to acquire securities in a transaction in reliance on the rule (the ''3% limit'').[23] The Commission proposed to eliminate this limit, noting that the other provisions of rule 10f–3 provide sufficient protections against dumping, and that the diversification provisions of the Investment Company Act provide shareholders of most funds with protections similar to those provided by the 3% limit.[24] Commenters supported the proposed amendment eliminating the 3% limit, which the Commission is adopting.

B. Foreign Offerings and Rule 144A Securities

A fund currently cannot rely on rule 10f–3 to purchase securities of any issuer, including a foreign issuer, unless the securities are registered under the Securities Act or are municipal securities. The proposed amendments would have permitted a fund to purchase securities issued by a foreign issuer that were not registered under the Securities Act if the securities were issued in either an ''Eligible Foreign Offering'' or a ''Foreign Issuer Rule 144A Offering,'' as defined in the proposed amendments. Commenters generally supported extending the rule to purchases of foreign securities that are not registered under the Securities Act. The Commission is adopting the amendments related to foreign

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Larry D. Soderquist, *Inefficiency in the Market for Initial Public Offerings*, 48 Vand. L. Rev. 965 (1995). There are additional potential costs to purchasing securities in the secondary market. In secondary market purchases, for example, funds must pay brokerage commissions that they usually do not pay when purchasing directly in an underwritten offering.

[14] Funds in a large fund complex also may find it inefficient to purchase only 4% of an offering, particularly if the total offering amount is small. For these funds, 4% of an offering may be too small an amount to have any significant effect on the funds' portfolios. The portfolio managers of the funds may then decide not to purchase the security at all.

[15] For example, some fund complexes have over fifty funds. Perhaps as many as twenty of the funds might be interested in purchasing a security in a primary offering because investing in the security is consistent with each fund's investment objectives. In that case, those twenty funds must limit their total purchases of the security to the greater of 4% of the offering or $500,000, but in no event more than 10% of the offering.

[16] *See* Proposing Release, *supra* note 8, at nn.21–26 and accompanying text.

[17] Comments ranged from supporting the percentage limit as proposed, to a percentage limit as high as 80%.

[18] As the Proposing Release noted, in 1980 there were 564 funds with total assets of $134.8 billion, and in 1995 there were 5,789 funds with total assets of over $2.8 trillion. Proposing Release, *supra* note 8, at n.10. By December 1996, there were 6,270 funds with total assets of over $3.5 trillion. Investment Company Institute, Press Release (Jan. 28, 1997). Assets invested in funds currently exceed account deposits at commercial banks. *See* Board of Governors of the Federal Reserve System, Flow of Funds Accounts of the United States (Mar. 14, 1997) (table L.109).

[19] Increases in the demand for municipal bonds by mutual funds have outpaced increases in the supply of new municipal bonds. In 1980, 42 municipal bond funds held under $3 billion in municipal bonds. By 1996, 1,180 municipal bond funds held over $287 billion in municipal bonds. By contrast, the growth in municipal bond supply has grown only modestly: in 1980, approximately $47 billion in municipal bonds were issued; by 1996, issuances had only grown about fourfold, to $184 billion. Investment Company Institute, 1997 Mutual Fund Fact Book 68; Investment Company Institute, 1986 Mutual Fund Fact Book 19; Investment Company Institute, 1981 Mutual Fund Fact Book 77; Investment Company Institute, Press Release (Jan. 28, 1997); Bond Buyer, 1997 Yearbook 11; Bond Buyer, 1990 Yearbook 38; Lipper Closed-End Fund Performance Analysis Service (Jan. 1997), at 78. Some commenters noted that the withdrawal of several investment banks from the municipal bond business has intensified these pressures.

[20] In 1979, funds (not including insurance company separate accounts) owned approximately 2% ($61.6 billion) of outstanding securities (including U.S. government securities); in 1996, funds owned approximately 13% ($2.7 trillion) of outstanding securities, an increase in the percentage of ownership of over 500% compared to 1979. *See* Board of Governors of the Federal Reserve System, Flow of Funds Accounts of the United States, 1979–1988 (Mar. 14, 1997) (tables L.209 through L.214); Board of Governors of the Federal Reserve System, Flow of Funds Accounts of the United States (Mar. 14, 1997) (tables L.209 through L.214).

[21] *See* amended rule 10f–3(b)(7) [17 CFR 270.10f–3(b)(7)].

[22] With respect to the calculation of the percentage limit in Eligible Rule 144A Offerings, *see infra* note 34 and accompanying text. With respect to the calculation of the percentage limit in multi-class or multi-tranche offerings, *see infra* Section II.B.3.

[23] Rule 10f–3(e).

[24] *See* section 5(b)(1) of the Investment Company Act [15 U.S.C. 80a–5(b)(1)] (limiting a diversified fund to investing, with respect to 75% of its assets, no more than 5% of its assets in the securities of a single issuer).

securities, with certain modifications from the proposal in response to issues raised by commenters, as described below.

In considering the proposed amendments related to offerings of foreign securities, the Commission also focused on similar issues related to domestic issuers that might sell their securities outside the United States or privately in unregistered offerings. The Commission has concluded that rule 10f–3 should be extended to securities of certain domestic issuers that are sold in foreign offerings or that are exempt from registration and eligible for resale pursuant to rule 144A.[25]

1. Eligible Foreign Offerings

The amendments permit an affiliated fund to purchase securities in a public offering that is conducted under the laws of a country other than the United States (''Eligible Foreign Offering'').[26] An Eligible Foreign Offering must be subject to regulation by a foreign financial regulatory authority, as defined in the Investment Company Act, in the country in which the public offering occurs.[27] The rule also requires that financial statements of the issuer of the securities that are prepared and audited in a manner required or permitted by the appropriate foreign financial regulatory authority in the country in which the Eligible Foreign Offering occurs, for the two years prior to the offering, must be made available in connection with the offering.[28]

The rule, as proposed, would have limited Eligible Foreign Offerings to offerings by foreign issuers. The Commission has decided to permit an affiliated fund to purchase a domestic issuer's securities offered in an Eligible Foreign Offering, provided that the domestic issuer is a reporting issuer.[29] This requirement is designed to provide assurance that the issuer is not making a foreign offering in order to avoid the disclosure requirements of the U.S. securities laws to facilitate the dumping of securities on affiliated funds.

2. Rule 144A Offerings

Many fund purchases of foreign issuer securities are made in offerings that are exempt from the registration provisions of the Securities Act and in which the securities are eligible for resale pursuant to rule 144A under the Securities Act (''rule 144A offerings'').[30] Rule 144A is a non-exclusive safe harbor that exempts from the registration provisions of the Securities Act resales of securities to certain institutions, known as Qualified Institutional Buyers (''QIBs'').[31]

A rule 144A offering of a foreign issuer's securities often is part of a larger global offering. Sometimes a global offering is divided into several tranches—one for the issuer's home country, one for the United States, and one or more for other countries. Other times, there is a single home country tranche from which limited amounts of securities may be sold in the United States and elsewhere. In both cases, the price for the securities is uniform to all purchasers, and the issuer prepares an offering document that provides detailed information about the issuer and the offered securities.[32]

The proposed amendments would have permitted a fund to purchase securities in a ''Foreign Issuer Rule 144A Offering,'' subject to the other conditions of rule 10f–3 (except for the Securities Act registration requirement). Most commenters supported this proposal. The Commission is adopting these amendments with a number of changes that should accommodate a greater variety of offering structures, in a manner consistent with the protection of investors.[33]

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[25] 17 CFR 230.144A.

[26] Amended rule 10f–3(a)(2) [17 CFR 270.10f–3(a)(2)].

[27] Amended rule 10f–3(a)(2)(i) [17 CFR 270.10f–3(a)(2)(i)]. ''Foreign financial regulatory authority'' is defined in section 2(a)(50) of the Investment Company Act [15 U.S.C. 80a–2(a)(50)] generally as any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to certain financial activities, or (C) membership organization a function of which is to regulate the participation of its members in such financial activities.

A ''foreign securities authority'' is defined in section 2(a)(49) of the Investment Company Act [15 U.S.C. 80a–2(a)(49)] as any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

[28] Amended rule 10f–3(a)(2)(iii) [17 CFR 270.10f–3(a)(2)(iii)]. The amendments as adopted do not specify the format of the financial statements that must be provided, in recognition that financial reporting standards differ from country to country. Nor do the amendments specify that applicable foreign law must require the issuer to disclose information about itself and the offering to prospective purchasers. The other components of the definition of an Eligible Foreign Offering should make this condition unnecessary. Fund management should determine whether there is sufficient information concerning the issuer and the offering to ensure that the securities are marketable and that the other conditions of the rule, particularly those related to the price and timing of the purchase of the securities, are satisfied.

[29] Amended rule 10f–3(a)(2)(iv) [17 CFR 270.10f–3(a)(2)(iv)] (requiring that the domestic issuer (1) have a class of securities registered pursuant to section 12(b) or 12(g) of the Securities Exchange Act of 1934 (''Exchange Act'') or be required to file reports pursuant to section 15(d) of the Exchange Act, and (2) have filed all the material required to be filed pursuant to section 13(a) or 15(d) of the Exchange Act for the 12 months preceding the offering).

Separate from the conditions included in rule 10f–3, Regulation S under the Securities Act [17 CFR 230.901–.904] contains certain limitations on the availability of its safe harbor from registration for foreign offers and sales by domestic issuers. Rule 10f–3 exempts certain transactions only from the prohibitions contained in section 10(f) of the Investment Company Act. Nothing in this release should be interpreted to suggest that the requirements and limitations of Regulation S do not apply to transactions permitted under rule 10f–3. See Offshore Offers and Sales, Securities Act Release No. 6863 (Apr. 24, 1990) [55 FR 18306 (May 2, 1990)]. The Commission recently proposed amendments to Regulation S that would, if adopted, treat equity securities of domestic issuers and equity securities of foreign issuers with primary trading markets in the United States as restricted securities for purposes of rule 144 under the Securities Act [17 CFR 230.144]. *See* Offshore Offers and Sales, Securities Act Release No. 7392 (Feb. 20, 1997) [62 FR 9258 (Feb. 28, 1997)].

[30] 17 CFR 230.144A. In 1993, funds purchased more foreign equity securities in rule 144A offerings than did any other type of purchaser. *See* Securities and Exchange Commission, Staff Report on Rule 144A 15 (1994) (''Staff Report'').

[31] Under rule 144A, the seller must reasonably believe that the purchaser is a QIB. A QIB is an institution of a type listed in rule 144A that owns or invests on a discretionary basis at least $100 million of certain securities. *See* 17 CFR 230.144A(a)(1). Many funds qualify as QIBs in their own right, and others qualify because they are part of a ''family'' of funds that owns, in the aggregate, at least $100 million of certain securities. 17 CFR 230.144A(a)(1)(iv).

[32] Although most foreign rule 144A placements appear to be priced the same as concurrent foreign offerings, there is no regulatory requirement that the securities be priced in this manner. *See* Staff Report, supra note 30, at 26. It has been suggested, however, that most securities eligible for resale pursuant to rule 144A are sold in underwriting arrangements with terms and conditions substantially similar to those applicable to registered public offerings. *See* 1 Edward Greene et al., U.S. Regulation of the International Securities Markets: A Guide for Domestic and Foreign Issuers and Intermediaries 141 (1993); *see also* Report of The Advisory Committee on the Capital Formation and Regulatory Processes, Appendix A at 39–42 (1996) (stating that rule 144A offerings bear increasing resemblance to public offerings, and that, due to the active participation of mutual funds as buyers and sellers of rule 144A debt securities, ''liquidity is readily available, even without subsequent registration.'' (footnote omitted)). Rule 144A requires an issuer to provide certain information about itself that the purchaser of the securities may request, including financial information for its two most recent fiscal years of operation. *See* 17 CFR 230.144A(d)(4). The rule exempts from this information requirement foreign governments and foreign private issuers that furnish information to the Commission pursuant to rule 12g3–2(b) under the Exchange Act [17 CFR 240.12g3–2(b)]. *See* 17 CFR 230.144A(d)(4)(i).

[33] The adopted amendments define the phrase ''Eligible Rule 144A Offering'' in lieu of the phrase ''Foreign Issuer Rule 144A Offering'' because, as discussed further below, the amendments permit the purchase of securities of both foreign and domestic issuers in Rule 144A offerings. Amended rule 10f–3(a)(4) [17 CFR 270.10f–3(a)(4)]. In order to clarify the nature of an Eligible Rule 144A Offering, the definition specifies that the securities must be sold in certain types of transactions exempt from the registration requirements of the Securities Act. Amended rule 10f–3(a)(4)(i) [17 CFR 270.10f–3(a)(4)(i)]. The amended rule provides that the fund may reasonably rely on the written statements of

The proposed amendments would have required that securities offered in a Foreign Issuer Rule 144A Offering also be offered in a concurrent Eligible Foreign Offering. The Proposing Release stated that the concurrent public offering requirement was designed to provide assurance that there would be a widespread distribution of securities that are fungible with the securities purchased by the fund. One commenter specifically supported this approach, but several commenters opposed it, stating that rule 144A offerings often do not involve a concurrent foreign public offering of securities of the same class. In response to a request for comment, several commenters also suggested that the rule should permit affiliated funds to purchase securities of domestic issuers in rule 144A offerings. The Commission has decided to amend rule 10f–3 to permit the purchase of securities in rule 144A offerings of foreign and domestic issuers, subject to the other conditions of the rule.

The Commission is making two additional changes that are reflected in the definition of ''Eligible Rule 144A Offering.'' The proposed amendments would have required that securities purchased in an Eligible Rule 144A Offering be purchased ''in the United States.'' This requirement has been eliminated. Second, the proposed amendments would have required that the offer or sale be made ''exclusively'' to QIBs. Several commenters suggested that the sale of a portion of the offering to non-QIBs should not prevent an affiliated fund from purchasing securities in the offering. The amended rule therefore does not include the exclusivity requirement because, as suggested by commenters, it may be unnecessarily limiting. The percentage limit as applied to an Eligible Rule 144A Offering, however, would be measured with respect to the portion of the offering sold to QIBs.[34]

3. Calculation of Percentage Limit in Global Offerings

Several commenters recommended that the Commission clarify that the percentage limit in the context of a global offering applies to the entire global offering rather than to the U.S. portion of the offering. The Commission staff has stated that in a global, multi-tranche offering of securities with identical terms at an identical offering price, with various closings that are conditioned upon each other, calculation of the percentage limit may properly be based on the total amount of the entire global offering.[35]

The Commission believes that this approach is consistent with the purpose of section 10(f) and rule 10f–3, and with the protection of investors. This method of calculating the percentage limit would not be appropriate, however, in an offering of different classes or series of a security when each class or series has different terms, whether conducted in one country or in many countries.[36]

C. Price and Timing of the Purchase

Rule 10f–3 currently requires that a security purchased in reliance on the rule be ''purchased at not more than the public offering price prior to the end of the first full business day after the first date on which the issue is offered to the public.'' [37] This provision is intended to provide assurance that the price paid by the affiliated fund is no higher than that paid by similarly situated but unaffiliated purchasers, and that the purchase occur before the underwriters know if the offering is fully subscribed.[38]

The amended rule clarifies this language and provides that the securities must be purchased ''prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities.'' [39] The provision should be applied to offerings registered under the Securities Act, municipal offerings, and to Eligible Foreign Offerings in the same way as the pre-amendment provision.[40] With regard to Eligible Rule 144A Offerings, this provision requires funds purchasing securities to pay no more than the public offering price in any concurrent public offering of the same securities. In addition, the price that funds pay for securities in the Eligible Rule 144A Offering must not be higher than that paid by other purchasers (other than underwriters or members of the selling syndicate) in the same offering.

D. Group Sales

The proposed amendments to rule 10f–3 would have permitted the purchase of municipal securities in ''group sales.'' [41] A ''group sale'' is a sale of municipal securities resulting from a ''group order,'' which is an order for securities for the account of all members of a syndicate in proportion to their respective participations in the syndicate.[42] Rule 10f–3 currently prohibits a fund from purchasing a security, directly or indirectly, from its affiliated underwriter. This provision of the rule permits a purchase from a syndicate manager, but not if the purchase is through a group sale.[43] This

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the issuer or an underwriter in determining whether this condition has been satisfied. *See* amended rule 10f–3(b)(3) [17 CFR 270.10f–3(b)(3)].

The amendments in no way affect the determination that must be made by a fund's board of directors whether a security purchased by the fund in a rule 144A placement is deemed a liquid security for purposes of the fund's liquidity policies. *See* Resale of Restricted Securities, Securities Act Release No. 6862 (Apr. 23, 1990) [55 FR 17933 (Apr. 30, 1990)].

[34] A purchasing fund under the rule need not be a QIB. If there is a concurrent Eligible Foreign Offering with respect to an Eligible Rule 144A Offering, the percentage limit may be calculated by reference to the securities sold in both offerings. *See* amended rule 10f–3(b)(7)(ii) [17 CFR 270.10f–3(b)(7)(ii)].

[35] *See* Rowe Price-Fleming International Inc., SEC No-Action Letter (Apr. 12, 1996).

[36] For example, if an issuer offers multiple classes, series or tranches of a security, with each class, series or tranche having different maturity dates, interest rates and yields, it would be inappropriate to calculate the percentage limit with respect to the total value of all of the securities offered. Rather, the percentage limit would be calculated with respect to each class, series or tranche of the issue. With respect to municipal securities, the Commission has stated in the past that a single offering of municipal securities would not be deemed to be separate classes of securities for purposes of the percentage limit solely by virtue of differing maturity dates. *See* Exemption of Acquisition of Securities During the Existence of Underwriting Syndicate, Investment Company Act Release No. 10592 (Feb. 13, 1979) [44 FR 10580 (Feb. 21, 1979)] at n.21.

[37] Rule 10f–3(a)(2).

[38] *See* Investment Company Acquisition of Securities Underwritten by an Affiliate of That Company, Investment Company Act Release No. 14924 (Jan. 29, 1986) [51 FR 4386 (Feb. 4, 1986)] at n.17 and accompanying text.

[39] Amended rule 10f–3(b)(2)(i) [17 CFR 270.10f–3(b)(2)(i)]. As proposed, the amended rule provides an exception from the pricing requirement in an Eligible Foreign Offering if rights to purchase the securities are offered as ''required by law to be granted to existing security holders of the issuer.'' *Id.*

[40] The change in language from referring to the day on which the securities are ''offered to the public'' to referring to the day on which ''any sales are made'' is not intended to make a substantive change to this condition; rather, it is intended to reflect the development of shelf registration as well as current business practice and usage of the terms. Sales would be made on the first day on which the underwriter accepts orders to purchase the securities—not the day on which the underwriter purchases the securities from the issuer. The amended requirement that the purchase must occur ''prior to the end of the first day'' conforms the rule text to the Commission's long-standing interpretation of this condition. *Id.*

[41] Rule 10f–3 currently defines ''municipal securities'' by reference to section 3(a)(29) of the Exchange Act [15 U.S.C. 78c(a)(29)]. *See* rule 10f–3(a)(1)(ii).

[42] *See* Municipal Securities Rulemaking Board (''MSRB'') Rule G–11(a)(iii), MSRB Manual (CCH) ¶ 3551; *see also* The Galaxy Fund *et al.*, Investment Company Act Release No. 20660 (Oct. 26, 1994) [59 FR 54665 (Nov. 1, 1994)] (Notice of Application).

[43] By contrast, an affiliated fund may, under rule 10f–3, purchase a municipal security through an order in which the fund designates one or more of

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provision is designed to ensure that a purchase permitted by rule 10f–3 does not violate section 17(a) of the Investment Company Act, which prohibits a fund from purchasing securities from an affiliate or from an affiliate of an affiliate.[44]

According to Municipal Securities Rulemaking Board rules, a syndicate that is offering municipal securities must establish a priority by which orders for the securities will be filled.[45] The proposed amendments related to group sales were based on the assumption that group orders frequently receive first priority,[46] and that the prohibition in rule 10f–3 on group sales therefore could act to the detriment of affiliated municipal bond funds by preventing them from purchasing municipal bonds in oversubscribed offerings in which only group orders are filled. The proposed amendments would have permitted group sales if (1) the syndicate were to establish that orders designated as group orders would have first priority, or that only group orders would be filled and (2) at the time of sale, the affiliated underwriters were not committed to underwrite more than 50% of the principal amount of the offered securities.

Two commenters disagreed with the factual premise of the proposed group sale provision. These commenters stated that group orders typically do *not* receive first priority in offerings, but rather that ''designated orders'' (orders in which the purchaser designates one or more members of the syndicate to receive credit for the sale) often receive first priority. One commenter suggested that the proposed amendment could have the unintended effect of encouraging syndicate managers to give group orders first priority in municipal offerings when they otherwise would not.

Under the current rule, an affiliated fund may purchase municipal securities through a designated order, as long as the fund does not designate its affiliated underwriter as the recipient of the credit. In view of the availability of this option, the Commission has determined not to adopt the proposed group sale amendments.[47] The Commission considered permitting group sales if the offering were oversubscribed and only group orders would be filled in the offering, but concluded that it would be impracticable to include such a condition in the rule at the present time. To the extent that the prioritization of group orders poses an impediment to the purchase of municipal securities under rule 10f–3, funds may seek exemptive relief from sections 10(f) and 17(a) as they have in the past, on a case-by-case basis.

E. Role of Fund Board of Directors

Rule 10f–3 currently requires fund boards of directors to adopt procedures pursuant to which a fund may purchase securities in reliance on the rule. The Commission proposed to amend the requirement related to directors' duties to clarify that the directors must *approve*, rather than *adopt*, procedures for the purchase of securities pursuant to rule 10f–3, in order to reflect more accurately the role of the board in approving policies and procedures developed by fund management.[48] Two commenters specifically supported this proposed amendment. The Commission is adopting the amendment as proposed.[49]

The Commission also requested comment on the role of fund directors in determining compliance with the proposed foreign securities provisions, and whether the existing requirements for the establishment and review of procedures are sufficient to cover the proposed amendments. Several commenters responded that the existing requirement concerning board duties is sufficient. The Commission has determined not to adopt any substantive change in the requirement concerning board duties. Fund boards are reminded, however, that changes in procedures will likely be required to accommodate purchases made under the amendments to rule 10f–3, including procedures concerning the reasonableness of commissions, spread or profit received by principal underwriters.[50]

The Commission continues to recognize the important role played by the fund directors in safeguarding the interests of fund investors.[51] A fund's board should be vigilant in reviewing the procedures and transactions as required by rule 10f–3 as well as in conducting any additional reviews that it determines are needed to protect the interests of investors, particularly if the fund purchases significant amounts of securities in reliance on rule 10f–3. For example, the board should consider monitoring how the performance of securities purchased in reliance on rule 10f–3 compares to securities not purchased in reliance on the rule, or to a benchmark such as a comparable market index. Such monitoring would enable the board to determine not only whether existing procedures are being followed, but also whether the procedures are effective in fulfilling the policies underlying section 10(f).[52]

F. Reporting and Recordkeeping

The proposed amendments would have eliminated the current requirement in rule 10f–3 that a fund report any transactions under rule 10f–3 to the Commission in its semi-annual report on Form N-SAR and attach to that form certain written records of those transactions.[53] In view of the increase in the percentage limit and the other amendments the Commission is adopting today, the Commission believes that the current reporting

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the syndicate participants to receive credit for the sale (also known as a ''designated order''), provided that the fund does not designate its affiliated underwriter as one of the recipients of the credit.

[44] 15 U.S.C. 80a–17(a).

[45] *See* MSRB Rule G–11(e), MSRB Manual (CCH) ¶ 3551.

[46] *See* Proposing Release, *supra* note 8, at n.57 and accompanying text (citing Public Securities Association, Fundamentals of Municipal Bonds 80 (1990)).

[47] In order to clarify that a purchase of municipal securities in a group sale proposed to be permitted by rule 10f–3 also would be exempt from the prohibition against affiliate transactions contained in section 17(a) of the Investment Company Act, the Commission proposed new rule 17a–10, to exempt any purchase of municipal securities in a group sale that complied with rule 10f–3 from section 17(a)(1). This rule is not being adopted.

[48] Proposing Release, *supra* note , at n.52.

[49] Amended rule 10f–3(b)(10) [17 CFR 270.10f–3(b)(10)].

[50] *See* amended rule 10f–3(b)(6) [17 CFR 270.10f–3(b)(6)].

[51] *See., e.g., Burks* v. *Lasker*, 441 U.S. 471, 484 (1979) (noting the importance of fund directors in ''furnishing an independent check upon management''); Division of Investment Management, U.S. Securities and Exchange Commission, Protecting Investors: A Half Century of Investment Company Regulation 251–260 (1992) (describing the important functions of fund directors as required by the Investment Company Act and the rules thereunder).

[52] *See* amended rule 10f–3(b)(10)(ii) [17 CFR 270.10f–3(b)(10)(ii)] (requiring the board to make and approve ''such changes to the procedures as the board deems necessary''). *See also* Exemption of Acquisition of Securities During the Existence of Underwriting Syndicate, Investment Company Act Release No. 10736 (June 14, 1979) [44 FR 36152 (June 20, 1979)] (stating that the ''Commission expects that investment company directors, in establishing procedures under [rule 10f–3] and determining compliance with such procedures, will address the concerns embodied in section 10(f) of the Act against overreaching and the placing of otherwise unmarketable securities with an investment company'').

[53] Rule 10f–3(g) currently requires that a fund attach to its report on Form N-SAR ''a written record of each [rule 10f–3] transaction, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or materials'' upon which the board determined that the purchases were made in accordance with the fund's procedures concerning compliance with rule 10f–3. Reports on Form N-SAR are available for public inspection from the Commission in hard copy, and through the Commission's Electronic Data Gathering, Analysis and Retrieval (''EDGAR'') database, which is accessible through the Commission's Internet Web site (http://www.sec.gov).

requirement will provide useful information to the Commission in monitoring compliance with the amended rule. The Commission has decided to retain the Form N-SAR reporting requirement of rule 10f–3.[54]

As noted above, rule 10f–3 requires that the information attached to Form N–SAR include, among other things, the terms of the transaction and the information or materials upon which the board of directors makes a determination that all transactions during the preceding quarter were effected in accordance with the fund's procedures for ensuring compliance with the rule. The information reported pursuant to these provisions generally should include the date of the purchase, the maturity date and interest rate of any series purchased, the number and value of securities purchased (specific as to each series if applicable), and the aggregate number and value of securities offered through the underwriting or selling syndicate.

G. U.S. Government Securities

The Proposing Release requested comment whether rule 10f–3 should be amended to permit the purchase of other types of securities, such as U.S. government securities, that rule 10f–3 currently does not address, and the extent to which the conditions of the rule should apply to such purchases. In requesting comment, the Commission noted that it might not be necessary for rule 10f–3 to permit the purchase of U.S. government securities because the arrangements among distributors of these securities may not always constitute underwriting or selling syndicates for purposes of section 10(f).[55] Two commenters suggested that section 10(f) should not be interpreted to prohibit fund purchases of securities issued by agencies or instrumentalities of the U.S. government if a fund affiliate is a dealer in the primary distribution of the securities and that, in the alternative, the Commission should amend rule 10f–3 to permit such purchases.

The Commission has determined not to adopt amendments to rule 10f–3 related to additional types of securities. As noted above and in the Proposing Release, section 10(f) does not apply to certain types of offerings of U.S. government securities.[56] The Commission has not received any applications for exemptive relief with respect to offerings of U.S. government securities to which the section does apply, which suggests that relief may not be necessary at this time. Moreover, in light of the variety of these types of offerings and securities, and the unique issues they may present under section 10(f), it may be more appropriate to address these offerings of securities on a case-by-case basis in connection with individual requests for exemption.

III. Cost-Benefit Analysis

The amendments to rule 10f–3 would increase the flexibility for funds to purchase securities during the existence of a syndicate in which an affiliated underwriter participates. These amendments should benefit funds, which will be able to (i) purchase securities of foreign and domestic issuers in Eligible Foreign Offerings and Eligible Rule 144A Offerings in reliance upon rule 10f–3, without having to seek an exemptive order from the Commission and (ii) in many cases, purchase more desirable quantities of securities at advantageous prices. The potential benefits to fund investors of these proposed amendments are better investment performance and lower costs to the funds.

The costs of the amendments to funds and investors are likely to be minimal. Fund investment advisers and boards of directors will be required to determine whether purchases of securities in foreign offerings and rule 144A offerings comply with the standards in the amended rule. Rule 10f–3, however, currently has standards that must be met for purchases permitted under the rule. Thus, the additional cost of complying with the standards related to purchases of securities in foreign offerings and rule 144A offerings are likely to be minimal.[57]

Similarly, with respect to costs of reporting rule 10f–3 transactions on Form N–SAR, the increased opportunities to purchase greater quantities and types of securities may result in an increased aggregate cost of reporting for funds that purchase in reliance on the rule. At the same time, however, due to the increased number of securities that are likely to be purchased, the average compliance costs (per security purchased) of reporting rule 10f–3 transactions will probably diminish.

The increased risk of the dumping of unmarketable securities on affiliated funds appears to be minimal. The amendments are designed to loosen the restrictions of rule 10f–3 while maintaining those features of the rule that protect investors. The Commission is not aware of any evidence that dumping has been problematic under the current conditions of the rule, and the Commission intends to monitor transactions undertaken in reliance on rule 10f–3 after the amendments become effective.

Comment letters on the Proposing Release did not provide empirical data quantifying the dollar benefits of amending the rule. Therefore, it is difficult to estimate what effect, if any, the rule amendments will have on the prices of securities, on issuers' capital costs, or on the securities markets generally. However, the amendments are likely to increase efficiency in the securities markets because the amendments remove unnecessary restrictions on certain market participants. Funds with affiliated underwriters likely will purchase a larger proportion of their portfolios through primary offerings and a smaller proportion in the secondary market. Conversely, other investors likely will purchase a smaller proportion of their portfolios in primary offerings and larger proportions in the secondary market.

IV. Paperwork Reduction Act

As set forth in the Proposing Release, rule 10f–3 contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[58] Accordingly, the collection of information requirements contained in the rule amendments were submitted to the Office of Management and Budget (''OMB'') for review pursuant to section 3507(d) of the PRA. No comments were received on the proposal with respect to the PRA. The collection of information requirements are in accordance with section 3507 of the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number. OMB approved the PRA request and assigned a control

[54] Amended rule 10f–3(b)(9) [17 CFR 270.10f–3(b)(9)]. The Commission intends to monitor reports concerning rule 10f–3 transactions and take appropriate action in response to any problems that arise.

[55] *See* Proposing Release, *supra note*, at n.684 (citing Institutional Liquid Assets, SEC No-Action Letter (Dec. 16, 1981) (granting no-action relief under section 10(f) to Goldman, Sachs, which had sought relief in order to act as one of a limited number of broker-dealers participating in a distribution of Federal Home Loan Bank notes, arguing that it should not be considered a member of an ''underwriting or selling syndicate'' for purposes of section 10(f))).

[56] *See* Institutional Liquid Assets, SEC No-Action Letter (Dec. 16, 1981).

[57] Purchases of securities in foreign offerings and rule 144A offerings, of course, are voluntary. If a fund were to determine that the costs of a purchase would outweigh the benefits, it could decide not to purchase.

[58] 44 U.S.C. 3501–3520.

number of 3235–0226, with an expiration date of May 31, 1999.

The collections of information under rule 10f–3, and as required to be reported on Form N–SAR, are necessary for investment companies to obtain the benefit of exemption from section 10(f) of the Investment Company Act that rule 10f–3 provides. As described in more detail in the Proposing Release and in this release above, the collections of information are necessary to provide the Commission with information regarding compliance with rule 10f–3. The Commission may review this information during periodic examinations or with respect to investigations. Except for the information required to be kept under paragraph (b)(11)(ii) of rule 10f–3 as amended, none of the information required to be collected or disclosed for PRA purposes will be kept confidential. If the records required to be kept pursuant to these rules are requested by and submitted to the Commission, they will be kept confidential to the extent permitted by relevant statutory and regulatory provisions.

The amendments to rule 10f–3 as adopted do not impose a greater paperwork burden upon respondents than that estimated and described in the Proposing Release. The retention of the reporting requirement on Form N–SAR will not increase the estimated burden for respondents, because the proposed elimination of this reporting requirement was not calculated as a reduction in burden for purposes of the proposed amendments.

V. Summary of Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis (''IRFA'') was published in the Proposing Release. No comments were received on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C. 604 regarding amendments to rule 10f–3 under the Investment Company Act.

The FRFA discusses the need for, and objectives of, the rule amendments. The FRFA states that rule 10f–3 permits funds to purchase securities notwithstanding section 10(f) of the Investment Company Act if certain conditions are met. The amendments to rule 10f–3 expand the circumstances in which funds subject to section 10(f) may purchase securities. The FRFA further states that the amendments are designed to increase the flexibility of funds to purchase (i) quantities of securities that are in the interest of fund investors and (ii) certain domestic and foreign securities that are not registered under the Securities Act, while minimizing the risk of abuses that section 10(f) was enacted to address.

The FRFA estimates that out of approximately 3,850 active investment companies registered with the Commission as of December 31, 1996, a total of approximately 800 would be considered small entities. The amendments to rule 10f–3 would apply to approximately 40 of these 800 small entities. The FRFA indicates that the proposed amendments would affect small entities in the same manner as other entities subject to section 10(f), but that the amendments increase flexibility for all funds.

Finally, the FRFA states that in adopting the amendments the Commission considered: (a) The establishment of differing compliance requirements that take into account the resources available to small entities; (b) simplification of the rule's requirements for small entities; (c) the use of performance rather than design standards; and (d) an exemption from the rule for small entities. The FRFA states that the Commission concluded that different requirements for small entities are not necessary and would be inconsistent with investor protection, and that the amended rule incorporates performance standards to the extent practicable. Cost-benefit information reflected in the ''Cost-Benefit Analysis'' section of this Release also is reflected in the FRFA. The FRFA is available for public inspection in File No. S7–7–96, and a copy may be obtained by contacting C. Hunter Jones, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–2, Washington, D.C. 20549.

VI. Statutory Authority

The Commission is adopting amendments to rule 10f–3 pursuant to the authority set forth in sections 10(f), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–10(f), 80a–30(a), 80a–37(a)].

Text of Rule

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Section 270.10f–3 is revised to read as follows:

§ 270.10f–3. Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

(a) *Definitions.*—(1) *Domestic Issuer* means any issuer other than a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country.

(2) *Eligible Foreign Offering* means a public offering of securities, conducted under the laws of a country other than the United States, that meets the following conditions:

(i) The offering is subject to regulation by a ''foreign financial regulatory authority,'' as defined in section 2(a)(50) of the Act [15 U.S.C. 80a–2(a)(50)], in such country;

(ii) The securities are offered at a fixed price to all purchasers in the offering (except for any rights to purchase securities that are required by law to be granted to existing security holders of the issuer);

(iii) Financial statements, prepared and audited in accordance with standards required or permitted by the appropriate foreign financial regulatory authority in such country, for the two years prior to the offering, are made available to the public and prospective purchasers in connection with the offering; and

(iv) If the issuer is a Domestic Issuer, it meets the following conditions:

(A) It has a class of securities registered pursuant to section 12(b) or 12(g) of the Securities Exchange Act of 1934 [15 U.S.C. 78*l*(b) or 78*l*(g)] or is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(d)]; and

(B) It has filed all the material required to be filed pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a) or 78o(d)] for a period of at least twelve months immediately preceding the sale of securities made in reliance upon this (or for such shorter period that the issuer was required to file such material).

(3) *Eligible Municipal Securities* means ''municipal securities,'' as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)], that have received an investment grade rating from at least one NRSRO; *provided,* that if the issuer of the municipal securities, or the entity supplying the revenues or other payments from which the issue is to be paid, has been in continuous operation

for less than three years, including the operation of any predecessors, the securities shall have received one of the three highest ratings from an NRSRO.

(4) *Eligible Rule 144A Offering* means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(2)], rule 144A thereunder [§ 230.144A of this chapter], or rules 501–508 thereunder [§§ 230.501–230.508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

(5) *NRSRO* has the same meaning as that set forth in § 270.2a–7(a)(14).

(b) *Conditions.* Any purchase of securities by a registered investment company prohibited by section 10(f) of the Act [15 U.S.C. 80a–10(f)] shall be exempt from the provisions of such section if the following conditions are met:

(1) *Type of Security.* The securities to be purchased are:

(i) Part of an issue registered under the Securities Act of 1933 [15 U.S.C. 77a–aa] that is being offered to the public;

(ii) Eligible Municipal Securities;

(iii) Securities sold in an Eligible Foreign Offering; or

(iv) Securities sold in an Eligible Rule 144A Offering.

(2) *Timing and Price.*

(i) The securities are purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities (except, in the case of an Eligible Foreign Offering, for any rights to purchase that are required by law to be granted to existing security holders of the issuer); and

(ii) If the securities are offered for subscription upon exercise of rights, the securities shall be purchased on or before the fourth day preceding the day on which the rights offering terminates.

(3) *Reasonable Reliance.* For purposes of determining compliance with paragraphs (b)(1)(iv) and (b)(2)(i) of this section, an investment company may reasonably rely upon written statements made by the issuer or a syndicate manager, or by an underwriter or seller of the securities through which such investment company purchases the securities.

(4) *Continuous Operation.* If the securities to be purchased are part of an issue registered under the Securities Act of 1933 [15 U.S.C. 77a—aa] that is being offered to the public or are purchased pursuant to an Eligible Foreign Offering or an Eligible Rule 144A Offering, the issuer of the securities shall have been in continuous operation for not less than three years, including the operations of any predecessors.

(5) *Firm Commitment Underwriting.* The securities are offered pursuant to an underwriting or similar agreement under which the underwriters are committed to purchase all of the securities being offered, except those purchased by others pursuant to a rights offering, if the underwriters purchase any of the securities.

(6) *Reasonable Commission.* The commission, spread or profit received or to be received by the principal underwriters is reasonable and fair compared to the commission, spread or profit received by other such persons in connection with the underwriting of similar securities being sold during a comparable period of time.

(7) *Percentage Limit.* The amount of securities of any class of such issue to be purchased by the investment company, or by two or more investment companies having the same investment adviser, shall not exceed:

(i) If purchased in an offering other than an Eligible Rule 144A Offering, 25 percent of the principal amount of the offering of such class; or

(ii) If purchased in an Eligible Rule 144A Offering, 25 percent of the total of:

(A) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, plus

(B) The principal amount of the offering of such class in any concurrent public offering.

(8) *Prohibition of Certain Affiliate Transactions.* Such investment company does not purchase the securities being offered directly or indirectly from an officer, director, member of an advisory board, investment adviser or employee of such investment company or from a person of which any such officer, director, member of an advisory board, investment adviser or employee is an affiliated person; *provided,* that a purchase from a syndicate manager shall not be deemed to be a purchase from a specific underwriter if:

(i) Such underwriter does not benefit directly or indirectly from the transaction; or

(ii) In respect to the purchase of Eligible Municipal Securities, such purchase is not designated as a group sale or otherwise allocated to the account of any person from whom this paragraph prohibits the purchase.

(9) *Periodic Reporting.* The existence of any transactions effected pursuant to this section shall be reported on the Form N–SAR [§ 274.101 of this chapter] of the investment company and a written record of each such transaction, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or materials upon which the determination described in paragraph (b)(10)(iii) of this section was made shall be attached thereto.

(10) *Board Review.* The board of directors of the investment company, including a majority of the directors who are not interested persons of the investment company:

(i) Has approved procedures, pursuant to which such purchases may be effected for the company, that are reasonably designed to provide that the purchases comply with all the conditions of this section;

(ii) Approves such changes to the procedures as the board deems necessary; and

(iii) Determines no less frequently than quarterly that all purchases made during the preceding quarter were effected in compliance with such procedures.

(11) *Maintenance of Records.* The investment company:

(i) Shall maintain and preserve permanently in an easily accessible place a written copy of the procedures, and any modification thereto, described in paragraphs (b)(10)(i) and (b)(10)(ii) of this section; and

(ii) Shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or materials upon which the determination described in paragraph (b)(10)(iii) of this section was made.

By the Commission.

Dated: July 31, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20747 Filed 8–6–97; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD86

Deeming in the Supplemental Security Income (SSI) Program When an Ineligible Spouse or Parent is Absent From the Household Due Solely to Active Military Service

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are adding a rule on how the income and resources of ineligible spouses or parents affect the eligibility and benefit amounts of Supplemental Security Income (SSI) claimants and recipients when those spouses or parents are absent from their households due solely to a duty assignment as a member of the Armed Forces on active duty. We are adding this rule because the current rules do not reflect the provision of the Social Security Act (the Act), as amended by the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993), that addresses this situation.

DATES: This rule is effective September 8, 1997.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about this rule.

For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Regulations at § 416.1167(a) state that a ''temporary'' absence, for SSI deeming purposes, occurs when an SSI claimant/recipient, an ineligible spouse or parent, or an ineligible child leaves the household but intends to, and does, return in the same month or the month immediately following. If the absence is temporary, we continue to consider the person a member of the household for deeming purposes.

Under our policy prior to October 1, 1993, an ineligible spouse or parent who was absent from an SSI claimant's or recipient's household for any reason, including active duty military service, and whose absence was not temporary (§ 416.1167(a)), was not considered to be a member of the household for deeming purposes effective with the first day of the month following the month the spouse or parent left the household.

Section 13733(a) of OBRA 1993 (Pub. L. 103–66) changed SSI policy, effective October 1, 1993, on the treatment of ineligible spouses and parents who are absent from deeming households solely because of active duty military assignments. Under this legislation, which added paragraph (4) to section 1614(f) of the Act, the service member continues to be considered a member of the household, absent evidence to the contrary, for income and resources deeming purposes. Current regulations do not specifically address this situation.

The change in the deeming rules made by section 13733(a) of Public Law 103–66 was intended to prevent an absent deemor's active military service from adversely affecting an SSI claimant's or recipient's benefits. Prior to the change in the deeming rules, and under certain circumstances, it was possible for an individual to receive a smaller SSI benefit—or no benefit at all—as a result of a spouse's or parent's absence from the household due to military service.

For SSI purposes, the treatment of an ineligible spouse's or parent's earnings differs depending on whether the spouse or parent is considered to be living in the same household as the SSI recipient. If the spouse or parent is considered to be living in the same household as the SSI recipient, the earnings are treated as earned income. If the spouse or parent is not considered to be living in the same household, any earnings that are made available to the household are treated as unearned income. In the SSI program, more generous exclusions apply to earned income than to unearned income.

For example, under prior policy, if an absent military member whose income and resources were no longer deemed sent wages home, or his or her wages were directly deposited into a bank account held jointly with other family members, income so received by household members was considered to be *unearned* for SSI eligibility and payment computation purposes. In contrast, wages received while the military deemor resided in the household were considered to be *earned* income for program purposes. Accordingly, prior policy had the effect of disadvantaging certain SSI claimants and recipients.

As a result of section 13733(a) of OBRA 1993, a military spouse's or parent's absence from the SSI household because of an active duty assignment is generally not considered for program purposes; the same deeming rules that apply to ''at home'' spouses and parents will generally apply to spouses and parents who are temporarily absent from the household due to active duty military service. Therefore, we are amending our regulations at § 416.1167 to reflect section 13733(a) of OBRA 1993.

The statute and the rule recognize that circumstances may change, and an absent service member who originally intended to continue to live in the deeming household may decide not to do so. Taking this into consideration, under the final rule, we provide that if an absent service member's intent to continue to live in the household changes, deeming stops beginning with the month following the month in which the intent changed.

We assume, absent evidence to the contrary, that the absent service member intends to return to the deeming household upon conclusion of the military assignment. ''Evidence to the contrary'' is evidence indicating that the service member does not intend to return to the deeming household upon conclusion of the military assignment. Evidence to the contrary includes (but is not limited to) a signed statement by the ''at home'' spouse or parent, or by the absent service member, indicating that the service member does not intend to return to the deeming household. Other examples of evidence to the contrary are evidence of divorce or legal separation that will result in the service member not returning to the deeming household. Also, diminished support from the absent service member to the household—e.g., an absent spouse who no longer makes his or her military wages available to the deeming household—may be evidence that the absent service member no longer intends to return to the deeming household.

On January 24, 1997, we published this final rule as a proposed rule in the **Federal Register** at 62 FR 3633 with a 60-day comment period. We received no comments during the public comment period. Therefore, we are publishing the final rule unchanged from the proposed rule.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget and determined that this rule does not meet

the criteria for a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic impact on a substantial number of small entities since this rule affects only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This rule imposes no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: Program No. 96.006-Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 28, 1997.

John J. Callahan,

Acting Commissioner for Social Security.

For the reasons set out in the preamble, part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211 of Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Section 416.1167 is amended by adding new paragraph (c) to read as follows:

§ 416.1167 Temporary absences and deeming rules.

* * * * *

(c) *Active duty military service.* If your ineligible spouse or parent is absent from the household due solely to a duty assignment as a member of the Armed Forces on active duty, we continue to consider that person to be living in the same household as you, absent evidence to the contrary. If we determine that during such an absence, evidence indicates that your spouse or parent should no longer be considered to be living in the same household as you, then deeming will cease. When such evidence exists, we determine the month in which your spouse or parent should no longer be considered to be living in the same household as you and stop deeming his or her income and resources beginning with the month following that month.

Example. Tom is a child who receives SSI. In January 1996, Tom's father leaves the household due solely to an active duty assignment as a member of the Armed Forces. Five months later in June 1996, while Tom's father is still on an active duty assignment, Tom's parents file for divorce. As a result, Tom's father will not be returning to live in Tom's household. Therefore, Tom's father should no longer be considered to be living in the same household with Tom. Beginning July 1, 1996, deeming from Tom's father will cease.

[FR Doc. 97–20743 Filed 8–6–97; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulation No. 16]

RIN 0960–AE61

Reduction in Supplemental Security Income (SSI) Payable to Institutionalized Children Whose Medical Costs Are Covered by Private Insurance

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: The interim final rules published at 62 FR 1053, on January 8, 1997, are adopted as final without change. These rules implement an amendment to section 1611(e)(1)(B) of the Social Security Act (the Act) made by section 214 of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

DATES: These rules are effective beginning January 8, 1997.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

Section 1611(e)(1)(A) of the Act generally precludes eligibility for SSI benefits when a claimant is a resident of a public institution throughout a month. However, section 1611(e)(1)(B) provided an exception to that bar. Under that section, payments could be made at the reduced Federal benefit rate to individuals in institutions ''receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX * * *'' This language was implemented through regulations to mean that individuals in institutions would receive only the reduced benefit amount when ''Medicaid (title XIX of the Social Security Act) pays a substantial part (more than 50 percent) of the cost of'' the claimant's care (§ 416.211(b)).

Section 214 of Pub. L. 104–193, effective for benefits beginning with the month of December 1996, amends section 1611(e)(1)(B) of the Act by extending applicability of the reduced SSI benefit rate to children under age 18 in medical care facilities receiving payments on their behalf under a health insurance policy issued by a private provider (hereinafter referred to as private health insurance). Prior to the enactment of section 214, children under the age of 18 in private institutions with private health insurance generally could be eligible for a full SSI payment. Section 214 now restricts the SSI payment for such children to the Federal reduced benefit rate. Also, prior to this legislation, individuals in public institutions not receiving substantial Medicaid payments on their behalf generally were ineligible for SSI. However, as a result of this legislation, children under age 18 in public institutions receiving private health insurance on their behalf now are eligible for SSI payments at the reduced Federal benefit amount.

The final rules apply the reduced Federal benefit amount to children under age 18 with private health insurance when it, either alone or in combination with Medicaid, pays a substantial part (more than 50 percent) of the cost of their care in the institution.

Regulatory Changes

During the public comment period, we received two comments within the scope of this rulemaking. One commenter, representing a major advocacy group for retarded citizens, expressed agreement with the Social Security Administration's interpretation of the provision regarding the amount of private insurance payments required in order for the reduced Federal SSI benefit rate to apply. Another commenter asked that we add a clarification specifying that Health Maintenance Organizations (HMOs) are

considered to be private health insurance providers within the meaning of this provision. However, the constantly evolving variety of innovative funding sources for institutional care precludes any attempt to specifically address each possible situation in these regulations. Our administrative issuances provide guidance to adjudicators in determining whether particular HMOs, or other kinds of insurers, may or may not be considered private health insurance providers. We also received several other comments, but they were not within the scope of this rulemaking.

Therefore, the interim final rules are adopted as final without change.

Dated: July 28, 1997.

John J. Callahan,

Acting Commissioner for Social Security.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Accordingly, the interim final rules amending 20 CFR part 416 which were published at 62 FR 1053 on January 8, 1997, are adopted as final without change.

[FR Doc. 97–20741 Filed 8–6–97; 8:45 am]

BILLING CODE 4190–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ17–2–169, FRL–5868–4]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Volatile Organic Compounds for the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is announcing the approval of a revision to the New Jersey State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards for Ozone. The SIP revision was submitted by the New Jersey Department of Environmental Protection and consists of the adopted revisions to Subchapter 16 ''Control and Prohibition of Air Pollution by Volatile Organic Compounds.'' These revisions relate to the control of volatile organic compounds from major stationary sources not subject to control techniques guidelines (CTG). The intended effect is to reduce the emissions of volatile organic compounds and thereby reduce ozone concentrations in the lower atmosphere which will assist in attaining the health based ozone air quality standard. EPA finds that the State has met the Clean Air Act requirement to adopt reasonably available control technology for non-CTG major sources.

EPA is also approving revisions to Subchapter 8 ''Permits and Certificates,'' Subchapter 17 ''Control and Prohibition of Air Pollution by Toxic Substances,'' Subchapter 23 ''Prevention of Air Pollution From Architectural Coatings and Consumer Products'' and Subchapter 25 ''Control and Prohibition of Air Pollution by Vehicular Fuels,'' and Air Test Method 3—Sampling and Analytical Procedures for the Determination of Volatile Organic Compounds from Source Operations (Title 7, Chapter 27B, Subchapter 3).

EFFECTIVE DATE: This rule will be effective September 8, 1997.

ADDRESSES: Copies of New Jersey's submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Paul R. Truchan, Environmental Engineer, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: On April 11, 1997 (62 FR 17766) EPA published, in the **Federal Register**, a proposed approval of a request by the State of New Jersey to revise its State Implementation Plan (SIP) for ozone. This revision to the New Jersey Ozone SIP added revisions to Subchapter 16, ''Control and Prohibition of Air Pollution by Volatile Organic Compounds,'' of New Jersey Administrative Code (N.J.A.C.) of Title 7, Chapter 27 which have occurred several times since EPA's last action. EPA is approving all changes which have occurred in Subchapter 16 (effective date March 2, 1992) since EPA's last approval on April 15, 1994 (59 FR 1994). This includes the following versions of Subchapter 16 with effective dates of December 20, 1993, June 20, 1994, December 5, 1994, May 15, 1995, and July 17, 1995.

EPA is also approving revisions to Subchapter 8 ''Permits and Certificates'' (sections 8.1 and 8.2), Subchapter 17 ''Control and Prohibition of Air Pollution by Toxic Substances,'' Subchapter 23 ''Prevention of Air Pollution From Architectural Coatings and Consumer Products'' and Subchapter 25 ''Control and Prohibition of Air Pollution by Vehicular Fuels,'' and Air Test Method 3—Sampling and Analytical Procedures for the Determination of Volatile Organic Compounds from Source Operations (Title 7, Chapter 27B, Subchapter 3). These revisions were effective July 17, 1995 and only involve administrative changes made to insure consistency with Subchapter 16 revisions.

Today's approval by EPA will revise the State Implementation Plan so that it contains the most current versions of the State regulations which were submitted as SIP revisions. The revisions and rationale for EPA's approval and rulemaking actions were explained in the April 11, 1997 proposal and will not be restated here. The reader is referred to the proposal for a detailed explanation of New Jersey's SIP revision. In response to EPA's proposed approval of New Jersey's SIP revision, no comments were received.

Conclusion

EPA is approving the revisions of Subchapter 8, ''Permits and Certificates'' (sections 8.1 and 8.2), Subchapter 16, ''Control and Prohibition of Air Pollution by Volatile Organic Compounds,'' Subchapter 17, ''Control and Prohibition of Air Pollution by Toxic Substances,'' Subchapter 23, ''Prevention of Air Pollution From Architectural Coatings and Consumer Products,'' and Subchapter 25, ''Control and Prohibition of Air Pollution by Vehicular Fuels,'' and to Title 7, Chapter 27B, Subchapter 3 of the New Jersey Administrative Code Air Test Method 3—''Sampling and Analytical Procedures for the Determination of Volatile Organic Compounds from Source Operations,'' into the New Jersey SIP for the attainment and maintenance of the national ambient air quality standards for Ozone.

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

factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act (Act) do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

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

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 6, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 21, 1997.

William J. Muszynski,

Deputy Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(63) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

* * * * *

(63) Revisions to the New Jersey State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds from stationary sources, dated November 15, 1993 and two revisions dated June 21, 1996 submitted by the New Jersey Department of Environmental Protection (NJDEP).

(i) Incorporation by reference:

(A) Amendments effective December 20, 1993 to Title 7, Chapter 27 of the New Jersey Administrative Code Subchapter 16, ''Control and Prohibition of Air Pollution by Volatile Organic Compounds.''

(B) Amendments effective June 20, 1994 to Title 7, Chapter 27 of the New Jersey Administrative Code: Subchapter 8, ''Permits and Certificates'' (sections 8.1 and 8.2), Subchapter 16, ''Control and Prohibition of Air Pollution by Volatile Organic Compounds,'' Subchapter 17, ''Control and Prohibition of Air Pollution by Toxic Substances,'' Subchapter 23, ''Prevention of Air Pollution From Architectural Coatings and Consumer Products,'' and Subchapter 25, ''Control and Prohibition of Air Pollution by Vehicular Fuels.'' Amendments effective June 20, 1994 to Title 7, Chapter 27B, Subchapter 3 of the New Jersey Administrative Code Air Test Method 3—''Sampling and Analytical Procedures for the Determination of Volatile Organic Compounds from Source Operations.''

(C) Amendments effective December 5, 1994 to Title 7, Chapter 27 of the New Jersey Administrative Code Subchapter 16, ''Control and Prohibition of Air Pollution by Volatile Organic Compounds.''

(D) Amendments effective May 15, 1995 to Title 7, Chapter 27 of the New Jersey Administrative Code Subchapter 16, ''Control and Prohibition of Air Pollution by Volatile Organic Compounds.''

(E) Amendments effective July 17, 1995 to Title 7, Chapter 27 of the New Jersey Administrative Code Subchapter 16, ''Control and Prohibition of Air Pollution by Volatile Organic Compounds.''

(ii) Additional material:

(A) November 15, 1993 letter from Jeanne Fox, NJDEP, to William J. Muszynski, EPA, requesting EPA approval of Subchapter 16.

(B) June 21, 1996 letter from Robert C. Shinn, Jr., NJDEP, to Jeanne M. Fox, EPA, requesting EPA approval of Subchapters 8, 16, 17, 23, 25 and Air Test Method 3.

(C) June 21, 1996 letter from Robert C. Shinn, Jr., NJDEP, to Jeanne M. Fox, EPA, requesting EPA approval of Subchapter 16.

3. Section 52.1605 is amended by revising the entries for Subchapters 8, 16, 17, 23, and 25 under the heading ''Title 7, Chapter 27'' and Subchapter 3 under the heading ''Title 7, Chapter 27B to the table in numerical order to read as follows:

§ 52.1605 EPA-approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * * * * * *			
Title 7, Chapter 27			
* * * * * * *			
Subchapter 8, ''Permits and Certificates, Hearings, and Confidentiality''.	Apr. 5, 1985	Nov. 25, 1986, 51 FR 42573.	
Section 8.11	Mar. 2, 1992	Apr. 15, 1994, 59 FR 17935.	
Sections 8.1 and 8.2	June 20, 1994.	August 7, 1997 [FR page citation].	
* * * * * * *			
Subchapter 16, ''Control and Prohibition of Air Pollution by Volatile Organic Compounds''.	July 17, 1995.	August 7, 1997 [FR page citation].	Earlier versions of Subchapter 16 remain part of the SIP only to the extent of determining compliance dates which have since passed.
Subchapter 17, ''Control and Prohibition of Air Pollution by Toxic Substances''.	June 20, 1994.	August 7, 1997 [FR page citation].	Subchapter 17 is included in the SIP only as it relates to the control of perchloroethylene.
* * * * * * *			
Subchapter 23, ''Prevention of Air Pollution from Architectural Coatings and Consumer Products''.	June 20, 1994.	August 7, 1997 [FR page citation].	
* * * * * * *			
Subchapter 25, ''Control and Prohibition of Air Pollution by Vehicular Fuels''.	June 20, 1994.	August 7, 1997 [FR page citation].	Approves 1992 revision of Subchapter 25 except that (1) oxygenated gasoline provisions are approved only as they apply to the four month control period from November 1 through the last day in February, consistent with the February 21, 1995 NJDEP modification of N.J.A.C. 7:27–25; and (2) oxygenated gasoline provisions are approved only as they apply to the Northern New Jersey portion of the New York-Northern New Jersey-Long Island consolidated metropolitan statistical area.
* * * * * * *			
Title 7, Chapter 27B			
Subchapter 3, ''Air Test Method 3: Sampling and Analytic Procedures for the Determination of Volatile Organic Compounds from Source Operations''.	June 20, 1994.	August 7, 1997 [FR page citation].	

[FR Doc. 97–20827 Filed 8–6–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5869–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete Spokane Junkyard and Associated Properties Site from the National Priorities List: Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Spokane Junkyard and Associated Properties Site (the Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes 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 Washington Department of Ecology (Ecology) have determined that the Site poses no significant threat to public health and the environment and, therefore, all appropriate CERCLA actions have been implemented, and no further cleanup is appropriate.

DATES: Comments concerning this site may be submitted on or before September 8, 1997.

ADDRESSES: Comments may be mailed to: Kevin Rochlin, Office of Environmental Cleanup, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, Mail Stop: ECL–111, Seattle, Washington 98101.

Comprehensive information on this site is available through the EPA Region 10 public docket, which is located at EPA's regional office and is available for public viewing by appointment from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. Requests for appointments to view the Regional public docket should be directed to: Superfund Records Center, EPA Region 10, 1200 6th Avenue, Seattle, Washington 98101.

Background information from the Regional public docket is also available for viewing at the Spokane Junkyard and Associated Properties Site information repository located at: Hillyard Branch Library, 4005 Cook Street, Spokane, Washington 99207.

FOR FURTHER INFORMATION CONTACT: Kevin Rochlin, Office of Environmental Cleanup, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, Mail Stop: ECL–111, Seattle, Washington 98101, (206) 553–2106 or, (800) 424–4372.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Spokane Junkyard and Associated Properties Site 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 identified 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 action in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site from the NPL for 30 days after publication of this document in the **Federal Register**.

Section II of this document 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 Spokane Junkyard and Associated Properties Site and explains how the 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 300.66(c)(7), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will 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 actions under CERCLA have 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.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the response action at the site to ensure that the selected remedy remains protective of public health and the environment. Because hazardous substances are consolidated and capped on the Site, EPA will conduct five-year reviews of this remedy.

If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever 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 Hazardous Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1) EPA has signified that the PRPs at the Site completed the early action specified in the 1996 Action Memorandum; (2) The Washington State Department of Ecology has concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and, (4) All relevant documents have been made available for public review in the local site information repositories.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final action in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rational for the proposal to delete this site from the NPL.

A. Site Background

The Spokane Junkyard and Associated Properties Site is located in the Hillyard area, a light commercial and residential area in Spokane. The Site covers approximately 16 acres and includes a former junkyard, the former Spokane Metals facility, and two other parcels of land.

B. History

Spokane Metals operated a metal recycling facility at the Site from the 1940's until the early 1980's. The metal recycling operations, which included salvaging transformers and batteries, spread out onto the other properties at the Site contaminating them with PCBs and lead. The junkyard accumulated a wide variety of surplus materials including asbestos, paint waste, and various liquid and solid wastes. Poor storage practices of these materials also resulted in site contamination.

After an explosive fire on the junkyard property in July 1987, EPA conducted a Removal Action at the Site during 1988 and 1989. The most contaminated materials were removed, and the Site was fenced to prevent access. The Site was added to the NPL in May 1994.

An Engineering Evaluation/Cost Assessment (EE/CA) was completed in December 1995. In January 1996, EPA held a public comment period on the six Non-Time-Critical Removal Action (Removal Action) cleanup alternatives in the EE/CA. The design for the Removal Action was completed in the summer of 1996, and the Removal Action took place from September to November 1996. EPA approved the Construction Report documenting the

completion of the Removal Action on June 26, 1997.

C. Characterization of Risk

EPA conducted a risk assessment following the completion of the Removal Action. Concentrations of contaminants remaining in the soil at the Site were below State and Federal regulatory levels and risks for both current and future use were within acceptable levels as defined by the NCP.

One of the three criteria for deletion specifies that EPA may delete a site when all appropriate responses under CERCLA have been implemented, and no further action by responsible parties is appropriate. EPA with concurrence from Ecology, believes that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this site from the NPL. Documentation supporting this action is available from the docket.

Dated: July 25, 1997.

Charles E. Findley,

Acting Regional Administrator.

[FR Doc. 97–20583 Filed 8–6–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–270; RM–8323, RM–8339, RM–8428, RM–8429, and RM–8430]

FM Broadcasting Services; Nashville, Cordele, Dawson, Montezuma, Hawkinsville, Cuthbert, and Leary, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of July 16, 1997, a *Report and Order* in MM Docket No. 93–270, 62 FR 38031. Inadvertently, the **DATES** and **SUPPLEMENTARY INFORMATION** portions of the **Federal Register** summary were in error.

FOR FURTHER INFORMATION CONTACT: Bert Withers, (202) 418–2180.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** issue of July 16, 1997, FR Doc. 97–18736, on page 38031 in the second column, correct the document as shown:

1. On page 38031, in the second column, line 44, correct the **DATES** portion to read: **DATES:** Effective September 2, 1997. The window period for filing applications for (1) Channel 251A at Dawson, Georgia; for (2) Channel 264A at Cuthbert, Georgia; and for (3) Channel 236A at Montezuma, Georgia will open on August 25, 1997, and close on September 25, 1997.

2. On page 38031, in the second column, line 52, correct the **SUPPLEMENTARY INFORMATION** portion to read: **SUPPLEMENTARY INFORMATION:** Channel 237C2 can be allotted at Nashville, Georgia in compliance with the Commission's minimum distance separation requirements at a site restricted to 6.3 kilometers (3.9 miles) northwest of the community at coordinates North Latitude 31–15–18 and West Longitude 83–17–08. RCI's petition was denied and DBC's petition and its later-filed counterproposal (RM–8430) were dismissed because the license for Station WAZE(FM) was canceled, creating a vacant allotment at Dawson, Georgia. A counterproposal jointly filed by Tri-County Broadcasting, Inc., licensee of Station WQSY(FM), Hawkinsville, Georgia and Montezuma Broadcasting, licensee of Station WLML(FM), Montezuma, Georgia (RM–8429), was also dismissed. Because of this latter dismissal, two more vacant allotments were created. Accordingly, filing windows are being opened for Dawson, Cuthbert, and Montezuma, Georgia. This is a summary of the Commission's *Report and Order,* MM Docket No. 93–270 adopted June 25, 1997 and released July 11, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in Commission's Reference Center (Room 239), 1919 M Street, N.W., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800.

Dated: July 29, 1997

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 97–20768 Filed 8–6–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–270; RM–8323; RM–8339, RM–8428, RM–8429, and RM–8430]

FM Broadcasting Services; Nashville, Cordele, Dawson, Montezuma, Hawkinsville, Cuthbert, and Leary, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; Withdrawal.

SUMMARY: The Chief, Allocations Branch, published in the **Federal Register** of July 17, 1997, a *Report and Order* in MM Docket No. 93–270, 62 FR 38218. This document was in error and is being withdrawn.

FOR FURTHER INFORMATION CONTACT: Bert Withers, (202) 418–2180.

Accordingly, under the authority of 47 U.S.C. 154, the final rule published on July 17, 1997 (62 FR 38218) is withdrawn.

Dated: July 29, 1997.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 97–20769 Filed 8–6–97; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 080197B]

Atlantic Tuna Fisheries; Fishery Closure

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

ACTION: Closure.

SUMMARY: NMFS has determined that the 1997 Atlantic bluefin tuna (ABT) June-August period General category subquota will be attained by August 3, 1997. Therefore, the General category fishery for June-August will be closed effective at 11:30 p.m. on August 3, 1997. This action is being taken to prevent overharvest of the General category June-August period subquota.

DATES: Effective 11:30 p.m. local time on August 3, 1997, through August 31, 1997.

FOR FURTHER INFORMATION CONTACT: Chris Rogers, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

General Category Closure

NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a **Federal Register** announcement to close the applicable fishery.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a subquota of 374 mt of large medium and giant ABT to be harvested from the regulatory area by vessels permitted in the General category during the period beginning June 1 and ending August 31. Based on reported catch and effort, NMFS projects that this subquota will be reached by August 3, 1997. Therefore, fishing for, retaining, possessing, or landing large medium or giant ABT by vessels in the General category must cease at 11:30 p.m. local time August 3, 1997. The General category will reopen September 1, 1997 with a quota of 187 mt for the September period. If necessary, the September subquota will be adjusted based on actual landings from the current period.

The intent of this closure is to prevent overharvest of the June-August period subquota established for the General category.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: August 1, 1997.

Bruce Morehead,

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

[FR Doc. 97–20758 Filed 8–1–97; 4:48 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D.073097D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the Gulf king mackerel resource.

EFFECTIVE DATE: The closure is effective 12:01 a.m., August 2, 1997, through June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles or Fentress Munden, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel set the annual commercial quota at 0.77 million lb (0.35 million kg) for the western zone.

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial quota of 0.77 million lb (0.35 million kg) for the western zone of the Gulf migratory group of king mackerel was reached on August 1, 1997. Hence, the commercial fishery for Gulf group king mackerel from the western zone is closed effective 12:01 a.m., local time, August 2, 1997, through June 30, 1998, the end of the fishing year. The boundary between the eastern and western zones is 87°31'06'' W. long., which is a line directly south from the Alabama/Florida boundary.

During the closure, except for a person aboard a charter vessel or headboat, a person aboard a vessel for which a commercial permit for king and Spanish mackerel has been issued may not fish for king mackerel in the EEZ in the western zone and may not retain king mackerel in or from the western zone EEZ. A person aboard a charter vessel or headboat may continue to retain king mackerel in or from the western zone EEZ under the bag and possession limits set forth in § 622.39(c)(1) and (2), provided the vessel is operating as a charter vessel or headboat and the vessel has an annual charter vessel/headboat permit, as specified in § 622.4(a)(1). A charter vessel or headboat that also has a commercial permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the western zone taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased, bartered, traded, or sold. This prohibition does not apply to trade in king mackerel from the western zone that were harvested, landed ashore, and bartered, traded, or sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under E.O. 12866.

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

Dated: August 1, 1997.

Richard W. Surdi,

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

[FR Doc. 97–20771 Filed 8–1–97; 4:48 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 152
Thursday, August 7, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comment.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a proposed rule to implement two provisions of the Thrift Savings Plan Act of 1996. The first specifies how long a separated participant can maintain a Thrift Savings Plan (TSP) account and the second expands TSP withdrawal options by allowing in-service withdrawals.

DATES: Comments must be received by September 8, 1997.

ADDRESSES: Comments may be sent to Patrick J. Forrest, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest, (202) 942–1662.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 100 Stat. 514 (codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479). The TSP is a tax-deferred retirement savings plan for Federal employees which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. The Board published its current withdrawal regulations, which are codified at 5 CFR part 1650, in final form on February 21, 1995 (60 FR 9595).

On September 30, 1996, the President signed the Thrift Savings Plan Act of 1996 (the TSPA), Pub. L. 104–208, div. A, title I, sec. 101(f), section 659. Before passage of the TSPA, a participant was required to make a valid withdrawal election by February 1 of the year following the latest of (1) the date upon which the participant attained age 65, (2) the date that was 10 years after the effective date of the participant's first TSP contribution, or (3) the date the participant separated from Federal service. The Board was required by 5 U.S.C. 8433(f)(2) to purchase an annuity for a participant who did not make such an election. However, the Board never purchased an annuity for a participant under this rule because the tenth anniversary of the first TSP contributions did not occur until April 1997.

Section 203(a)(4) of the TSPA amended FERSA to provide that a participant must withdraw his or her account balance in a single payment or begin receiving his or her TSP account balance in monthly payments (or in the form of a TSP annuity) by April 1 of the later of (1) the year following the year in which the participant reaches age 70½, or (2) the year following the year in which the participant separates from Federal service. If the participant does not make an election so that payment can be made by this deadline, the Board must use his or her TSP account to purchase an annuity for the participant. The first calendar year in which withdrawals will be required under the amendment is 1998.

Before passage of the TSPA, FERSA also provided at 5 U.S.C. 8433(a) that a TSP participant could only withdraw his or her account after separating from Government employment. Therefore, in-service TSP withdrawals were not permitted. Section 203(a)(6) of the TSPA amended FERSA to allow in-service withdrawals under two circumstances. Under 5 U.S.C. 8433(h)(1)(A), a participant who has turned age 59½ can withdraw an amount up to his or her entire vested TSP account balance before separating from Government employment. A participant is allowed only one withdrawal under this provision. In addition, under section 8433(h)(1)(B), a participant can obtain a withdrawal before separating from Government employment on the basis of financial hardship. A financial hardship withdrawal is limited to the amount the participant contributed to the TSP (plus the earnings attributed to those contributions). There is no limit on the number of such withdrawals.

This proposed rule reorganizes and amends the Board's withdrawal regulations at 5 CFR part 1650 to implement the TSPA amendments. Subpart A of part 1650 contains general information and rules. This proposed rule adds new definitions to § 1650.1 and rewrites the sections that describe withdrawal eligibility (§ 1650.2) and the effect of a freeze on a participant's account (renumbered as § 1650.3) to make subpart A apply to both post-employment and in-service withdrawals. Also, this proposed rule removes § 1650.5 (regarding outstanding loans) as an independent section within subpart A. Before its removal, § 1650.5 explained that a participant must repay an outstanding TSP loan or that his or her loan must be declared a taxable distribution before the participant could obtain a post-employment withdrawal. An outstanding TSP loan will not prevent an in-service withdrawal. Because the substance of § 1650.5 is still a principle of post-employment withdrawal eligibility, it has been moved to new § 1650.2(c).

Subparts B and C describe post-employment withdrawals and explain the post-employment withdrawal process. The procedures which govern post-employment withdrawals will remain the same, and the only proposed substantive change to those subparts is a revision of § 1650.15 (which is § 1650.13 in the Board's current regulations) to reflect the new required date for receiving a post-employment withdrawal. However, to make room for the two new subparts which govern in-service withdrawals, the subparts B and C headings have been renamed and each of the subparts' sections have been renumbered. To provide a more convenient resource to the reader, the Board will republish subparts B and C in their entirety.

This proposed rule creates new subparts D and E in part 1650 to describe in-service withdrawals and explain the in-service withdrawal process. Section 1650.30 describes the age-based in-service withdrawal; § 1650.40 explains how to obtain one; and § 1650.42(a) describes the participant's payment options. A participant is allowed only one age-based in-service withdrawal. A participant who has reached age 59½ can withdraw up to his or her entire vested TSP account balance as a single

payment. Because an age-based in-service withdrawal is an eligible rollover distribution, a participant can ask the TSP to transfer all or a portion of the withdrawal to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. Any amount withdrawn but not transferred is subject to mandatory 20 percent Federal income tax withholding. An age-based in-service withdrawal is not subject to the additional 10 percent tax imposed by the Internal Revenue Code (I.R.C. 72(t)) on the early withdrawal of retirement savings.

Section 1650.31 describes the financial hardship in-service withdrawal; § 1650.41 explains how to obtain one; and § 1650.42(b) describes the participant's payment options. Only financial hardships described under § 1650.31 can be used as the basis for requesting an in-service withdrawal, and only sums contributed by the participant and their attributable earnings can be withdrawn for this purpose.

There are two types of qualifying financial hardships: Insufficient cash flow and extraordinary expenses. Under § 1650.31(a)(1), a participant will show financial hardship by demonstrating that his or her monthly cash flow cannot meet ordinary monthly household expenses. Under § 1650.31(a)(2), a participant will show financial hardship by demonstrating that he or she has incurred an unreimbursed and unpaid extraordinary expense which cannot be met by his or her monthly cash flow. Extraordinary expenses are limited to medical expenses relating to the care or treatment of the participant, the participant's spouse, or the participant's dependents; household improvements needed on account of a medical condition, illness or injury to the participant, the participant's spouse, or the participant's dependents; personal casualty loss suffered by the participant; and legal costs associated with the participant's separation and divorce. A participant can qualify for a financial hardship withdrawal by meeting one of the tests or by showing a combination of negative cash flow and extraordinary expenses.

Like an age-based withdrawal, a financial hardship withdrawal is an eligible rollover distribution; therefore, the participant may ask the TSP to transfer all or a portion of the withdrawal to an IRA or other eligible retirement plan. The TSP will withhold for Federal income tax purposes 20 percent of any amount withdrawn but not transferred. The hardship withdrawal applicant can ask the TSP to increase his or her withdrawal so that the net disbursement after the mandatory withholding will be the amount requested (or the maximum amount for which the participant qualifies, if less than the amount requested). This is subject to the availability of employee contributions and earnings in the participant's account.

Section 1650.32 explains that a participant can continue to contribute to the TSP after obtaining an age-based withdrawal, but is not eligible to contribute to the TSP for a period of six months after obtaining a financial hardship withdrawal. After six-months ineligibility to contribute, the participant can resume TSP contributions only by making a new TSP election on Form TSP–1. Generally, a participant whose TSP contributions were discontinued because of a financial hardship withdrawal is not required to wait until a TSP open season to submit Form TSP–1. A FERS participant's agency automatic (1%) contributions will continue following either type of in-service withdrawal.

Finally, § 1650.33 explains that a TSP loan and an in-service withdrawal are not interchangeable and that a TSP withdrawal cannot be repaid.

In addition to amending the withdrawal provisions of part 1650, this proposed rule would amend the spousal rights provisions. The TSPA provides that the spouse of a FERS participant must consent to an in-service withdrawal and that the spouse of a CSRS participant is entitled to notice when the participant applies for an in-service withdrawal. These spousal rights, which mirror those applicable to TSP loans, will be incorporated into the withdrawal regulations. This proposed rule would make no other changes to the spousal rights provisions of the withdrawal regulations other than by reorganizing them for purposes of clarity and ease of reading.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Pub. L. 104–4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments and on the private sector has been assessed. These regulations will not compel the expenditure in any one year of $100 million or more by any State, local, and tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1650

Employee benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

For the reasons set out on the preamble, the Federal Retirement Thrift Investment Board proposes to revise 5 CFR part 1650 to read as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

Subpart A—General

Sec.

Subpart B—Post-Employment Withdrawals

Subpart C—Procedures for Post-Employment Withdrawals

Subpart D—In-Service Withdrawals

Subpart E—Procedures for In-Service Withdrawals

Subpart F—[Reserved]

Subpart G—Spousal Rights

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

Subpart A—General

§ 1650.1 Definitions.

As used in this part:

Account balance means, unless otherwise specified, the nonforfeitable valued account balance of a TSP participant as of the most recent month-end before the date a withdrawal occurs.

Board means the Federal Retirement Thrift Investment Board established pursuant to 5 U.S.C. 8472.

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent retirement system.

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, or any equivalent retirement system.

In-service withdrawal means an age-based or financial hardship withdrawal from the TSP obtained by a participant who is still employed by the Government.

Monthly processing cycle means the process, beginning on the evening of the fourth business day of the month, by which the record keeper allocates the amount of earnings to be credited to participant accounts in the Plan and authorizes disbursements from the Plan.

Participant means any person with an account in the Thrift Savings Plan.

Post-employment withdrawal means a withdrawal from the TSP obtained by a participant who has separated from Government employment, as described at 5 CFR 1650.1.

Reimbursement means a payment made to or on behalf of a participant by any person or entity (including an insurance company) to cover the cost of an extraordinary expense described in § 1650.31(a)(2).

Separation from Government employment means the cessation of employment with the Federal Government or the U.S. Postal Service (or with any other employer from a position that is deemed to be Government employment for purposes of participating in the TSP) for at least 31 full calendar days.

Spouse means the person to whom a TSP participant is married on the date he or she signs forms on which the TSP requests spouse information including a spouse from whom the participant is legally separated, and including a person with whom a participant is living in a relationship that constitutes a common law marriage in the jurisdiction in which they live.

Thrift Savings Plan, TSP, or *Plan* means the Federal Retirement Thrift Savings Plan, established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8351 and 8401–8479.

Thrift Savings Plan (TSP) contribution election means a request by an employee to start contributing to the TSP, to terminate contributions to the TSP, to change the amount of contributions made to the TSP each pay period, or to change the allocation of future TSP contributions among the investment funds, and made effective pursuant to 5 CFR part 1600.

Thrift Savings Plan Service Office means the office established by the Board to service participants. This office's current address is: Thrift Savings Plan Service Office, National Finance Center, PO Box 61500, New Orleans, Louisiana 70161–1500.

Valuation date means, for purposes of a required minimum distribution, the last day of the calendar year immediately preceding the year for which a distribution is made.

§ 1650.2 Eligibility for a TSP withdrawal.

(a) A participant who separates from Government employment, as described in § 1650.1, can withdraw his or her account by one of the withdrawal methods described in subpart B of this part using the procedures set out in subpart C of this part.

(b) A separated participant who is reemployed in a position in which he or she is eligible to participate in the TSP is subject to the following withdrawal eligibility rules:

(1) A participant who is reemployed in a TSP-eligible position on or before the 31st full calendar day after separation cannot withdraw his or her TSP account (except for an in-service withdrawal described in subpart D of this subpart). If the participant is scheduled for an automatic cashout, as described in § 1650.22, the cashout will be canceled if the participant informs the TSP that he or she has been reemployed or expects to be reemployed within 31 full calendar days of separation.

(2) A participant who is reemployed in a TSP-eligible position more than 31 full calendar days after separation may withdraw the portion of his or her account balance which is attributable to the earlier period of employment. If the amount attributable to the earlier period of employment is greater than $3,500, the participant must submit a properly completed withdrawal request (Form TSP–70) selecting a withdrawal option that results in an immediate withdrawal. However, a Form TSP–70 will not be accepted unless the TSP records indicate that the former employing agency reported the participant as separated from Government employment. If a participant has elected to receive monthly payments under § 1650.11, upon report by the agency that the participant is not separated, payments will not be made and, if already started, will stop.

(c) A participant who has not separated from Government employment can elect a withdrawal option described in subpart D of this part by following the procedures set out in subpart E of this part.

(d) A participant cannot make a post-employment withdrawal until any outstanding TSP loan has been either repaid in full or declared to be a taxable distribution. An outstanding TSP loan does not affect a participant's eligibility for an in-service withdrawal.

(e) All withdrawals are subject to the rules relating to spouse's rights (found in subpart G of this part), domestic relations orders, alimony and child support legal process, and child abuse enforcement orders (5 CFR part 1653). Post-employment withdrawals are also subject to the Internal Revenue Code's required minimum distribution rules.

§ 1650.3 Frozen accounts.

A participant may not withdraw any portion of his or her account balance if the account is frozen as a result of a pending retirement benefits court order, an alimony or child support enforcement order, a child abuse enforcement order, or as a result of a freeze placed on the account by the Board for another reason.

Subpart B—Post-Employment Withdrawals

§ 1650.10 Single payment.

A participant can withdraw his or her entire account in a single payment.

§ 1650.11 Monthly payments.

(a) A participant can withdraw his or her account balance in two or more substantially equal monthly payments, to be calculated under one of the following methods:

(1) A fixed monthly payment amount. The amount must be at least $25 per month and must satisfy any minimum distribution requirements. Payments will be made each month until the account is expended. If the last scheduled payment would be less than

the chosen amount, it will be combined and paid with the previous payment;

(2) A fixed number of monthly payments. The participant's month-end account balance for the month preceding the month of the first payment will be divided by the number of payments chosen in order to determine the monthly amount. If that amount is less than $25, the election is rejected. The payment must also meet any minimum distribution requirements. In January of each subsequent year, the TSP will divide the December 31 account balance from the prior year by the remaining number of payments in order to determine that year's monthly payments. If the monthly payment amount is less than $25, it will be increased to $25. This process will be repeated each year until the account is expended; or

(3) A monthly payment amount calculated using the factors set forth in Internal Revenue Service expected return multiply table V, 26 CFR 1.72–9. There is no $25 minimum monthly payment under this method. In the year payments begin, the monthly payment amount is calculated by dividing the month-end account balance for the month preceding the month of the first payment by the factor from table V based upon the participant's age as of his or her birthday in that year. This amount is then divided by 12 to yield the monthly payment amount. In subsequent years, the monthly payment amount is recalculated each January by dividing the December 31 account balance from the previous year by the factor from Table V based upon the participant's age as of his or her birthday in the year payments will be made. That amount is divided by 12 to yield the monthly payment amount.

(b) A participant who chooses to receive monthly payments calculated using one of the three methods set forth in paragraph (a) of this section cannot change the method after payments begin. Also, except as provided in paragraph (c) of this section, the participant cannot change the number of payments or the payment amount after payments begin.

(c) A participant receiving monthly payments can choose to receive the remainder of his or her account balance in a final single payment.

(d) A participant receiving monthly payments may invest his or her account balance as provided in 5 CFR part 1601.

§ 1659.12 Annuities.

(a) A participant can withdraw his or her entire account balance in the form of a life annuity. The participant's account balance must be $3,500 or more in order for the TSP to purchase an annuity. The TSP will send forms to a participant who chooses this method which ask him or her to choose an annuity method, name a beneficiary (if required), and provide any necessary spousal waiver or spousal information. Upon receipt of the required information, the TSP will purchase the annuity from the TSP's annuity vendor using the participant's entire account balance, except for any amount necessary to satisfy minimum distribution requirements. The first annuity payment will be made approximately 30 calendar days after the purchase of the annuity. The annuity will provide a payment for life to the participant and, if applicable, the participant's survivor, in accordance with the type of annuity chosen.

(b) The following types of annuities are available to participants:

(1) A single life annuity with level payments. This annuity is based upon the life expectancy of the participant at the time of purchase and provides monthly payments to the participant as long as the participant lives.

(2) A joint life annuity for the participant and his or her spouse with level payments. This annuity is based upon the combined life expectancies of the participant and the spouse and provides monthly payments to the participant, as long as both the participant and spouse are alive, and monthly payments to the survivor, as long as he or she is alive.

(3) Either a single life or joint life annuity (as described in paragraph (b)(1) or (b)(2) of this section) where the amount of the monthly payment can increase each year on the anniversary date of the first annuity payment. The amount of the increase is based on the average annual change in the Consumer Price Index for Urban Wage Earners and Clerical Workers as measured between the period of July through September in the second calendar year preceding the anniversary date and July through September in the calendar year preceding the anniversary date. For example, if the anniversary of an increasing annuity occurs in November of 1995, the amount of the increase will be calculated based upon the change in the index between the July-September period in 1993 and the July-September period in 1994. Monthly payments cannot decrease, nor can they increase more than 3 percent each year. If this option is chosen in conjunction with a joint life annuity with the spouse, the annual increase continues to apply to benefits received by the survivor.

(4) A joint life annuity, with level payments, for the participant and another person who either is a former spouse or has an insurable interest in the participant. This annuity is based upon the combined life expectancies of the participant and the other person. It provides monthly payments to the participant as long as both the participant and the joint annuitant are alive, and monthly payments to the survivor as long as he or she is alive. Increasing payments cannot be chosen for a joint annuity with a person other than the spouse.

(i) A person has an ''insurable interest'' in a participant if the person is financially dependent on the participant and could reasonably expect to derive financial benefit from the participant's continued life.

(ii) A relative (whether blood or adopted, but not by marriage) who is closer than a first cousin will be presumed to have an insurable interest in the participant.

(iii) A participant can establish that a person not described in paragraph (b)(4)(ii) of this section has an insurable interest in him or her by submitting with the annuity request an affidavit from a person other than the participant or the joint annuitant demonstrating that the designated joint annuitant has an insurable interest (as defined in paragraph (b)(4)(i) of this section) in the participant.

(c) Participants who choose a joint life annuity (with either a spouse or a person with an insurable interest) must choose either a 50 percent or a 100 percent survivor benefit. A 50 percent survivor benefit provides a monthly payment to the survivor which is 50 percent of the payment made when both the participant and the joint annuitant are alive. A 100 percent survivor benefit provides a monthly payment to the survivor which is the same amount as the payment made when both the participant and the survivor are alive. Either the 50 percent or the 100 percent survivor benefit may be combined with any joint life annuity option, except that the 100 percent survivor benefit can be combined with a joint annuity with a person other than the spouse (or a former spouse, if required by a retirement benefits court order) only if the joint annuitant is not more than 10 years younger than the participant.

(d) The following mutually exclusive features can be combined with certain types of annuities, as indicated:

(1) *Cash refund.* This feature provides that, if the participant (and joint annuitant, if applicable) dies before an amount equal to the balance used to purchase the annuity has been paid out, the difference between the balance used to purchase the annuity and the sum of

monthly payments already made will be paid to the named beneficiaries. The participant (or the joint annuitant, if the participant is deceased) may name or change the beneficiaries. This feature can be combined with any other annuity option.

(2) *Ten-year certain.* This feature provides that, if the participant dies before annuity payments have been made for 10 years (120 payments), monthly payments will continue to be made to the beneficiaries selected by the participant until 120 payments have been made. This feature can be combined with any single life annuity option, but cannot be selected in conjunction with any joint life annuity option.

(e) The Board can, from time to time, establish other types of annuities, other levels of survivor benefits, and other annuity features.

(f) The Board can, from time to time, eliminate a type of annuity (except for those annuities described in paragraph (b) of this section), a survivor benefit level, or an annuity feature. However, if the Board does so, it must continue to allow participants to purchase annuities of the eliminated type or containing the eliminated feature for five years after the date the decision to eliminate the annuity type or feature is announced in the **Federal Register**.

(g) Once an annuity has been purchased, the type of annuity, any annuity features, and the identity of the annuitant cannot be changed, and the annuity cannot be terminated.

§ 1650.13 Transfer of withdrawal payments.

(a) At the participant's request, the TSP will transfer directly to an eligible retirement plan all or part of any withdrawal that is an ''eligible rollover distribution,'' as defined in 26 U.S.C. 402(c)(4). A withdrawal method that is not an eligible rollover distribution cannot be transferred.

(b) The following TSP withdrawal methods are considered eligible rollover distributions;

(1) A single payment, as described in § 1650.10;

(2) Monthly payments, as described in § 1650.11, where payments are expected to last less than 10 years at the time they begin, according to the following rules:

(i) If the participant elects a number of monthly payments, the number of payments must be fewer than 120;

(ii) If the participant elects a monthly payment amount, the amount, when divided into the participant's account balance as of the end of the month prior to the first payment, must yield a number less than 85.

(3) A final single payment, as described in § 1650.11(c).

(c) The following withdrawal methods are not eligible rollover distributions:

(1) Any annuity purchased by the TSP.

(2) Any monthly payment that does not meet the rules set forth in paragraph (b)(2) of this section, including any monthly payment computed based on the Internal Revenue Service expected return multiple table V (see § 1650.11(a)(3)).

(3) Any minimum distribution payment or any portion of another payment which represents a minimum distribution payment.

(d) An eligible retirement plan is a plan defined in 26 U.S.C. 402(c)(8). There are three types of eligible retirement plans: an Individual Retirement Arrangement (IRA) (which can be either an individual retirement account or an individual retirement annuity), a plan qualified under 26 U.S.C. 401(a), and a plan described in 26 U.S.C. 403(a). An IRA or other eligible retirement plan must be maintained in the United States, which means one of the 50 states or the District of Columbia.

§ 1650.14 Deferred withdrawal elections.

(a) Subject to paragraph (b) of this section, a participant who separates from Government employment and elects to withdraw his or her account under one of the methods provided in §§ 1650.10, 1650.11 or 1650.12 may specify a future date (which shall be a month and year) for payment of the withdrawal.

(b) The future date chosen under this section cannot be later than March of the year following the year in which the participant becomes age 70½. If that date has already passed when the participant makes an election, the participant cannot choose a future date.

(c) If the withdrawal method chosen for future payment is a single payment or monthly payments (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the date chosen that such payments are scheduled to begin. If the payments are eligible rollover distributions, the participant may choose to transfer all or part of the payments to an Individual Retirement Arrangement (IRA) or another eligible retirement plan.

(d) If the withdrawal method chosen for future payment is an annuity (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the date chosen. At that time, the participant will be sent information asking him or her to choose an annuity method, name a beneficiary (if the cash refund or 10-year certain feature is chosen), and provide any necessary spousal waiver or spousal information.

§ 1650.15 Required withdrawal date.

(a) A participant must withdraw his or her account under § 1650.10 or begin receiving payments under §§ 1650.11 or 1650.12 by April 1 of the year following the later of the year in which:

(1) The participant turns 70½; or

(2) The participant separates from Government employment. However, in no event will a withdrawal be required under this paragraph until 1998.

(b) A separated participant may elect to withdraw his or her account or begin receiving payments before the date described in paragraph (a) of this section, but is not required to do so.

§ 1650.16 Changes and cancellation of withdrawal election.

(a) *Basic rule.* Subject to paragraphs (b) and (c) of this section and the rules relating to spouses' rights, a participant who has separated from Government employment can change his or her withdrawal election to any other withdrawal election or can cancel his or her withdrawal election if the change or cancellation can be processed before the withdrawal election is scheduled for disbursement.

(b) *Cutoff dates.* For participants who have any part of their accounts invested in the Common Stock Index Investment Fund (C Fund) or the Fixed Income Index Investment Fund (F Fund), a withdrawal payment that has been approved is scheduled on the second-to-last business day of the month preceding the month the withdrawal payment is to be made. For participants whose accounts are invested entirely in the Government Securities Investment Fund (G Fund), a withdrawal payment that has been approved is scheduled by the close of business on the day before the monthly processing cycle in which payments are made.

(c) *Special Rule for C and F Fund Participants.* Participants who have any part of their accounts invested in the C or F Funds may also change to another withdrawal method if the requested change can be processed before the close of business on the day before the monthly processing cycle in which payment will be made, and provided that under the new withdrawal method the amounts they have invested in the C or F Funds will still be withdrawn as originally scheduled from those Funds during the monthly processing cycle.

(d) *Example for participants whose accounts are invested in the C or F Funds.* This example illustrates the operation of the rules set forth in paragraphs (b) and (c) of this section for participants who have a portion of their accounts invested in the C or F Funds.

Example 1. Assume that such a participant wishes to withdraw the account by purchasing a single life annuity at the earliest possible date. The participant is married and has obtained the necessary waiver from her spouse for the purchase. All necessary forms have been submitted by the middle of April; thus, on the second-to-last business day in April, the annuity will be scheduled to be purchased in the May monthly processing cycle. However, in late April, the participant decides that she would rather receive the account in a single payment. The participant must submit a new Form TSP–70 electing the new withdrawal method. (She does not need a new spousal waiver, since her spouse already waived his right to a survivor benefit.) In this case, the participant will be able to change to a single payment if her properly completed Form TSP–70 is received and processed by the TSP record keeper by the close of business on the day before the May monthly processing cycle. If that occurs, she will receive the single payment in May, instead of having the annuity purchased then.

If, on the other hand, the participant wished to cancel her annuity purchase and leave her money in the Plan (or to change to a deferred withdrawal option), the TSP record keeper would have to be able to process her cancellation or change no later than the second-to-last business day in April. If that did not occur, the annuity purchase would proceed in May.

Subpart C—Procedures for Post-employment Withdrawals

§ 1650.20 Information to be provided by agency.

(a) *Information to be provided to the TSP.* When a TSP participant separates from Government employment, his or her employing agency must report the separation (including the date of separation) to the TSP record keeper. Until the TSP record keeper receives this information from the employing agency, it cannot process a post-employment withdrawal for the participant. A post-employment withdrawal cannot occur until at least 30 full calendar days have elapsed after the date of separation.

(b) *Information to be provided to the participant.* When a TSP participant separates from Government employment, his or her employing agency must furnish the participant with the most recent copies of the TSP withdrawal booklet, withdrawal forms, and tax notice. The employing agency is also responsible for counseling participants concerning TSP withdrawals.

§ 1650.21 Accounts of more than $3,500.

A participant whose account balance is more than $3,500 must submit a properly completed withdrawal election on Form TSP–70, Withdrawal Request, and any other form required by the TSP, in order to elect a post-employment withdrawal of his or her account balance.

§ 1650.22 Accounts of $3,500 or less.

(a) Unless he or she has already submitted a complete withdrawal election and can be scheduled for payment, a participant whose account balance is $3,500 or less as of the month end following receipt of separation information from the employing agency will be sent a notice informing him or her that the account balance will be paid directly to the participant automatically in the third monthly processing cycle following the date of the notice if the account is still $3,500 or less on the date of payment. The notice will inform the participant that he or she can:

(1) Choose to transfer all or part of the payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan;

(2) Choose another withdrawal method (as described in subpart B of this part);

(3) Choose to have the payment made directly to him or her as soon as possible; or

(4) Choose to leave his or her money in the Plan.

(b) If the participant does not take one of the actions described in paragraph (a) of this section, payment will be made as scheduled.

(c) No spousal rights attach to any post-employment withdrawals made to a participant whose account balance is $3,500 or less.

(d) If a participant's account balance is $3,500 or less after separation but later increases to more than $3,500, this section will cease to apply to that participant.

(e) This section does not apply to accounts containing a balance of less than $5.00.

Subpart D—In-Service Withdrawals

§ 1650.30 Age-based withdrawals.

(a) A participant who reached age 59½ and who has not separated from Government employment is eligible to withdraw all or a portion of his or her vested TSP account balance in a single payment. The amount of an age-based in-service withdrawal request must be at least $1,000.

(b) The participant may request that the TSP transfer all or a portion of the withdrawal to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. If a participant chooses to receive directly all or a portion of the withdrawal, the TSP will withhold for Federal income tax purposes 20 percent of all amounts paid directly to the participant.

(c) A participant is permitted only one age-based in-service withdrawal.

§ 1650.31 Financial hardship withdrawals.

(a) A participant who has not separated from Government employment and who demonstrates financial hardship is eligible to withdraw all or a portion of his or her own contributions to the TSP and their attributable earnings in a single payment to meet certain specified financial obligations. The amount of a financial hardship in-service withdrawal request must be at least $1,000. A participant will demonstrate financial hardship if he or she meets one or both of the following tests:

(1) The participant's monthly cash flow is negative, *i.e.*, net income is less than ordinary monthly household expenses based on TSP calculations; and/or

(2) The participant has incurred or will incur within the next six months an extraordinary expense which he or she has not paid, for which there has not been and will not be reimbursement (as defined in § 1650.1), and which cannot be met by his or her monthly cash flow over a period of six months. Extraordinary expenses are limited to the following four types:

(i) Medical expenses payable by the participant and related to the treatment of the participant, the participant's spouse, or the participant's dependents. Generally, eligible expenses are those that would be eligible for deduction for Federal income tax purposes, but without regard to the Internal Revenue Service's (IRS) income limitations on deductions. However, the following IRS allowable expenses are excluded from TSP unreimbursed medical expenses: health insurance premiums and expenses associated with household improvements required as a result of a medical condition, illness, or injury to the participant, the participant's spouse, or the participant's dependents. These items are already taken into account elsewhere in the financial hardship determination.

(ii) The cost of household improvements required as a result of a medical condition, illness or injury to the participant, the participant's spouse, or the participant's dependents, which is eligible for deduction as a medical expense for Federal income tax

purposes, but without regard to the IRS income limitations on deductions or the fair market value of the property. Household improvements are changes to the participant's living quarters or the installation of special equipment that is necessary to accommodate the circumstances of the incapacitated person;

(iii) The cost of repairs or replacement resulting from casualty loss that would be eligible for deduction for Federal income tax purposes, but without regard to the IRS income limitations on deductions, fair market value of the property, or number of events. This is sudden property loss resulting from damage or destruction by fire, storm, or other casualty, or due to theft of property; and

(iv) Legal costs, which are defined as attorney fees and court costs, associated with separation or divorce. Unpaid legal costs do not include alimony or child support payments or settlements a participant must pay a spouse or former spouse.

(b) The amount of a participant's financial hardship withdrawal cannot exceed the smallest of the following:

(1) The amount requested;

(2) The amount in the participant's account that is equal to his or her own contributions and attributable earnings; or

(3) The gross amount which would, subject to a request made under § 1650.42(b), result in a net disbursement to the participant (after the mandatory Federal income tax withholding) of enough funds to both:

(I) Make up the participant's negative cash flow for a period of six months in the case of a financial hardship withdrawal based on ordinary monthly household expenses; and

(ii) Pay the extraordinary expense upon which the participant's financial hardship withdrawal is based. If the participant has a negative cash flow, the amount of the net disbursement based on extraordinary expense is equal to the amount of the extraordinary expense. If there is a positive cash flow, the amount is equal to the amount of the expense minus six times the amount of the calculated monthly positive cash flow.

§ 1650.32 Contributing to the TSP after an in-service withdrawal.

(a) A participant's TSP contribution election will not be affected by an age-based in-service withdrawal; therefore, his or her TSP contributions will continue without interruption.

(b) A participant who obtains a financial hardship in-service withdrawal may not contribute to the TSP for a period of six months, beginning with the first pay date 45 days after the date of the withdrawal; therefore, his or her TSP contributions (and any applicable matching contributions) will be discontinued by his or her agency upon notification by the TSP. A participant whose TSP contributions were discontinued by his or her agency because of a hardship withdrawal can resume contributions any time after expiration of the six month period by submitting a new TSP Election Form (TSP–1). If a participant voluntarily terminated TSP contributions, he or she can resume contributions at the expiration of the six-month period, or in the next open season during which the participant would be eligible to submit a new Form TSP–1, whichever is later.

§ 1650.33 Uniqueness of loans and withdrawals.

An outstanding TSP loan cannot be converted into an in-service withdrawal, and *vice versa;* nor can an in-service withdrawal be returned or repaid.

Subpart E—Procedures for In-Service Withdrawals

§ 1650.40 How to obtain an age-based in-service withdrawal.

To request an age-based in-service withdrawal, a participant must submit to the TSP Service Office a properly completed withdrawal election on Form TSP–75, Age-Based In-Service Withdrawal Request.

§ 1650.41 How to obtain a financial hardship in-service withdrawal.

To request a financial hardship in-service withdrawal, a participant must submit to the TSP Service Office a properly completed request for withdrawal on Form TSP–76, Financial Hardship In-Service Withdrawal Request, a current earnings and leave statement, and supporting documentation for any extraordinary expenses listed on the application.

§ 1650.42 Taxes related to in-service withdrawals.

(a) An in-service withdrawal is an eligible rollover distribution under the Internal Revenue Code (IRC), and the IRC requires that the Board withhold at least 20 percent for Federal income tax purposes from any portion of the withdrawal that is not directly transferred to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. A participant who wants the TSP to transfer all or a portion of an in-service withdrawal to an IRA or other eligible retirement plan must submit to the TSP Service Office a properly completed Form TSP–75–T, Transfer of In-Service Withdrawal. If the participant does not make a transfer election, the withdrawal will be disbursed in the form of a single payment minus the mandatory tax withholding. The mandatory withholding cannot be waived, although a participant can elect to have additional taxes withheld by submitting Form W–4P, Withholding Certificate for Pension or Annuity Payments, to the TSP Service Office.

(b) If a participant applies for a financial hardship in-service withdrawal and does not make a transfer election, he or she can request the TSP to remove additional amounts from his or her TSP account so that the amount received after the mandatory 20 percent tax withholding is the amount requested (or for which the participant qualifies, if that amount is less than the amount requested). This option may be limited by the amount of employee contributions and attributable earnings available for withdrawal.

Subpart F—[Reserved]

Subpart G—Spousal Rights

§ 1650.60 Spousal rights pertaining to post-employment withdrawals.

(a) The spousal rights described in this section and in § 1650.61 only apply to post-employment withdrawals when the participant's vested TSP account balance exceeds $3,500.

(b) The spouse of a CSRS participant is entitled to notice when the participant applies for a post-employment withdrawal, unless the participant was granted an exception under § 1650.63 to the spouse notification requirement within one year of the date the withdrawal form is processed by the TSP. The participant must provide the TSP record keeper with the spouse's correct address. The TSP record keeper will send the required notice by first class mail to the most recent address provided by the participant.

(c) The spouse of a FERS participant has a right to a joint and survivor annuity with a 50 percent survivor benefit, level payments, and no cash refund when the participant elects a post-employment withdrawal. The participant may make a different withdrawal election only if his or her spouse waives the right to this annuity. To show that the spouse has waived the right to this annuity, the participant must submit to the TSP record keeper Form TSP–70, Withdrawal Election, or Form TSP–11–C, Spouse Information and Waiver, signed by his or her spouse. Once a form containing the spouse's

waiver has been submitted to the TSP record keeper, the spouse's waiver is irrevocable for purposes of that form.

§ 1650.61 Spousal rights when a separated participant changes post-employment withdrawal election.

(a) The spouse of a CSRS participant is entitled to notice if the participant changes his or her post-employment withdrawal election, unless the participant was granted an exception under § 1650.63 to the spouse notification requirement within one year of the date the form requesting the change is processed by the TSP. The participant must provide the TSP record keeper with the spouse's current address. The TSP record keeper will send the required notice by first class mail to the most recent address provided by the participant.

(b) A married FERS participant who has made a post-employment withdrawal election and who wants to elect another withdrawal method (other than the annuity required in § 1650.60(c)) must obtain a waiver from the spouse to whom he or she is married on the date the new withdrawal form is signed, unless:

(1) That spouse previously signed a waiver of the required annuity in connection with an earlier post-employment withdrawal election made by the participant; or

(2) The participant was granted within one year of the date on which the new withdrawal form is received by the TSP an exception under § 1650.64 to the requirement to obtain that spouse's signature for an in-service or post-employment withdrawal election.

Once a form containing the spouse's waiver has been submitted to the TSP record keeper, the spouse's consent is irrevocable for purposes of that form.

§ 1650.62 Spousal rights pertaining to in-service withdrawals.

(a) The spousal rights described in this section apply to all in-service withdrawals and do not depend on the amount of the participant's vested account balance or the amount requested to be withdrawn.

(b) The spouse of a CSRS participant is entitled to notice when the participant applies for an in-service withdrawal, unless the participant was granted within one year of the date on which the withdrawal form is received by the TSP an exception to the notice requirement under § 1650.63. The participant must provide the TSP record keeper with the spouse's correct address. The TSP record keeper will send the required notice by first class mail to the most recent address provided by the participant.

(c) A participant covered by FERS must obtain the consent of his or her spouse before obtaining an in-service withdrawal unless the participant was granted, within one year of the date on which the new withdrawal form is received by the TSP, an exception to a signature requirement under § 1650.64. To show spousal consent, a participant must submit to the TSP record keeper Form TSP–75, Age-Based In-Service Withdrawal Request, or Form TSP–76, Financial Hardship In-Service Withdrawal Request, signed by his or her spouse. Once a form containing the spouse's consent has been submitted to the TSP record keeper, the spouse's consent is irrevocable for purposes of that form.

§ 1650.63 Executive Director's exception to the spousal notification requirement.

(a) Whenever this subpart requires the Executive Director to give notice of an action to the spouse of a participant, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. A request for an exception to a notification requirement based on unknown whereabouts must be submitted to the Executive Director on Form TSP–16, Exception to Spousal Requirements, accompanied by one of the following:

(1) A judicial determination (court order) stating that the spouse's whereabouts cannot be determined;

(2) A police or governmental agency determination signed by the appropriate department or division head which states that the spouse's whereabouts cannot be determined; or

(3) Statements by the participant and two other persons that meet the following requirements:

(I) The participant's statement must give the full name of the spouse, declare the participant's inability to locate the spouse, and state the efforts the participant has made to locate the spouse. Examples of attempting to locate the spouse include, but are not limited to, checking with relatives and mutual friends or using telephone directories or directory assistance for the city of the spouse's last known address. Negative statements such as ''I have not seen nor heard from him'' or ''I have not had contact with her'' are not sufficient.

(ii) The statements from two other persons must support the participant's statement that the participant does not know the whereabouts of his or her spouse.

(iii) Each statement must be signed and dated and must state the following:

I understand that a false statement or willful misrepresentation is punishable under Federal law (18 U.S.C. 1001) by a fine or imprisonment or both.

(b) A withdrawal election received within one year of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

§ 1650.64 Executive Director's exception to requirement to obtain the spouse's signature.

(a) Wherever this subpart requires a spouse's consent to a loan or withdrawal or a waiver of the right to a survivor annuity, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that:

(1) The spouse's whereabouts cannot be determined in accordance with the provisions of § 1650.63; or

(2) Due to exceptional circumstances, requiring the spouse's signature would be otherwise inappropriate.

(i) An exception to the spousal signature requirement may be granted based on exceptional circumstances only when the participant presents a judicial determination (court order) or a governmental agency determination signed by the appropriate department or division head. A court order or a governmental agency determination must contain a finding or a recitation of such exceptional circumstances regarding the spouse as would warrant an exception to the signature requirement.

(ii) Exceptional circumstances are narrowly construed and includes circumstances such as when a court order:

(A) Indicates that the spouse and the participant have been maintaining separate residences with no financial relationship for three or more years;

(B) Indicates that the spouse abandoned the participant, but for religious or similarly compelling reasons, the parties chose not to divorce; or

(C) Expressly states that the participant may obtain a loan from his or her Thrift Savings Plan account or withdraw his or her Thrift Savings Plan account balance notwithstanding the absence of the spouse's signature.

(b) A withdrawal election by a separated participant or an in-service withdrawal request by a participant in the Federal service received within one year of an approved exception will be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

(c) The requirements for establishing an exception for a withdrawal by a separated participant or an in-service withdrawal by a participant in the Federal service and the one-year period of validity of an approved exception also apply to exceptions for loans under 5 CFR 1655.18.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 55

RIN 3150–AF62

Initial Licensed Operator Examination Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to require all nuclear power facility licensees to prepare, proctor, and grade the written examinations and prepare the operating tests that the NRC currently uses to evaluate the competence of individuals applying for operator licenses at those plants. The proposed amendment would require the licensee to submit each examination and test for the NRC's review and approval and would preserve the NRC's authority to prepare the examinations and tests, as necessary, if it loses confidence in a licensee's ability to prepare these examinations acceptably. In addition, the NRC would periodically invoke this authority in order to maintain the proficiency of its own license examiners.

DATES: Submit comments by October 21, 1997. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays. For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information section.

Single copies of this proposed rulemaking may be obtained by written request or telefax ((301) 415–2260) from Harry S. Tovmassian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555. Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as indicated in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6231; e-mail hst@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 107 of the Atomic Energy Act (AEA) of 1954, as amended, requires the NRC to determine the qualifications of individuals applying for an operator license, to prescribe uniform conditions for licensing such individuals, and to issue licenses as appropriate. Pursuant to the AEA, 10 CFR part 55 requires applicants for operator licensees to pass an examination that satisfies the basic content requirements specified in the regulation. Although neither the AEA nor part 55 specifies who must prepare, proctor, or grade these examinations, the NRC has traditionally performed those tasks itself or through its contract examiners. In accordance with 10 CFR 170.12(i), NRC staff and contractual costs are recovered from facility licensees who receive examination services. The NRC and its contract examiners have used the guidance in NUREG–1021, ''Operator Licensing Examination Standards for Power Reactors,'' to prepare the initial operator licensing examinations. This document has been revised as experience has been acquired in preparing these examinations. The current version is designated Interim Revision 8.[1]

The intended modifications to 10 CFR part 55 would allow facility licensees to have greater participation in the initial operator licensing process and enable the NRC to eliminate contractor assistance in this area. Between $3 million and $4 million in contractor support for the preparation and administration of the initial operator licensing examinations and for support of requalification program inspections would be eliminated.

On April 18, 1995, the Commission approved the NRC staff's proposal to initiate a transition process to revise the operator licensing program and directed the NRC staff to carefully consider experience from pilot examinations before fully implementing the changes. On August 15, 1995, the NRC staff issued Generic Letter (GL) 95–06, ''Changes in the Operator Licensing Program,''[2] outlining the revised examination development process and soliciting volunteers to participate in pilot examinations to evaluate and refine the methodology.

Between October 1, 1995, and April 5, 1996, the NRC staff reviewed and approved 22 operator licensing examinations, including both the written examinations and the operating tests, prepared by facility licensees as part of a pilot program. These examinations were prepared using the guidance in Revision 7 (Supplement 1) of NUREG–1021 and the additional guidance in GL 95–06.[2] These examinations were used to test 146 reactor operator (RO) and senior reactor operator (SRO) applicants.

The results of the pilot examinations were discussed in SECY–96–123, ''Proposed Changes to the NRC Operator Licensing Program,'' dated June 10, 1996. Based on the results of the pilot program, the staff recommended that the Commission approve the implementation of the new examination process on a voluntary basis until rulemaking could be completed to require all power reactor facility licensees to prepare the entire initial examination for reactor operators and senior reactor operators and to proctor the written portion of the examination. On July 23, 1996, the Commission authorized the staff to continue the pilot examination process on a voluntary basis and requested the staff to develop a detailed rulemaking plan to justify the changes that may be necessary to 10 CFR part 55. The Commission also directed the staff to address a number of additional items (e.g., pros, cons, and vulnerabilities) regarding the revised examination process to facilitate a Commission decision on whether to implement the revised process on an industry-wide basis.

On September 25, 1996, the staff forwarded the requested rulemaking

[1] Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC 20555; the PDR's mailing address is Mail Stop LL–6; telephone (202) 634–3273, fax (202) 634–3343. Interim Revision 8 is also available for downloading from the Internet at ''http://www.nrc.gov.''

[2] Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC 20555; the PDR's mailing address is Mail Stop LL–6; telephone (202) 634–3273; fax (202) 634–3343.

plan and a response to the additional items to the Commission in SECY–96–206, ''Rulemaking Plan For Amendments to 10 CFR part 55 to Change Licensed Operator Examination Requirements.'' On December 17, 1996, the Commission directed the staff to proceed with the proposed rulemaking.

With Commission approval, the staff resumed conducting pilot-style examinations on August 19, 1996, and by the end of December 1996 had reviewed, approved, and administered 12 additional examinations that were developed by facility licensees based on the guidance in GL 95–06. This raised the total number of examinations completed using the pilot process to 34 and the number of applicants tested to 84 ROs and 144 SROs.

Discussion

The pilot program demonstrated that the revised process, using licensee developed examinations, can be both effective and efficient. Comments from the NRC staff and industry personnel who participated in the pilot examinations were generally favorable. The quality of the licensee-developed examinations (as modified by the NRC) was generally comparable to the examinations prepared by the NRC staff or its contractors. All of the licensee-developed examinations required some modifications subsequent to NRC review; however, several of these examinations required significant rework, indicating that some licensees did not fully understand the criteria for preparing examinations which meet NRC standards. With training and experience, it is expected that the industry would gain proficiency in preparing the examinations. The monitoring and assessment of this voluntary pilot program has demonstrated that facility licensee developed examinations, as modified by the NRC, are comparable in terms of their quality to those prepared by the NRC and its contract examiners under the existing process; therefore, the safe operation of the facility in question is in no way compromised. The fact that the pass/fail results on the 34 pilot examinations administered to the 84 ROs and 144 SROs through the end of December 1996 were comparable to the power reactor licensing examination results during Fiscal Year 1995, when all the examinations were prepared by the NRC or its contractors, supports this conclusion. The provisions of the proposed rule in § 55.40(a)(2), which require NRC staff review and approval of facility licensee developed tests and examinations, should facilitate the monitoring of the quality of the submittals and the modification of those which do not meet NRC standards.

The fact that NRC examiners will be administering all of the operating tests without contractor assistance is expected to improve the NRC staff's focus on operator performance and its core of experience because every applicant will be directly observed by an NRC employee. Before beginning the transition process, contract examiners administered about half of the operating tests and collected the observations that formed the basis for the NRC's licensing actions. The contractors' efforts focused primarily on task completion, so any broader insights and experience that might have been gained while giving the examinations was of little benefit to the NRC.

The Commission has assessed the pros and cons associated with the revised examination process, as discussed in SECY–96–206, and considered the measures that the NRC staff has taken to mitigate the vulnerabilities. The Commission acknowledges that the revised examination process increases the risk of lapses in examination quality (including level of difficulty), consistency, and security and wishes to emphasize the NRC's resolve to maintain the existing standards of performance in each of these areas.

With regard to examination security, in particular, applicants, licensees (operators), and facility licensees are reminded that 10 CFR 55.49 prohibits their engagement in any activity that compromises the integrity (security) of any application, test, or examination required by 10 CFR part 55 and that examination will need to be proctored in accordance with 10 CFR 55.40. These provisions require facility licensees to maintain proper examination security. The Commission expects that licensees will meet the security provisions in ES–201 and ES–402 of NUREG–1021 or similar NRC-approved standards. Consistent with NUREG–1021, facility employees with specific knowledge of any NRC examination before it is given may not communicate the examination contents to unauthorized individuals and may not participate in any further instruction of the students scheduled to take the examination. Before they are given access to the examination, the facility employees are expected to sign a statement acknowledging their understanding of the restrictions and the potential consequences of noncompliance and sign a post-examination statement certifying that they did not knowingly compromise the examination. In addition to the restrictions on personnel, NUREG–1021 also discusses a number of physical security precautions, including protecting and mailing the examination materials and simulator considerations. The guidance also cautions NRC examiners to be attentive to examination security measures and requires them to review the security expectations with the facility licensee at the time the examination arrangements are confirmed.

The Commission considers a violation of 10 CFR 55.49 for compromising an examination has occurred when (1) a failure to control the integrity of an examination occurs such that there is a potential for an applicant to have an unauthorized advantage in the examination process or (2) an applicant obtains an unauthorized advantage. Both facility licensees and applicants for examinations may be subject to enforcement action for violations of 10 CFR 55.49 commensurate with the nature and seriousness of the compromise.

As part of the final rulemaking in this matter, the Commission intends to modify its ''General Statement of Policy and Procedures for NRC Enforcement Actions'' (Enforcement Policy), NUREG–1600. Security compromises will normally be considered at least at Severity Level IV. A violation where it was likely that an applicant obtained unauthorized access to examination material will be considered a significant regulatory concern and categorized at least at Severity Level III. The NRC intends to utilize its full enforcement authority including, as warranted, civil penalties and orders against persons found to have been involved in willful compromises of examinations in violation of 10 CFR 55.49. This will include use of the rule on Deliberate Misconduct (10 CFR 50.5). In addition, cases involving willful violations will be referred to the Department of Justice.

Availability of Guidance Document for License Examination Preparation

Although 10 CFR part 55 does not specify who will prepare, administer, and grade the written examinations and operating tests for reactor operator and senior reactor operator licenses, the NRC or its contract examiners have traditionally performed these tasks. As a consequence of performing the tasks associated with preparing and administering the initial licensing examinations, the NRC has developed a substantial body of guidance, which has been published in various versions of NUREG–1021 to aid both NRC and its contract examiners. The latest version of NUREG–1021 (Interim Revision 8) incorporates the pilot examination

criteria in GL 95–06, lessons learned during the pilot examinations, and a number of refinements prompted by the comments submitted in response to the **Federal Register** notice dated February 22, 1996 (61 FR 6869), which solicited public comments on the proposed NUREG changes. A copy of Interim Revision 8 of NUREG–1021 has been mailed to each facility licensee. Copies may be inspected and/or copied for a fee at the NRC's Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. NUREG–1021 is also electronically available for downloading from the Internet at ''http://www.nrc.gov.'' All interested parties are invited to comment on Interim Revision 8 of NUREG–1021 in addition to the proposed rule. These public comments will be addressed, and Revision 8 will be published as a final NUREG document.

The NRC plans to prepare, administer, and grade initial operator licensing examinations at least four times per year, using NUREG–1021 as guidance. Licensees would also be expected to use the guidance contained in NUREG–1021 to prepare the licensing examinations. The NRC staff would review and approve any deviations from this guidance. The NRC will not approve any deviation that would compromise its statutory responsibility of prescribing uniform conditions for the operator licensing examinations. Examples of unacceptable deviations include, but are not limited to, the use of essay questions in place of multiple choice questions and the administration of open book examinations.

Proposed Rule

This proposed regulation would add a new section, § 55.40, ''Implementation,'' to Subpart E of 10 CFR part 55 which would require power reactor facility licensees to prepare the written examinations and operating tests, to submit them to the NRC for review and approval, and to proctor and grade the written examinations. These requirements would be contained in §§ 55.40(a)(1), (2), and (3), respectively.

Each power reactor facility licensee would be required to prepare and submit the proposed examinations (including the written examination, the walk-through, and the dynamic simulator tests) to the NRC consistent with the guidance contained in NUREG–1021. The NRC staff would review the entire examination and direct whatever changes are necessary to ensure that adequate levels of quality, difficulty, and consistency are maintained. After the NRC staff reviews and approves an examination, the facility licensee would proctor and grade the written portion consistent with the guidance in NUREG–1021. The NRC staff would continue to independently administer and grade the operating tests, review and approve the written examination results, and make the final licensing decisions. The facility licensee would not conduct parallel operator evaluations during the dynamic simulator or the walk-through tests.

Pursuant to proposed requirements in § 55.40(b), the NRC staff would maintain the authority to prepare the examinations and tests and to proctor and grade the site-specific written examinations. This proposed rule would allow NRC to maintain its staff capability to perform these activities. Also, if the NRC has reason to question a licensee's ability to prepare an acceptable examination, § 55.40(b) provides the NRC authority to prepare and administer the examinations and tests.

Paragraph (c) of § 55.40 reasserts that the NRC would continue to prepare and administer the written examinations and operating tests at non-power reactor facilities. The NRC has taken this position because the non-power reactor community does not have an accreditation process for training and qualification or the resources to prepare the examinations. However, the process will be implemented using only NRC examiners, thereby allowing the elimination of all routine contract assistance in that area.

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 or connecting to the NRC interactive rulemaking web site, ''Rulemaking Forum.'' 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 indicators 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.

You may also access the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if your web browser supports that function.

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. For information about the interactive rulemaking site, contact

Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average 500 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information (i.e., preparing the examinations). The U. S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the collection of information contained in the proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6F–33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at bjs1@nrc.gov; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0018, and 3150–0101), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the collections of information or on the above issues should be submitted by September 8, 1997. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

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.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Harry S. Tovmassian at (301) 415–6231.

The Commission requests public comment on the draft regulatory analysis and the following specific questions.

1. Are there portions of the operator exams that are common to all licensees, and would therefore be more efficiently developed by the NRC?

2. Is the conclusion in the regulatory analysis correct that it would be less costly for each licensee to prepare their own initial operator examinations to be reviewed, revised, and administered by the NRC, than to have one NRC contractor prepare these exams for all licensed operators with the costs to be reimbursed by licensee fees.

Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The pertinent part of 10 CFR 50.109 (a)(1) defines backfitting as ''the modification of or addition to ... the procedures or organization required to ... operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position....'' Although part 55 addresses the qualifications and requirements for operators' licenses and changes are not per se subject to the backfit rule in part 50, changes to these requirements could be included within the backfit definition of ''procedures or organization required to ... operate a facility.'' However, in this case, the proposed shift of responsibility from the NRC staff (or its contractors) to the facility licensee for developing and administering the initial written examination for the operator license exam would not constitute a ''modification of the procedures required to operate a facility'' within the scope of the backfit rule; therefore, no backfit analysis needs to be prepared.

The proposed rule does not affect the basic procedures for operator license qualification, i.e., the required training programs, the required testing, the content and format of the exams, the grading of the exams, or the basis for issuing an operator license. The shift in responsibility for preparing the initial exam does not affect the content or format of the exam. The proposed rule is designed to ensure that the format, content, and quality of the initial written examination will not be modified. The proposed rule requires the NRC to provide oversight of facility licensees' development and administration of initial written examinations. The NRC would also retain its discretion to determine whether to administer the initial written examination itself, as well as continuing to determine whether to grant or deny an application for an RO or SRO license and to consider candidates' appeals.

The licensee's organizational structure required to operate the facility will not be modified. All reactor licensees have a training component as part of their organizational structure, and the proposed rule does not alter that organizational structure. Although, the proposed rule could have an ''effect'' on the licensee's organization, it does not require any modification to the organizational structure.

Finally, the proposed rule does not impose any new costs on licensees since the NRC's costs to develop examinations are presently recovered in the fee base. These costs are basically the same as the costs that will be incurred by licensees to develop the examinations under the proposed rule.

List of Subjects in 10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, 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. 553; the NRC proposes to adopt the following amendments to 10 CFR part 55.

PART 55—OPERATOR'S LICENSES

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

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

2. In § 55.8 paragraph (b) is revised to read as follows:

§ 55.8 Information collection requirements; OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 55.31, 55.40, 55.45, 55.53, and 55.59.

* * * * *

3. A new § 55.40 is added to read as follows:

§ 55.40 Implementation.

(a) Power reactor facility licensees shall —

(1) Prepare the required site-specific written examinations and operating tests;

(2) Submit the written examinations and operating tests to the Commission for review and approval; and

(3) Proctor and grade the NRC-approved site-specific written examinations.

(b) In lieu of requiring a specific power reactor facility licensee to prepare the examinations and tests or to proctor and grade the site-specific written examinations, the Commission may elect to perform those tasks.

(c) The Commission will prepare and administer the written examinations and operating tests at non-power reactor facilities.

Dated at Rockville, MD. this 31st day of July, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–20645 Filed 8–6–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 and A321 series airplanes. This proposal would require a one-time inspection for discrepancies of the release cable of the forward and rear passenger doors, and replacement of any discrepant release cable with a new release cable. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the passenger door to open and consequent inability of the slide/slide raft to deploy, which could delay or impede passengers when exiting the airplane during an emergency.

DATES: Comments must be received by September 16, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–167–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2589; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–167–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–167–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 and A321 series airplanes. The DGAC advises that, during a routine deployment of the aft right-hand passenger door slide, the passenger door failed to open fully. Investigation revealed that the attachment ball nipple of the release cable detached from the cable end due to a production process error. Failure of the passenger door to open could result in the inability to deploy the slide/slide raft. This

condition, if not corrected, could delay or impede passengers when exiting the airplane during an emergency.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) 25–12, Revision 1, dated March 21, 1996, which describes procedures for a one-time inspection for discrepancies of the release cable of the forward and rear passenger doors, and replacement of any discrepant cable with a new cable. The DGAC classified this AOT as mandatory and issued French airworthiness directive 96–171–083 (B), dated August 28, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified (with one exception) in the AOT described previously.

Operators should note that, although the AOT describes procedures to declare a discrepant slide/slide raft inoperative in accordance with the Minimum Equipment List (MEL) requirements, this AD specifically requires that any discrepant cable must be replaced prior to further flight. Where there are differences between this AD and the AOT, the AD prevails.

Cost Impact

The FAA estimates that 132 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,920, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 97-NM–167-AD.

Applicability: Model A320 and A321 series airplanes, as specified in French airworthiness directive 96–171–083 (B), dated August 28, 1996, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the slide/slide raft to deploy due to a failure of the passenger door, which could delay or impede passengers when exiting the airplane during an emergency, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, perform a detailed inspection of each release cable at the left- and right-hand side of doors 1 and 4 for any discrepancy, in accordance with Airbus All Operators Telex (AOT) 25–12, Revision 1, dated March 21, 1996. If any discrepancy is found, prior to further flight, replace the release cable in accordance with the AOT.

Note 2: This AD supersedes any relief provided by the Master Minimum Equipment List (MMEL).

(b) As of the effective date of this AD, no person shall install a release cable, part number C37103–101 or C37103–103, on any airplane unless the release cable has been inspected to detect any discrepancy in accordance with Airbus All Operators Telex (AOT) 25–12, Revision 1, dated March 21, 1996. If any discrepancy is detected in accordance with the AOT, that release cable shall not be installed.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on July 31, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–20730 Filed 8–6–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–162–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all CASA Model CN–235 series airplanes. This proposal would require installation of a contactor and relocation of the existing fuse in the battery circuit. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the battery circuit due to a burned fuse, and consequent inability to restart the engine using batteries during flight.

DATES: Comments must be received by September 16, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–162–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Dirección General de Aviación Civil (DGAC), which is the airworthiness authority for Spain, recently notified the FAA that an unsafe condition may exist on all CASA Model CN–235 series airplanes. The DGAC advises that during a flight test performed by the manufacturer the flight crew intentionally shut an engine down, but were unable to restart the engine by using batteries. Investigation revealed that the batteries failed because a fuse had burned. This condition, if not corrected, could result in the inability to restart the engine with the batteries during flight.

Explanation of Relevant Service Information

CASA has issued Service Bulletin SB–235–24–07M, dated June 4, 1995; and Revision 1, dated January 25, 1996, which describe procedures for installation and relocation of a contactor in the battery circuit to allow for an alternate current path in the event of a fuse failure in the battery circuit. The DGAC classified these service bulletins as mandatory and issued Spanish airworthiness directive 09/96, dated December 9, 1996, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 2 CASA Model CN–235 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 58 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $10,960, or $5,480 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Construcciones Aeronauticas, S.A., CASA: Docket 97–NM–162–AD.

Applicability: All Model CN–235 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fuse in battery number 1 during battery starting of engines, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a contactor in the battery circuit and relocate the existing fuse in accordance with CASA Service Bulletin SB–235–24–07M, dated June 4, 1995; or Revision 1, dated January 25, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

Issued in Renton, Washington, on July 31, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–20731 Filed 8–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–264–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, that currently requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each Structural Significant Item, and repair of cracked structure. That AD was prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where, if damage were to occur, supplemental inspections may be required for timely detection. This action would require additional and expanded inspections, and repair of cracked structure. This action also would expand the applicability of the existing AD to include additional airplanes. The actions specified by the proposed AD are intended to ensure the continued structural integrity of the Boeing Model 737–100 and –200 fleet.

DATES: Comments must be received by September 16, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–264–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Schneider, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Washington; telephone (425) 227–2028; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments,

in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–264–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–264–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Determination To Develop the Supplemental Structural Inspection Program

As part of its continuing work to maintain the structural integrity of older transport category airplanes, in the early 1980's, the FAA concluded that the incidence of fatigue cracking may increase as these airplanes reach or exceed their design service objective (DSO). A significant number of these airplanes were approaching or had exceeded the DSO on which the initial type certification approval was predicated. In light of this, and as a result of increased utilization, longer operational lives, and the high levels of safety expected of the currently operated transport category airplanes, the FAA determined that a supplemental structural inspection program (SSIP) was necessary to ensure a high level of structural integrity for all airplanes in the transport fleet.

Issuance of Advisory Circular

As a follow-on from that determination, the FAA issued Advisory Circular (AC No. 91–56), ''Supplemental Structural Inspection Program for Large Transport Category Airplanes,'' dated May 6, 1981. The AC provides guidance material to manufacturers and operators for use in developing a continuing structural integrity program to ensure safe operation of older airplanes throughout their operational lives. This guidance material applies to large transport airplanes that were certified under the fail-safe requirements of Civil Air Regulations 4b or damage tolerance structural requirements of 14 CFR part 25, and that have a maximum gross weight greater than 75,000 pounds. The procedures set forth in this AC are applicable to the large transport category airplanes operated under subpart F of 14 CFR part 91 and parts 121, 123, 125, and 135. The objective of the SSIP was to establish inspection programs to ensure timely detection of fatigue cracking.

Development of the Supplemental Structural Inspection Program

In order to evaluate the effect of increased fatigue cracking with respect to maintaining fail-safe design and damage tolerance of the structure of Boeing Model 737–100 and –200 series airplanes, Boeing conducted a structural reassessment of those airplanes, using modern damage tolerance evaluation techniques. Boeing accomplished this reassessment using the criteria contained in AC No. 91–56, as well as 14 CFR 25.571; Amdt. 25–45. During the reassessment, members of the airline industry participated with Boeing in working group sessions and developed the SSIP for Model 737–100 and –200 series airplanes. Engineers and maintenance specialists from the FAA also attended these sessions to observe these developments. Subsequently, based on the working group's recommendations, Boeing developed the Supplemental Structural Inspection Document (SSID) for Model 737–100 and –200 series airplanes.

Issuance of AD 91–14–20, Amendment 39–7061

On August 9, 1991, the FAA issued AD 91–14–20, amendment 39–7061 (56 FR 30680, July 5, 1991), which is applicable to certain Boeing Model 737 series airplanes. That AD currently requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI), and repair of cracked structure. The AD references Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document'' (SSID), Revision B, dated February 18, 1987, and Revision C, dated January 1990, as the appropriate source of service information. That action was prompted by a structural re-evaluation that identified additional structural components where fatigue cracking is likely to occur. The requirements of that AD are intended to ensure the continued structural integrity of the entire Boeing Model 737 fleet.

Actions Since Issuance of Previous AD

Since issuance of AD 91–14–20, the FAA has reconsidered the following four aspects of the existing SSID:

1. Classification of Fuselage Skin as ''Damage Obvious'' or ''Malfunction Evident''

AC No. 91–56, Change 2, dated April 15, 1983, recommends that the SSID should contain inspections of all critical parts or components for each airplane to ensure the continued safe operation of the existing fleet. The fuselage skin is an example of a critical component. Cracking in any critical part or component, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Revisions B and C of the SSID excluded the fuselage skin from directed inspections, since it was classified as ''damage obvious'' or ''malfunction evident.'' At the time of this classification, Revisions B and C of the SSID relied on venting or flapping to indicate cracks in the fuselage skin.

Venting is a gradual loss of cabin pressure as a result of cracking in the pressurized area of the fuselage skin. Based on the design philosophy of flapping, these cracks in the fuselage skin would grow only to a specific length and then turn direction because of certain structural components. Because venting and flapping were considered to be readily apparent, Boeing considered that it was unnecessary to provide for additional inspections of the fuselage skin. Reliance also was placed on venting or flapping to allow for the safe operation of an airplane with such cracks. This technique worked well in ground tests and in some in-service incidents, but proved to be unreliable in other cases.

In one such case, a large portion of Section 43 of the fuselage structure separated from a Boeing Model 737 series airplane. Results of a National Transportation Safety Board (NTSB) investigation revealed that this incident occurred as a result of the catastrophic failure of the fuselage skin at a lap joint. The results also revealed that, contrary to the design philosophy, controlled decompression of the structure (i.e., flapping or venting) did not occur due to the presence of widespread fatigue damage. As a result of this failure, the NTSB recommended that the SSID be revised to discontinue classification of the fuselage skin as ''damage obvious'' or ''malfunction evident.''

The FAA concurs with the NTSB's recommendation. Therefore, the FAA has determined that additional inspections are necessary to ensure timely detection of cracks in the fuselage skin structure.

2. Deletions of Modified, Altered, or Repaired Structure from the SSIP

Paragraph 1.4 of Appendix 1, ''Guidelines for Development of Supplemental Inspection Document,'' of AC No. 91–56, Change 2, dated April 15, 1983, states, ''the effect of repairs and modifications approved by the manufacturer should also be taken into account. In addition, it may be necessary to consider the effect of repairs and operator-approved modifications on individual airplanes. The operator has the responsibility for ensuring notification and consideration of any such aspects.''

In addition, the FAA's current policy is that operators of transport category airplanes that are subject to AD's that mandate SSID programs should follow the guidelines of AC No. 91–56 and should continue to inspect any SSI that is modified, altered, or repaired in any way. Any modification that affects the loading spectrum, stress levels, or damage tolerance characteristics of the structure must be reassessed to determine its impact on the inspection program. Such a reassessment may require the development of additional inspection requirements for that modification.

The FAA's policy also states that, ''* * * the [SSID] programs are based on type design crack growth data generated from analysis or structural tests using a realistic and conservative loading spectrum, material properties, part geometry, etc. For this reason, structural modifications that may increase stress levels in load carrying structures, including maximum weight limit increases, cargo door installations, and repairs to load carrying structures, must be reassessed for its impact on the structural inspection program.'' (Reference: Transport Airplane Directorate's Policy Letter, *Information: Policy Regarding Impact of Modifications and Repairs on the Damage Tolerance Characteristics of Transport Category Airplanes,* dated October 27, 1989. This letter will be retained in Rules Docket No. 96–NM–264–AD.)

Section 5.0 of Revisions B and C of the SSID contains provisions that allow for the deletion of modified, altered, or repaired areas from the SSIP because Boeing considers these areas not to be ''representative of the fleet.'' The FAA is aware that there have been a significant number of such deletions. As a result, contrary to the FAA's policy discussed above, operators are not following the guidelines of AC No. 91–56 and not continuing to inspect any SSI that is modified, altered, or repaired in any way.

In addition, for Boeing Model 737–100 and –200 series airplanes that have been converted from a passenger configuration to an all-cargo configuration by the Supplemental Type Certification (STC) process, the FAA finds that Revisions B and C of the SSID do not include procedures for inspection of new SSI's created by this conversion, or unmodified SSI's affected by this conversion. (There are approximately 100 of these airplanes in the worldwide fleet of which several are listed in the effectivity listing of Revisions B and C of the SSID.) These conversions have the effect of removing SSI's from the SSIP and creating a large number of new SSI's that have not been assessed. Consequently, airplanes that have been converted to an all-cargo configuration do not have a SSID that specifies an inspection method and compliance time for each new SSI. Additionally, an unmodified SSI also could require a new inspection method and compliance time because the modification may increase the loads or change the load distributions in that SSI. These conditions would necessitate that the inspection interval for that affected, unmodified SSI be shorter than required in the Boeing SSID. Hence, the FAA finds that the objectives of the SSIP are not being met for these modified airplanes.

Likewise, a design change (such as an increase in the maximum certified weight or in the center of gravity limits) also may cause an increase in the loads or change the load distributions in the affected, unmodified SSI's. The effect of this increase or change would be similar to the effect that a cargo conversion would have on an unmodified SSI. As a result, the inspection interval for an affected, unmodified SSI may need to be lower than required in the Boeing SSID. Thus, the DTR specified in the SSID for any SSI affected by a design change may no longer be applicable. Therefore, the FAA finds that the objectives of the SSIP are not being met for airplanes with such design changes.

Furthermore, in consideration of AC No. 91–56 and current FAA policy, the FAA has determined that new inspection methods and compliance times are necessary for areas that have been modified, altered, or repaired to ensure timely detection of cracking in those areas. The FAA also has determined that new inspection methods and compliance times are necessary for those areas that were deleted from the SSIP by previously approved alternative methods of compliance, which includes those areas deleted in accordance with the requirements of Section 5.0 of the SSID. Furthermore, the new inspection methods and compliance times should meet the requirements of 14 CFR 25.1529, Amdt. 25–45; 14 CFR 25.571, Amdt. 25–45; 14 CFR 25.571, Amdt. 25–54; 14 CFR 25.571, Amdt. 25–72; or the guidelines of AC 91–56.

3. Candidate Fleet vs. Inspection Threshold Approach

Paragraph 4.4 of AC No. 91–56, Change 2, dated April 15, 1983, states, ''Inspection thresholds for supplemental inspections should be established. These inspections would be supplemental to the normal inspection including the detailed internal inspections.'' Moreover, paragraph 4.4.2 of AC No. 91–56 states, ''* * * this threshold should be such as to include sufficient [high-cycle] airplanes in the inspection to develop added confidence in the integrity of the structure * * *.''

A properly established inspection threshold ensures that: (1) The SSI inspections are accomplished; (2) fatigue cracks in SSI's are detected in a timely manner; (3) airplanes are automatically added to the SSIP; and (4) the SSIP includes a statistically valid number of airplanes.

Among other things, Revisions B and C of the SSID define a candidate fleet approach to ensure that fatigue cracks in SSI's are detected in a timely manner in the entire fleet. The initial Boeing Model 737 candidate fleet consisted of a number of airplanes that had exceeded 37,500 flight cycles by April 30, 1983. In other words, Boeing considered 37,500 flight cycles to be the threshold for the airplanes in the candidate fleet. These airplanes were the most likely in the fleet to experience initial fatigue damage since they had the highest number of flight cycles. Boeing produced this SSID with the assumption that the airplanes in the candidate fleet would continue to represent the entire fleet and would have the highest number of flight cycles in the fleet.

Under the existing SSIP, Boeing intended to periodically review the airplanes in the candidate fleet for significant changes in fleet distribution, composition, or utilization, and update the candidate fleet, if any significant change was detected. It was intended that the FAA would then mandate any change to the SSID through the rulemaking process.

The FAA finds that the candidate fleet approach is deviating from Boeing's original philosophy in that the candidate fleet has not been updated to reflect changes (such as cargo conversions) in the fleet. This situation

could result in a statistically invalid number of airplanes in the SSIP and undetected fatigue cracks in SSI's. The candidate fleet approach also does not automatically account for non-candidate airplanes that eventually accumulate more flight cycles than that of certain candidate airplanes. High-cycle airplanes are more likely to experience initial fatigue damage in the fleet. The confidence in the structural integrity of the fleet of airplanes could be reduced if high-cycle airplanes are excluded from the SSIP.

The FAA has reconsidered the candidate fleet approach described in Revisions B and C of the SSID, since it does not meet the guidelines of AC No. 91–56. The FAA has determined that the Boeing Model 737 SSIP must contain inspection thresholds for all Boeing Model 737–100 and –200 series airplanes to ensure the timely detection of fatigue cracks in the SSI's. (The FAA is currently considering a separate rulemaking action to address the problems associated with fatigue cracking on all Boeing Model 737–300, –400, and –500 series airplanes.)

The FAA has reviewed the thresholds derived from Boeing's reliability analysis. The analysis is based on a certain probability that cracks will be detected in the inspected fleet before they initiate on other airplanes that have not been inspected. The FAA has determined that the thresholds recommended in the analysis of past service experience of the Boeing Model 737 fleet are acceptable. Therefore, for Model 737–200C series airplanes, the FAA has determined that a threshold of 46,000 total flight cycles is necessary in order to produce a statistically valid assessment of the service history for these airplanes. For other Model 737–100 and –200 series airplanes, the FAA has determined that a threshold of 66,000 total flight cycles is necessary to produce a valid assessment. The threshold for Model 737–200C series airplanes is lower than that of other Model 737 series airplanes since Model 737–200C series airplanes have a lower utilization rate and fewer airplanes in the fleet. Since the utilization rate is lower for Model 737–200C series airplanes, these airplanes have accumulated fewer flight cycles and have fewer airplanes with higher flight cycles than that of the remaining fleet.

It should be noted that, although the proposed AD requires a threshold, the FAA may approve requests for adjustments to the compliance time [i.e., under paragraph (h)(1) of this proposed AD] provided that no cracking is detected in the airplane's SSI's. The request should include a new inspection threshold and must include data to substantiate that such an adjustment would provide an acceptable level of safety.

Operators should note that the alternative inspection threshold may be based solely on the analysis of the data of the existing fleet. However, the FAA has determined that the analysis that derives the new inspection threshold must include: (1) Data relevant to a sufficient number of high-cycle airplanes, and (2) data that shows accomplishment of the inspections of the SSI's. An adequate statistical sampling size will provide confidence in the structural integrity of the fleet of airplanes. Therefore, additional airplanes may need to be added to the inspected fleet until a sufficient number of airplanes have been inspected with no crack findings.

4. Transferability of Airplanes

Since issuance of the SSID and AD 91–14–20, the FAA has issued several AD's that implement Corrosion Prevention and Control Programs (CPCP) for aging airplanes. While developing the AD's that mandated the CPCP, the FAA recognized that an operator of an airplane that has been transferred from another operator could revise its maintenance program to restart the compliance times for the required corrosion tasks. This situation could lead to corrosion not being detected and corrected in a timely manner, which could reduce the structural integrity of the airplane.

As a result, the CPCP AD's require that operators establish a program for accomplishment of the subject corrosion tasks before any airplane can be added to an air carrier's operations specification. Establishment of this program will ensure that airplanes transferred from operator to operator are inspected and that corrosion is detected in a timely manner.

The FAA's intent in AD 91–14–20 was that operators of candidate fleet airplanes that have been previously operated under an FAA-approved maintenance program accomplish the SSID inspections within the compliance time established by the previous operator. The FAA assumed that, under the existing SSID, these airplanes would be inspected in a manner similar to CPCP requirements. However, the SSID and AD 91–14–20 do not address the transfer of airplanes in the candidate fleet from one operator to another.

AD 91–14–20 currently requires that the revision to the maintenance program be included and be implemented in accordance with the procedures specified in Sections 5.0 and 6.0 of the SSID. However, the FAA finds that these sections do not provide explicit instructions to repetitively inspect airplanes that have been transferred from one operator to another. It also does not specify that new operators must continue the SSID inspections at the same frequency established by the previous operator.

In addition, as AD 91–14–20 is currently worded, the FAA finds that operators that acquire candidate fleet airplanes that have been previously operated under a maintenance inspection program could revise their programs to restart the compliance times. This situation is contrary to standard AD requirements. An AD typically mandates an initial compliance time and a repetitive interval that remains unchanged for all operators of the affected airplanes.

As a result of these omissions, the SSID inspections of a candidate fleet airplane could be deferred until it is required by the maintenance inspection program of the new operator. For airplanes that are transferred frequently, this situation could continue for the life of the airplane. As a result, fewer Boeing Model 737 candidate fleet airplanes are being inspected; thus, the size of the candidate fleet is in effect reduced. Even if airplanes are ultimately inspected under these circumstances, inspections would not be performed frequently enough to maintain the applicable DTR. The FAA has determined that such a reduction does not ensure the continued structural integrity of the entire Boeing Model 737 fleet.

Implementation of procedures in the SSID that are similar to the CPCP will ensure that: (1) Airplanes transferred from operator to operator are inspected; (2) the SSIP includes a statistically valid number of airplanes; and (3) fatigue cracks are detected in a timely manner.

Therefore, the FAA finds that, to ensure the continued structural integrity of the entire Model 737 fleet, the AD 91–14–20 must be revised to include provisions that address the transfer of airplanes. The FAA also finds that a program must be established to accomplish the inspections before any airplane that is subject to this proposal can be added to an air carrier's operations specifications.

FAA's Conclusions

In light of all the factors discussed above, the FAA has determined that AD 91–14–20 does not adequately ensure timely detection of fatigue cracking in SSI's. Fatigue cracking in those items, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of New Relevant Service Information

The FAA has reviewed and approved Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document'' (SSID), Revision D, dated June 1995, which describes procedures for revising the FAA-approved maintenance inspection program for all Boeing Model 737–100 and –200 series airplanes. This revision of the Model 737 SSID incorporates additional and expanded inspections from those that were contained in the previous version and mandated by AD 91–14–20. The fuselage skin structure that was the subject of an NTSB recommendation is included in these inspections. The FAA finds that accomplishment of these inspections will ensure the continuing structural integrity of the Boeing Model 737–100 and –200 fleet.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–14–20.

Paragraph (a) of the proposed AD restates the requirements of AD 91–14–20.

Paragraph (b) of the proposed AD would require incorporation of a revision into the FAA-approved maintenance inspection program that provides no less than the required DTR for each SSI listed in Revision D of the SSID.

Paragraph (c) of the proposed AD would establish specific compliance times for performing the initial inspection of the structure identified in Revision D of the SSID. Once the initial inspection has been performed, operators would be required to perform repetitive inspections at the intervals specified in the Document in order to remain in compliance with their maintenance inspection programs, which would have been revised in accordance with paragraph (b) of this proposed AD.

Paragraph (d) of the proposed AD would require, for airplanes on which any design change or repair has been accomplished prior to the effective date of this proposed AD, a revision to the FAA-approved maintenance inspection program to include an inspection method for any new or affected SSI, and to include the compliance times for this inspection. This paragraph also would require that any new inspection method and the compliance times be approved by the FAA.

Paragraph (e) of the proposed AD would require that the repair of any cracked structure is to be accomplished in accordance with an FAA-approved method.

Paragraph (f) of the proposed AD would require, for airplanes on which any design change or repair has been accomplished after the effective date of this proposed AD, a revision to the FAA-approved maintenance inspection program to include a new inspection method for any new or affected SSI, and to include the compliance times for this inspection. This paragraph also would require that any new inspection method and the compliance times be approved by the FAA.

Before any airplane that is subject to this proposed AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this proposed AD must be established. Paragraph (g) of the proposed AD would require accomplishment of the following:

1. For airplanes that have been inspected in accordance with this proposed AD, the inspection of each SSI must be accomplished by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, whichever would result in the earlier accomplishment date for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule and inspection method.

2. For airplanes that have not been inspected in accordance with this proposed AD, the inspection of each SSI must be accomplished either prior to adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the FAA. After each inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule.

Accomplishment of these inspections will ensure that: (1) Operators' newly acquired airplanes comply with its SSIP before being operated; and (2) frequently transferred aircraft are not permitted to operate without accomplishment of the inspections defined in the SSID.

Differences Between SSID and Proposed AD

Operators should note the following differences between the procedures specified in Revision D of the SSID and the proposed requirements of this AD:

1. Paragraphs 5.1.17 and 5.1.18 of the General Instructions of Revision D of the SSID permit deletions of modified, altered, or repaired structure from the SSIP. As described previously in Item 2 of the ''Actions Since Issuance of Previous AD'' section of this preamble, the FAA has determined that such deletions are unacceptable. Therefore, for airplanes on which the areas specified in the SSID have been modified, altered, or repaired, the proposed AD would require a revision to the operator's existing SSIP to include procedures for accomplishing a new FAA-approved inspection method that provides a new DTR for that SSI.

2. Revision D of the SSID bases the supplemental inspections on specific high-cycle airplanes (i.e., candidate fleet airplanes) and does not include an inspection threshold for those airplanes. It also does not automatically add airplanes to the candidate fleet. Based on the discussion described previously in Item 3 of the ''Actions Since Issuance of Previous AD'' section of this preamble, the FAA has determined that the proposed AD would expand the applicability of this AD action to include all Model 737–100 and –200 series airplanes. In addition, for Model 737–200C series airplanes, the proposed inspection of all SSI's would be required to be accomplished prior to the accumulation of 46,000 total flight cycles, or within 18 months, whichever occurs later. For other Model 737–100 and –200 series airplanes, the proposed inspection of all SSI's would be required to be accomplished prior to the accumulation of 66,000 total flight cycles, or within 18 months, whichever occurs later.

Cost Impact

There are approximately 1,021 Boeing Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 404 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are proposed in this AD action would take approximately 1,200 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $29,088,000, or $72,000 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator

would accomplish those actions in the future if this AD were not adopted.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions proposed in this AD were to be conducted as ''stand alone'' actions. However, in actual practice, these actions for the most part would be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours would be minimal in many instances. Additionally, any costs associated with special airplane scheduling would be minimal.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–7061 (56 FR 30680, July 5, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 96–NM–264–AD. Supersedes AD 91–14–20, Amendment 39–7061.

Applicability: All Model 737–100 and –200 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continued structural integrity of the Boeing Model 737–100 and –200 fleet, accomplish the following:

Note 1: Where there are differences between the AD and the Supplemental Structural Inspection Document, the AD prevails.

(a) For airplanes listed in Section 3.0 of Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document'' (SSID), Revision B, dated February 18, 1987, and Revision C, dated January 1990: Within 12 months after August 9, 1991 (the effective date of AD 91–14–20, amendment 39–7061), incorporate a revision into the FAA-approved maintenance inspection program which provides no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in that document. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include and shall be implemented in accordance with the procedures in Sections 5.0 and 6.0 of the SSID. This revision shall be deleted following accomplishment of the requirements of paragraph (b) of this AD.

Note 2: For the purposes of this AD, an SSI is defined as a principal structural element that could fail and consequently reduce the structural integrity of the airplane.

(b) Within 12 months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides no less than the required DTR for each SSI listed in Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document'' (SSID), Revision D, dated June 1995 (hereinafter referred to as ''Revision D''). (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include and shall be implemented in accordance with the procedures in Section 5.0, ''Damage Tolerance Rating (DTR) System Application'' and Section 6.0, ''SSI Discrepancy Reporting'' of Revision H. Upon incorporation of the revision required by this paragraph, the revision required by paragraph (a) of this AD may be deleted.

(c) Except as provided in paragraph (d) or (f) of this AD, as applicable, perform an inspection to detect cracks in all structure identified in Revision D at the time specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For Model 737–200C series airplanes: Inspect prior to the accumulation of 46,000 total flight cycles, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For Model 737–100 and –200 series airplanes, except for those airplanes identified in paragraph (c)(1) of this AD: Inspect prior to the accumulation of 66,000 total flight cycles, or within 18 months after the effective date of this AD, whichever occurs later.

Note 3: Once the initial inspection has been performed, operators are required to perform repetitive inspections at the intervals specified in Revision D in order to remain in compliance with their maintenance inspection programs, as revised in accordance with paragraph (b) of this AD.

(d) For airplanes on which the structure identified in Revision D is affected by any design change or repair that was accomplished prior to the effective date of this AD: Within 18 months after the effective date of this AD, revise the FAA-approved maintenance inspection program to include an inspection method for any new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of this inspection. For purposes of this section, an SSI is ''affected'' if it has been altered or repaired, or if the loads acting on the SSI have been increased or redistributed. Following accomplishment of the revision and within the compliance times established, perform an inspection to detect cracks in the structure affected by any design change or repair, in accordance with the new inspection method. The new inspection method and the compliance times shall be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, fax (425) 227–1181.

Note 4: Notwithstanding the provisions of paragraphs 5.1.17 and 5.1.18 of the General Instructions of Revision D, which would permit deletions of modified, altered, or repaired structure from the Supplemental Structural Inspection Program (SSIP), the inspection of SSI's that are modified, altered, or repaired shall be done in accordance with a method approved by the Manager, Seattle ACO.

Note 5: For the purposes of this AD, a design change is defined as any modification, alteration, or change to operating limitations.

(e) Cracked structure found during any inspection required by this AD shall be repaired, prior to further flight, in accordance with an FAA-approved method.

(f) For airplanes on which the structure identified in Revision D is affected by any design change or repair that is accomplished after the effective date of this AD: Within 12 months after that modification, alteration, or repair for any new or affected SSI, revise the FAA-approved maintenance inspection

program to include an inspection method for any new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of this inspection. For purposes of this section, an SSI is ''affected'' if it has been altered or repaired, or if the loads acting on the SSI have been increased or redistributed. Following accomplishment of the revision and within the compliance times established, perform an inspection to detect cracks in the structure affected by any design change or repair, in accordance with the new inspection method. The new inspection method and the compliance times shall be approved by the Manager, Seattle ACO.

Note 6: Notwithstanding the provisions of paragraphs 5.1.17 and 5.1.18 of the General Instructions of Revision D, which would permit deletions of modified, altered, or repaired structure from the SIP, the inspection of SSI's that are modified, altered, or repaired shall be done in accordance with a method approved by the Manager, Seattle ACO.

(g) Before any airplane that is subject to this AD and that has exceeded the applicable compliance times specified in paragraph (c) of this AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established in accordance with paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD, the inspection of each SSI must be accomplished by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, whichever would result in the earlier accomplishment date for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD, the inspection of each SSI required by this AD must be accomplished either prior to adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Seattle ACO. After each inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule.

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 91–14–20, amendment 39–7061, are not considered to be approved as alternative methods of compliance with this AD.

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

Issued in Renton, Washington, on July 31, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–20732 Filed 8–6–97; 8:45 am]

BILLING CODE 4910–13–O

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 422

RIN 0960–AE09

Federal Old-Age, Survivors, and Disability Insurance; Disclosure of Information to Consumer Reporting Agencies and Overpayment Recovery Through Administrative Offset Against Federal Payments

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose to make several revisions to our regulations dealing with debt collection. First, we propose to modify the regulations dealing with the recovery of benefit overpayments under title II of the Social Security Act (the Act) to reflect statutory authority for the Social Security Administration (SSA) to selectively refer information to consumer reporting agencies and to recover title II overpayments through administrative offset by the Department of the Treasury against other Federal payments to which the overpaid individual may be entitled. These collection practices would be limited to overpayments made to a person after he or she attained age 18 that are determined to be otherwise unrecoverable under section 204 of the Act after the individual ceases to be a beneficiary under title II of the Act. Second, as an independent agency in the executive branch of the U.S. Government, we propose to establish a new subpart D in part 422 of title 20 of the Code of Federal Regulations which will explain our rules on debt collection procedures for both administrative debts and for title II program overpayments determined to be otherwise unrecoverable under section 204 of the Act. These proposed rules for the new subpart D would address the reporting of delinquent debts to consumer and other credit reporting agencies and the use of administrative offset through the Department of the Treasury. Third, we propose to revise our rules on the recovery of title II program overpayments through the use of the Federal income tax refund offset (TRO) provisions to reflect that, beginning January 1, 1998, the Department of the Treasury, rather than the Internal Revenue Service (IRS), will administer the TRO program, and to reflect other changes in policies and procedures applied by the IRS and the Department of the Treasury in the TRO program.

DATES: To be sure your comments are considered, we must receive them no later than October 6, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, Maryland 21235, sent by telefax to (410) 966–2830, sent by e-mail to ''regulations@ssa.gov,'' or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–5121. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Section 204 of the Act prescribes the methods SSA may use to recover Social Security benefits erroneously paid under title II of the Act (title II program overpayments), as distinguished from the methods SSA may use to collect other debts owed the agency (administrative debts) that are recoverable under other statutory authority. Until recently, SSA was authorized to recover title II program overpayments only through adjustment of future benefits payable to the overpaid individual or to others on the earnings record on which the overpayment was made, by direct recovery from the overpaid person (or the overpaid person's estate, if deceased), or by offset against Federal income tax refunds due from the Department of the Treasury. Amendments to section 204 of the Act by section 5 of Pub. L. 103–387 (1994) and section 31001(z)(2) of Pub. L. 104–134 (1996) permit SSA to use several debt collection procedures that have

been available to Federal agencies (including SSA) by statute since 1982, but that SSA had been precluded from using to recover title II program overpayments. Among other things, these procedures include reporting delinquent debts to consumer and other credit reporting agencies and recovering debts by administrative offset against other Federal payments to which the debtor is entitled. Under section 204(f) of the Act (42 U.S.C. 404(f)), these additional debt collection procedures may be used to recover title II program overpayments only if the overpayment was made to a person after he or she attained age 18 and the overpayment has been determined to be otherwise unrecoverable under section 204 of the Act after the overpaid person is no longer entitled to benefits under title II of the Act.

Before we can refer information to consumer or other credit reporting agencies or refer a debt to the Department of the Treasury for administrative offset (either title II program overpayments or administrative debts), we must (1) send the debtor written notice (or, in the case of an individual for whom we do not have a current address, take reasonable action to locate and send written notice) describing the amount and nature of the debt, the action that we propose to take, and the debtor's rights to an explanation of the debt, to request us to review the debt, to dispute the accuracy of the information about the debt, and to inspect or copy our records about the debt; and (2) give the debtor at least 60 calendar days to present evidence that all or part of the debt is not past-due or not legally enforceable, or enter into a written agreement to pay the debt.

Prior to March 31, 1995, SSA was an operating division of the Department of Health and Human Services (DHHS). SSA relied on the DHHS rules at 45 CFR part 30 for debt collection (other than collection of title II program overpayments). The Social Security Independence and Program Improvements Act of 1994 (SSIPIA), Pub. L. 103–296, established SSA as an independent agency in the executive branch of the Federal government effective March 31, 1995, and vested general regulatory authority in the Commissioner of Social Security (the Commissioner). Under section 106(b) of the SSIPIA, DHHS regulations in effect immediately before March 31, 1995, which relate to functions now vested in the Commissioner by reason of SSA's independence, continue to apply to SSA until such time as they are modified, suspended, terminated, or repealed by the Commissioner. In this rule, we propose to establish a new subpart D in part 422 of our regulations which will set forth the SSA rules on debt collection for title II program overpayments that have been determined to be otherwise unrecoverable under section 204 of the Act and for administrative debts. At this time, we propose to set forth in subpart D our rules on referral to consumer and other credit reporting agencies and referral to the Department of the Treasury for administrative offset. In the future, as we make the necessary systems changes and develop policies and procedures to enable us to use additional debt collection tools for recovery of title II program overpayments, we will modify subpart D of part 422. In the meantime, we will continue to rely on the definitions and collection methods contained in the DHHS regulations in 45 CFR part 30 to recover administrative debts owed the Federal government.

We are also proposing revisions to our existing rules on the recovery of title II program overpayments through the withholding of amounts due to former beneficiaries as Federal income tax refunds to reflect the fact that, beginning January 1, 1998, the Federal income tax refund offset (TRO) program will be administered by the Department of the Treasury, Financial Management Service (FMS), instead of the IRS. The policy requiring agencies to delay referral of debts for TRO for three months after the right to collect first accrued has been rescinded. Also, the TRO program, as administered by FMS, will be ongoing rather than cyclical so that it will no longer be necessary for agencies to recertify amounts for collection by TRO each year. Instead, the case will remain with FMS for offset in succeeding years.

Explanation of Changes to Regulations

We propose to revise our title II rules on TRO at §§ 404.520–404.526 to reflect the fact that, beginning January 1, 1998, we will be referring title II program overpayments for TRO to the Department of the Treasury, rather than to IRS. Section 404.520 would be revised to delete the requirement that a debt may not be referred for TRO before the expiration of three months after our right to collect first accrued. Section 404.526 would also be revised by deleting reference to the need to recertify an overpayment for TRO in cases where a tax refund is insufficient to recover an overpayment in a given year, reflecting the fact that the case will now remain with the Department of the Treasury for offset in succeeding years without need for recertification.

We propose to add a new § 404.527 to our regulations to explain that we will use the additional debt collection methods authorized by section 204(f) of the Act to recover title II program overpayments if the overpayment occurred after the individual attained age 18, and the overpayment has been determined to be otherwise unrecoverable under section 204 of the Act after the individual is no longer entitled to benefits under title II of the Act. Proposed § 404.527 also contains the criteria under which we determine that an overpayment is ''otherwise unrecoverable under section 204 of the Act.'' An overpayment debt will be determined to be unrecoverable when all of the following conditions are met: we completed our billing sequence or collection activity has been suspended or terminated in accordance with the Federal Claims Collection Standards in 4 CFR 104.2 and 104.3; there is no installment payment agreement or the overpaid person has failed to pay in accordance with such an agreement for two consecutive months; we cannot collect the overpayment by adjusting benefits payable to individuals other than the overpaid person. For purposes of proposed § 404.527, an overpayment will be deemed to be unrecoverable by adjustment of benefits payable to an individual who lived in a separate household from the overpaid person when the overpayment occurred and did not receive the overpayment. Adjustment of benefits is waived when waiver is requested under these circumstances. See 20 CFR 404.509.

We propose to add to § 404.903 new paragraphs (t) and (u) to include in the list of administrative actions that are not initial determinations our determinations whether we will refer information about an overpayment debt to consumer reporting agencies and whether we will refer the debt to the Department of the Treasury for offset against other Federal payments due the overpaid person. Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart J of our regulations at 20 CFR part 404, and they are not subject to judicial review.

We also propose to create a new subpart D to part 422 of our regulations to contain our rules on certain debt collection practices and procedures. In § 422.301, we would specify that the debt collection tools in subpart D may be used to recover both title II program overpayments the Commissioner has determined to be unrecoverable under section 204 of the Act and overdue administrative debts owed the agency.

In § 422.305, we explain that we will refer all overdue title II program debts over $25 to consumer reporting agencies. We describe the information we must include in the notice we send to the debtor before we report the debt to a consumer reporting agency. We also explain in this section that, in cases where an individual disputes the information we propose to refer to a consumer reporting agency within 60 calendar days of our notice of our proposed referral, we will not send the information until we determine the correct information.

In § 422.306, we explain that we will refer all overdue administrative debts over $25 to credit reporting agencies. We also describe the information we must include in the notice we send to the debtor before we report the debt to a credit reporting agency. Examples of administrative debts are overpayments of employees' pay and allowances, debts for civil money penalties imposed under section 1140(b) of the Act, debts for unpaid fees for reimbursable services by SSA (e.g., disclosure of information), contractor debts, etc.

In § 422.310, we explain our rules relating to referring debts to the Department of the Treasury for administrative offset. Specifically, we explain that we will refer overdue debts over $25 to the Department of the Treasury for offset against any Federal payments due the debtor. We also describe the information we must include in the notice we send to the debtor before referring the debt to the Department of the Treasury for administrative offset.

In § 422.315, we explain that a debtor has the right to inspect or copy our records related to a debt before we refer the debt to a consumer or credit reporting agency or to the Department of the Treasury for administrative offset, and the procedures for exercising that right.

In § 422.317, we explain that a debtor has the right to have us review the debt. To exercise this right, the debtor must notify us within 60 calendar days from the date of our notice of proposed referral and give us evidence that he or she does not owe all or part of the debt, or we do not have the right to collect it. After our review of the evidence, we explain that we will issue written findings of our review. If the debtor requests review and submits evidence within the 60-day period, we will not refer the debt to consumer or credit reporting agencies or to the Department of the Treasury unless and until we have completed our review and sent our findings to the debtor that all or part of the debt is overdue and legally enforceable.

Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. The file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations will impose no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Programs No. 96.001, Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004, Social Security—Survivors Insurance)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Social security.

Dated: July 28, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts F and J of part 404 of chapter III of title 20 of the Code of Federal Regulations and to add a new subpart D to part 422 of chapter III of title 20 of the Code of Federal Regulations as follows:

1. The authority citation for subpart F of Part 404 is revised to read as follows:

Authority: Secs. 204, 205(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 404, 405(a), and 902(a)); 31 U.S.C. 3720A.

2. Section 404.520 is revised to read as follows:

§ 404.520 Referral of overpayments to the Department of the Treasury for tax refund offset—General.

(a) The standards we will apply and the procedures we will follow before requesting the Department of the Treasury to offset income tax refunds due taxpayers who have an outstanding overpayment are set forth in §§ 404.520 through 404.526. These standards and procedures are authorized by 31 U.S.C. 3720A and are implemented through Department of the Treasury regulations at 26 CFR 301.6402–6.

(b) We will use the Department of the Treasury tax refund offset procedure to collect overpayments that are certain in amount, past due and legally enforceable, and eligible for tax refund offset under regulations issued by the Department of the Treasury. We will use these procedures to collect overpayments only from individuals who are not currently entitled to monthly Social Security benefits under title II of the Act. We will refer an overpayment to the Department of the Treasury for offset against tax refunds no later than 10 years after our right to collect the overpayment first accrued.

3. Section 404.521 is amended by revising the introductory text to read as follows:

§ 404.521 Notice to overpaid individual.

A request for reduction of a Federal income tax refund will be made only after we determine that an amount is owed and past due and send the overpaid individual written notice. Our notice of intent to collect an overpayment through tax refund offset will state:

* * * * *

4. Section 404.526 is revised to read as follows:

§ 404.526 Tax refund insufficient to cover amount of overpayment.

If a tax refund for a given taxable year is insufficient to recover an overpayment completely, the case will remain with the Department of the Treasury for offset, assuming that all criteria for offset continue to be met.

5. Section 404.527 is added to read as follows:

§ 404.527 Additional methods for recovery of title II benefit overpayments.

(a) *General.* In addition to the methods specified in § 404.502 and § 404.520, an overpayment under title II of the Act is also subject to recovery under the rules in subpart D of part 422, provided:

(1) The overpayment occurred after the individual has attained age 18;

(2) The overpaid individual is no longer entitled to benefits under title II of the Act; and

(3) Pursuant to paragraph (b) of this section, we have determined that the overpayment is otherwise unrecoverable under section 204 of the Act.

(b) *When an overpayment is considered to be otherwise unrecoverable.* An overpayment under title II of the Act is considered to be otherwise unrecoverable under section 204 of the Act if all of the following conditions are met:

(1) Our billing system sequence has been completed (i.e., we have sent the individual an initial notice of the overpayment, a reminder notice, and a past-due notice) or collection activity has been suspended or terminated in accordance with the Federal Claims Collection Standards in 4 CFR 104.2 or 104.3.

(2) We have not entered into an installment payment arrangement with the overpaid individual or, if we have entered into such an arrangement, the overpaid individual has failed to make any payment for two consecutive months.

(3) The overpaid individual has not requested waiver pursuant to § 404.506 or § 404.522 or, after a review conducted pursuant to those sections, we have determined that we will not waive collection of the overpayment.

(4) The overpaid individual has not requested reconsideration of the initial overpayment determination pursuant to §§ 404.907 and 404.409 or, after a review conducted pursuant to § 404.913, we have affirmed, in whole or in part, the initial overpayment determination.

(5) The overpayment cannot be recovered pursuant to § 404.502 by adjustment of benefits payable to any individual other than the overpaid individual. For purposes of this paragraph, an overpayment will be deemed to be unrecoverable from any individual who was living in a separate household from the overpaid person at the time of the overpayment and did not receive the overpayment.

6. In addition to the amendments set forth above, remove the acronym ''IRS'' and add, in its place, the words ''Department of the Treasury'' in the following places:

(a) Section 404.521(b);

(b) Section 404.522(b);

(c) Section 404.523(a) and (c); and

(d) Section 404.525.

7. The authority citation for subpart J of Part 404 is revised to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

8. Section 404.903 is amended by deleting the word ''and'' at the end of paragraph (r), replacing the period at the end of paragraph (s) with a semicolon, and adding paragraphs (t) and (u) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(t) Determining whether we will refer information about your overpayment to a consumer reporting agency (see § 404.527 and § 422.305 of this chapter); and

(u) Determining whether we will refer your overpayment to the Department of the Treasury for collection by offset against Federal payments due you (see § 404.527 and § 422.310 of this chapter).

PART 422—ORGANIZATION AND PROCEDURES

10. Subpart D is added to read as follows:

Subpart D—Claims Collection

Sec.

Subpart D—Claims Collection

Authority: Secs. 204(f), 205(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 404(f), 405(a), and 902(a)(5)); 31 U.S.C. 3711(e); 31 U.S.C. 3716.

§ 422.301 Material included in this subpart.

This subpart describes the procedures relating to collection of:

(a) Overdue administrative debts, and

(b) Overdue title II program overpayments described in § 404.527 of this chapter.

§ 422.305 Report of overdue title II program overpayment debts to consumer reporting agencies.

(a) *Debts we will report.* We will report to consumer reporting agencies all overdue title II program overpayment debts over $25.

(b) *Notice to debtor.* Before we report any such debt to a consumer reporting agency, we will send the debtor written notice of the following:

(1) We have determined that payment of the debt is overdue;

(2) We will refer the debt to a consumer reporting agency within not less than 60 calendar days after the date of the notice unless, within that 60-day period, the debtor pays the full amount of the debt or takes either of the actions described in paragraphs (b)(6) or (b)(7) of this section;

(3) The specific information we will provide to the consumer reporting agency, including information that identifies the debtor (e.g., name, address, and social security number) and the amount, status, and history of the debt;

(4) The debtor has the right to a complete explanation of the debt;

(5) The debtor may dispute the accuracy of the information to be provided to the consumer reporting agency;

(6) The debtor may request a review of the debt by giving us evidence showing that he or she does not owe all or part of the amount of the debt or that we do not have the right to collect it; and

(7) The debtor may request an installment payment plan.

(c) *Disputing the information that we would send to consumer reporting agencies.* If a debtor believes that the information we propose to send to consumer reporting agencies is incorrect, the debtor may ask us to correct such information. If, within 60 calendar days from the date of our notice described in paragraph (b) of this section, the debtor notifies us that any information to be sent to consumer reporting agencies is incorrect, we will not send the information to consumer reporting agencies until we determine the correct information.

§ 422.306 Report of overdue administrative debts to credit reporting agencies.

(a) *Debts we will report.* We will report to credit reporting agencies all overdue administrative debts over $25. Some examples of administrative debts are as follows: overpayments of pay and allowances paid to employees, debts for civil monetary penalties imposed under section 1140(b) of the Act, debts for unpaid fees for reimbursable services

performed by SSA (e.g., disclosures of information), and contractor debts.

(b) *Notice to debtor.* Before we report any administrative debt to a credit reporting agency, we will send the debtor written notice of the following:

(1) We have determined that payment of the debt is overdue;

(2) We will refer the debt to a credit reporting agency within not less than 60 calendar days after the date of the notice unless, within that 60-day period, the debtor pays the full amount of the debt or takes either of the actions described in paragraphs (b)(6) or (b)(7) of this section;

(3) The specific information we will provide to the credit reporting agency, including information that identifies the debtor (e.g., name, address, social security number, and employer identification number) and the amount, status, and history of the debt.

(4) the debtor has the right to a complete explanation of the debt;

(5) the debtor may dispute the accuracy of the information to be provided to the credit reporting agency;

(6) the debtor may request a review of the debt by giving us evidence showing that he or she does not owe all or part of the amount of the debt or that we do not have the right to collect it; and

(7) the debtor may request an installment payment plan.

§ 422.310 Collection of overdue debts by administrative offset.

(a) *Referral to the Department of the Treasury for offset.* We will recover overdue debts by offsetting Federal payments due the debtor through the Treasury Offset Program (TOP). TOP is a Governmentwide delinquent debt matching and payment offset process operated by the Department of the Treasury, whereby debts owed to the Federal Government are collected by offsetting them against Federal payments owed the debtor.

(b) *Debts we will refer.* We will refer for administrative offset all overdue debts over $25.

(c) *Notice to debtor.* Before we refer any debt for collection by administrative offset, we will send the debtor written notice that:

(1) We have determined that payment of the debt is overdue;

(2) We will refer the debt for administrative offset within not less than 60 calendar days after the date of the notice unless, within that 60-day period, the debtor pays the full amount of the debt or takes either of the actions described in paragraphs (c)(4) or (c)(5) of this section;

(3) The debtor may inspect or copy our records relating to the debt;

(4) The debtor may request a review of the debt by giving us evidence showing that the debtor does not owe all or part of the amount of the debt or that we do not have the right to collect it; and

(5) The debtor may request an installment payment plan.

§ 422.315 Review of our records related to the debt.

(a) *Notification by the debtor.* The debtor may request to inspect or copy our records related to the debt.

(b) *Our response.* In response to a request from the debtor described in paragraph (a) of this section, we will notify the debtor of the location and time at which the debtor may inspect or copy our records related to the debt. We may also, at our discretion, mail to the debtor copies of the records relating to the debt.

§ 422.317 Review of the debt.

(a) *Notification and presentation of evidence by the debtor.* A debtor who receives a notice described in §§ 422.305(b), 422.306(b), or 422.310(c) has a right to have us review the debt. To exercise this right, within 60 calendar days from the date of our notice, the debtor must notify us and give us evidence that he or she does not owe all or part of the debt or that we do not have the right to collect it. If the debtor does not notify us and give us this evidence within the 60 calendar-day period, we may take the action described in our notice.

(b) *Review of the evidence.* If the debtor notifies us and presents evidence within the 60 calendar day period described in paragraph (a) of this section, we will not take the action described in our notice unless and until we consider all of the evidence and send the debtor our findings that all or part of the debt is overdue and legally enforceable.

(c) *Findings by SSA.* Following our review of all of the evidence presented, we will issue written findings, including the supporting rationale for the findings. Issuance of these findings will be the final Agency action on the debtor's request for review. If we find that the debt is not overdue or we do not have the right to collect it, we will not send information about the debt to consumer or other credit reporting agencies or refer the debt to the Department of the Treasury for administrative offset.

[FR Doc. 97–20742 Filed 8–6–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

31 CFR Part 1

Privacy Act of 1974, Proposed Rule Exempting System of Records From Certain Provisions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed rule to exempt a new system of records entitled, ''Customer Feedback System Treasury/IRS 00.003,'' from certain provisions of the Privacy Act. The exemption is intended to comply with legal prohibitions against the disclosure of certain kinds of information and to protect certain information on individuals maintained in this system of records.

DATES: Comments must be received no later than September 8, 1997.

ADDRESSES: Please submit comments to the National Director, Governmental Liaison and Disclosure Office, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington DC. 20224. Comments will be made available for inspection and copying at the Freedom of Information Reading Room upon request.

FOR FURTHER INFORMATION CONTACT: Michael Sincavage, 6103/Privacy Operations, Governmental Liaison and Disclosure, Internal Revenue Service at (202) 622–6240.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, the Department of the Treasury is publishing separately the notice of a new Treasury/IRS system of records to be maintained by the IRS. The Department of the Treasury is hereby giving notice of a proposed rule to exempt the Customer Feedback System of records from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a (k)(4) and the authority vested in the Commissioner of Internal Revenue by 31 CFR 1.23(c).

Under 5 U.S.C. 552a, the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system is required by statute to be maintained and used solely as statistical records.

The reason for exempting the above-named system of records is that disclosure of statistical records (including release of any accounting for disclosure) would be of no benefit to a particular individual since the records

do not have a direct effect on a given individual, and the record may contain personal information about third parties.

The provisions of the Privacy Act of 1974 from which exemption for only those records required to be maintained by statute is claimed under 5 U.S.C. 552a(k)(4) are as follows: 5 U.S.C. 552a(c)(3);(d)(1),(2),(3) and (4); (e)(1),(e)(4)(G),(H), and (I); and (f).

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action and, therefore, does not require a regulatory impact analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The proposed rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department of the Treasury has determined that this proposed rule would not impose on the public new record keeping, application, reporting or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of title 31 of the Code of Federal Regulations is amended as follows:

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

§ 1.36 [Amended]

2. Section 1.36 of subpart C is amended by revising paragraph (d) under the heading THE INTERNAL REVENUE SERVICE to read as follows:

* * * * *

(d) *Exemption under 5 U.S.C. 552a(k)(4).* (1) This paragraph applies to the following systems of records maintained by the Internal Revenue Service, for which exemption is claimed under 5 U.S.C. 552a (k)(4):

Name of System	No.
Customer Feedback System	00.003
Statistics of Income-Individual Tax Returns	70.001

(2) Under 5 U.S.C. 552a (k)(4), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system is required by statute to be maintained and used solely as statistical records.

(3) The Statistics of Income—Individual Tax Returns is maintained under § 6108 of the Internal Revenue Code, which provides that ''the Secretary or his delegate shall prepare and publish annually statistics reasonably available with respect to the operation of the income tax laws, including classification of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable.''

(4) The Customer Feedback System is maintained under § 6108 of the Internal Revenue Code, and § 1211 of Pub. L. 104–168, the Taxpayers Bill of Rights 2 (TBOR 2), which provides that the Secretary of the Treasury shall submit a report to Congress on the misconduct of IRS employees. The Department is prohibited from using these records for any purpose involving the making of a determination about the individual to whom they pertain.

(5) The reason for exempting the above-named systems of records is that disclosure of statistical records (including release of accounting for disclosures) would in most cases be of no benefit to a particular individual since the records do not have a direct effect on a given individual.

(6) The provisions of the Privacy Act of 1974 from which exemption is claimed under 5 U.S.C. 552a (k)(4) are as follows:

5 U.S.C. 552a (c)(3)
5 U.S.C. 552a (d)(1), (2), (3), and (4)
5 U.S.C. 552a (e)(1)
5 U.S.C. 552a (e)(4)(G), (H), and (I)
5 U.S.C. 552a (f)

* * * * *

Dated: July 10, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 97–20817 Filed 8–6–97; 8:45 am]

BILLING CODE: 4810–30–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–16

RIN 3090–AF95

Governmentwide Real Property Policy

AGENCY: Office of Governmentwide Policy, General Services Administration.

ACTION: Proposed rule.

SUMMARY: The proposed rule describes the current real property policies applicable to GSA and Federal agencies to whom GSA real property operations have been delegated. The policies contained in this proposed rule have been separated from their procedural components and reflect the way that real property operations are currently conducted. This regulation, once finalized, will be located in the Federal Property Management Regulations (FPMR), Part 101–16, entitled ''Governmentwide Real Property Policy.''

DATES: Comments must be received on or before October 6, 1997.

ADDRESSES: Written comments should be sent to the General Services Administration, Office of Governmentwide Policy, Office of Real Property, Real Property Policy Division (MPR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, at (202) 501–1737.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

This rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

The Paperwork Reduction Act does not apply to this action because the proposed changes to the Federal Property Management Regulations do not impose reporting, recordkeeping or information collection requirements which require the approval of the Office of Management and Budget pursuant to 44 U.S.C. §§ 3501 *et seq.*

List of Subjects in 41 CFR Part 101–16

Federal buildings and facilities, Government real property management.

Therefore, it is proposed that 41 CFR Part 101–16 be added to read as follows:

PART 101–16—GOVERNMENTWIDE REAL PROPERTY POLICY

Sec.

Subpart 101–16.1—General

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C.§ 486(c)

Subpart 101–16.1 General

§ 101–16.100 Philosophy and scope of part.

(a) This part contains the applicable Governmentwide real property policies for Federal agencies operating pursuant to the authority of the Administrator of General Services, including the GSA/PBS business lines.

[The deviation language in the following sentence is proposed, subject to the revision of § 101–1.110]

GSA and Federal agencies operating under the authority of the Administrator of General Services must comply with the policy statements in this part, unless it is determined to be in the Government's best interest not to comply with them and there is no conflict with applicable laws and Executive orders. These policies cover the delivery, management, utilization and disposal of real property by Federal agencies that initiate and have decision-making authority over actions for real property services. These Governmentwide policies reflect a restatement of existing policies without their procedural, how-to components. They articulate the policy considerations concerning the manner in which Federal agencies currently conduct their real property business. In the future, GSA's Office of Governmentwide Policy will review these policies and make necessary adjustments to ensure that they optimize the performance of the Federal Government's real property portfolio. The policies stated in this part are derived from applicable laws and Executive orders. However, in the event a specific policy is not stated for a given real property function, or for any aspect of a function, all real property functions must be conducted in accordance with the provisions of applicable laws and Executive orders.

(b) The real property policies presented in this part are divided into subparts covering the following functional areas: delegation of authority, real estate, facility management, real property disposal, design and construction, art-in-architecture, historic preservation, assignment and utilization of space, safety and environmental management, security, and public utilities.

(c) The policy statements contained in this part are intended to apply to the FPMR Subchapters D, Public Buildings and Space, and H, Utilization and Disposal. To the extent that any statements of policy elsewhere in Subchapters D and H could be construed as inconsistent with the policy prescribed by this part, the policy statements in this part are controlling.

§ 101–16.101 Definitions.

(a) *Business line.* An organizational component of GSA/PBS charged with the management, execution, and/or oversight of its assigned real property-related duties and responsibilities. Within PBS the business lines include the Offices of Property Acquisition and Realty Services, Property Development, Federal Protective Service, Property Disposal, Property Management, and Portfolio Management. These business lines are also real property services providers.

(b) *Federal Government real property services provider.* A GSA/PBS organizational component, or other Federal Government entity operating pursuant to the authority of the Administrator of General Services, which provides real property services to Federal agencies and/or internal GSA customers. This definition also includes private sector firms under contract with Federal agencies that are engaged in the delivery of real property services to Federal agencies.

(c) *Federal agency.* Any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction).

§ 101–16.102 Applicability.

Those Federal agencies that initiate and have decision-making authority over actions for real property services from GSA under the authority of the Administrator of General Services, are accountable for compliance with the policies in this part.

§ 101–16.103 Basic authority.

The basic authorities underlying these Governmentwide real property policies include, but are not limited to, the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 471 *et seq.*); the Public Buildings Act of 1959, as amended, (40 U.S.C. 601–619); Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 note); and other applicable provisions of law, Executive Orders, and policies of the Office of Management and Budget.

§ 101–16.104 Legislative and executive impacts.

The following non-inclusive listing of legal provisions and statutory authorities influence specific aspects of the Governmentwide real property policies and programs:

(a) *Federal Property Management Regulations (FPMR, 41 CFR Chapter*

101), specifically Subchapter D—Public Buildings and Space, Parts 101–17—Assignment and Utilization of Space; 101–18—Acquisition of Real Property; 101–19—Construction and Alteration of Public Buildings; 101–20—Management of Buildings and Grounds, and Subchapter H—Utilization and Disposal, Part 101–47—Utilization and Disposal of Real Property.

(b) *Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.*). Among other things, this Act establishes the Federal Buildings Fund (FBF) and provides the Administrator of General Services with an important source of real property related authority, such as the authority to charge anyone furnished space or services at rates which approximate commercial charges for comparable space and services, authority for supervision and direction over the disposition of surplus property, authority for entering into leases not exceeding 20 years, and assigning and reassigning space in Government-owned and leased buildings to executive agencies.

(c) *Public Buildings Act of 1959, as amended, (40 U.S.C. 601–619).* Provides the Administrator with, among other things, the exclusive authority to construct public buildings; the authority to acquire any building and its site by purchase, condemnation, donation, exchange, or otherwise; the authority to alter any public building and to acquire such lands as may be necessary to carry out such alteration; the authority to acquire such lands or interests in lands for use as sites, or additions to sites, for public buildings authorized to be constructed or altered under this Act by purchase, condemnation, donation, exchange, or otherwise. In addition, this Act establishes a prospectus threshold, applicable to GSA and Federal agencies operating under the authority of the Administrator of General Services, for the construction, alteration, purchase, and acquisition of any building to be used as a public building; and establishes a prospectus threshold to lease any space for use for public purposes. Such projects require an approved resolution by the Senate and the House of Representatives if the dollar value exceeds the prospectus threshold. In order to obtain this approved resolution, prospectuses for such projects must be submitted to GSA; and the Administrator of General Services will transmit the proposed prospectuses to Congress for consideration by the Senate and the House of Representatives.

(d) *The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157).* Requires facilities be provided to ensure ready access for handicapped persons to public buildings and certain interior spaces.

(e) *The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.*). Requires consideration of environmental factors in the decision-making process for major Federal actions.

(f) *Executive Order 12072—Federal Space Management.* Requires Federal agencies to give first consideration to the Centralized Community Business Area (CBA) when locating Federal facilities in urban areas.

(g) *The Randolph-Sheppard Act, as amended, (20 U.S.C. 107–107f).* Requires that blind persons licensed under the provisions of the Act be authorized to operate vending facilities on any Federal property, including leased buildings. Federal agencies are obligated to acquire space in buildings with suitable areas for vending facilities.

(h) *Occupational Safety and Health Act of 1970 (29 U.S.C. 653).* Requires Federal agencies to provide safe and healthful places and conditions of employment.

(i) *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651–4655).* Requires Federal agencies to treat all property owners and other affected persons in a fair and equitable manner, and to provide relocation services and benefits to persons displaced by Federal agencies' acquisition of their real property.

(j) *Executive Order 11738—Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans.* Requires Federal agencies having authority to enter into contracts to conduct its acquisitions in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act.

(k) *Small Business Act, as amended (15 U.S.C. 631 et seq.*). Requires a positive effort by Federal contractors to place subcontracts with small and small disadvantaged business concerns.

(l) *Executive Order 11988—Floodplain Management.* Requires that each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for acquiring, managing, and disposing of Federal lands and facilities; providing federally undertaken, financed, or assisted construction and improvements; and conducting Federal activities and programs affecting land use. Each agency has the responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the polices and requirements of this Executive Order.

(m) *Executive Order 11990—Protection of Wetlands.* Requires that each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out its responsibilities for acquiring, managing, and disposing of Federal lands and facilities; providing federally undertaken, financed, or assisted construction and improvements; and conducting Federal activities and programs affecting land use. As implemented by GSA, the construction, purchase or lease of space in buildings located within a base floodplain or wetlands area is generally precluded.

(n) *Executive Order 12003—Relating to Energy Policy and Conservation.* Requires buildings constructed for Government lease to meet certain energy consumption design specifications.

(o) *Executive Order 12512—Federal Real Property Management.* Authorizes the Administrator to provide Governmentwide policy oversight and guidance for Federal real property management. This Executive Order requires, among other things, all executive departments and agencies to establish internal policies and systems of accountability that ensure effective use of real property in support of mission-related activities, consistent with Federal policies regarding the acquisition, management, and disposal of such assets. All such agencies shall also develop annual real property management improvement plans that include clear and concise goals and objectives related to all aspects of real property management, and identify sales, work space management, productivity, and excess property targets.

(p) *Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411–11412).* Requires Federal agencies to make available surplus real property to homeless organizations.

(q) *National Historic Preservation Act (16 U.S.C. 470 et seq.).* Requires Federal agencies to take into account the effect of any Federal undertaking on any property in or eligible for listing in the National Register of Historic Places; and

to use historic properties under Federal control prior to acquiring other real property for Federal use.

(r) *Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. 9601 et seq.).* Provides for liability, compensation, cleanup and emergency response for hazardous substances released into the environment, and the cleanup of hazardous waste disposal sites.

(s) *Superfund Amendments and Reauthorization Act of 1986, as amended (42 U.S.C. 9601–9675).* Extends and amends CERCLA, paragraph (r) of this section.

(t) *Protection of Public Property Act (40 U.S.C. 318–318d).* Gives the Administrator authority to make rules and regulations governing property under control of GSA, and to appoint uniformed and non-uniformed special police.

(u) *Executive Order 12196—Occupational Safety and Health Programs for Federal Employees.* Requires Federal agencies to establish and maintain occupational safety and health programs for Federal employees.

(v) *Rehabilitation Act of 1973, as amended (Pub. L. 93–112, 387 Stat. 355).* Requires Federal agencies to ensure compliance with standards set by GSA, DOD and HUD pursuant to the Architectural Barriers Act of 1968.

(w) *Public Buildings Amendments of 1988 (Pub. L. 100–678, 102 Stat. 4049).* Provides, among other things, the Administrator with authority to determine the extent to which a building constructed by GSA complies with one of the nationally recognized model building codes. Federal agencies may not lease any space to accommodate computer and telecommunications operations; secure or sensitive activities related to the national defense or security; or a permanent courtroom, judicial chamber, or administrative office for any United States court, if the average rental cost of leasing such space would exceed the prospectus threshold. Federal agencies may lease such space only if the Administrator first determines that leasing such space is necessary to meet requirements which cannot be met in public buildings and submits such reasons to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

(x) *Federal Power Act (16 U.S.C. 791a et seq.).* Regulates power industry and appoints the Federal Power Commission.

(y) *Clean Air Act of 1963 (42 U.S.C. 7401 et seq.).* Requires the utilization in Federal air control programs of all available and appropriate facilities and resources within the Federal Government for the prevention and abatement of air pollution.

(1) *Natural Gas Policy Act of 1978 (15 U.S.C. 3301 et seq.*). Regulates natural gas supplies, pricing and related issues.

(2) *Public Utility Regulatory Policies Act of 1978, as amended (Pub. L. 95–617, 92 Stat. 3117).* Provides for the conservation, distribution, and development of electric, hydro-electric, natural gas and crude oil energy resources.

(3) *Powerplant and Industrial Fuel Use Act of 1978, as amended (Pub. L. 95–620, 92 Stat. 3289).* To decrease petroleum importation and increase capability to use indigenous energy resources, among other things.

(4) *Rural Development Act of 1972 (Pub. L. 92–419, 86 Stat. 657).* Provides for improving the economy and living conditions in rural America.

(5) *Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776).* Provides for increased energy efficiency.

(6) *Executive Order 12902—Energy Efficiency and Water Conservation at Federal Facilities.* Requires, among other things, each executive agency to develop energy consumption reduction goals.

(7) *Executive Order 12873—Federal Acquisition, Recycling, and Waste Prevention.* Requires, among other things, each executive agency to incorporate waste prevention and recycling in its daily operations.

(8) *Executive Order 12411—Government Work Space Management Reforms.* Requires, among other things, the heads of all Federal executive agencies to establish programs to reduce the amount of workspace, used or held, to that amount which is essential for known agency missions; to produce and maintain a total inventory of work space and related furnishings and declare excess to the Administrator of General Services all such holdings that are not necessary to satisfy existing or known and verified planned programs; and ensure that the amount of office space used by each employee of the agency, or others using agency-controlled space, is held to the minimum necessary to accomplish the task that must be performed.

(9) *Americans with Disabilities Act of 1990 (Pub. L. 101–336, 104 Stat. 327).* Provides, among other things, accessibility requirements on employment, State and local government services, buildings and facilities.

(10) *Child care services for Federal employees in Federal buildings (40 U.S.C. 490b).* Provides Federal agencies with the authority to allot space in Federal buildings to individuals or entities who will provide child care services to Federal employees.

(11) *Executive Order 13006—Locating Federal Facilities on Historic Properties in our Nation's Central Cities.* When operationally appropriate and economically prudent, and subject to the requirements of Section 601 of Title VI of the Rural Development Act of 1972, as amended, (42 U.S.C. 3122), and Executive Order 12072, when locating Federal facilities, Federal agencies shall give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists.

(12) *Act of December 10, 1941 (40 U.S.C. 291).* Requires Federal agencies to admit seeing-eye dogs or other guide dogs accompanied by their blind masters to any building or other property owned or controlled by the United States.

(13) *Act of July 1, 1898 (40 U.S.C. 285).* Places all courthouses, customhouses, appraiser's stores, barge offices, and other public buildings outside of the District of Columbia and outside of military reservations under the exclusive jurisdiction and control and in the custody of the Administrator of General Services.

(14) *The Act of June 23, 1913 (40 U.S.C. 281).* Makes available appropriations for furniture and repairs of furniture whenever the Administrator of General Services is authorized to secure temporary quarters for the use of Government officials pending the repair and/or alteration of any public building under the control of the Administrator of General Services.

(15) *Act of May 14, 1948 (40 U.S.C. 130).* Places the operation, maintenance, and repair of the completed building for the use of the United States Court of Appeals for the District of Columbia and the United States District Court for the District of Columbia under the control of the Administrator of General Services. The allocation of space therein shall be vested in the chief judge of the United States Court of Appeals for the District of Columbia and the chief judge of the United States District Court for the District of Columbia.

(16) *Federal Urban Land-Use Act (40 U.S.C. 531–535).* Promotes more harmonious intergovernmental relations

and encourages sound planning, zoning, and land use practices by prescribing uniform policies and procedures in order that urban land transactions entered into for the General Services Administration or on behalf of other Federal agencies be consistent with zoning and land-use practices and be made in accordance with planning and development objectives of the local governments and local planning agencies concerned.

(17) *Section 901(b) of the Agriculture Act of 1970, 84 Stat. 1383, as amended by section 601 of Title VI the Rural Development Act of 1972, 86 Stat. 674 (42 U.S.C. 3122(b)).* Section 601 of Title VI of the Rural Development Act of 1972 amends Section 901(b) of the Agricultural Act of 1970. Section 601 directs the heads of all executive departments and agencies of the Government to establish and maintain departmental policies and procedures giving first priority to the location of new offices and other facilities in rural areas as defined in the private business enterprise exception in Section 306(a)(7) of the Consolidated Farmers Home Administration Act of 1961, as amended (7 U.S.C. 1926).

(18) *Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 601a, 612a).* Requires the Administrator to acquire and utilize space in suitable buildings of historic, architectural, or cultural significance, if feasible; to encourage the location of commercial, cultural, educational, and recreational facilities and activities within public buildings; to encourage public access and pedestrian traffic into and through public buildings; to encourage the public use of public buildings for cultural, educational, and recreational activities.

(19) *Executive Order 11507—Prevention, Control, and Abatement of Air and Water Pollution at Federal Facilities.* Requires that the Federal Government, in the design, operation, and maintenance of its facilities, provide leadership in the nationwide effort to protect and enhance the quality of our air and water resources.

(20) *Executive Order 11508—Providing for the Identification of Unneeded Federal Real Property.* Establishes a uniform policy for Executive branch concerning the identification of excess real property holdings and establishes uniform procedures to insure the prompt identification and release by executive agencies of real property holdings that are no longer essential to their activities and responsibilities.

(21) *Fair Housing Act, as amended (42 U.S.C. 3601 et seq.).* Provides for fair housing practices and prohibits discrimination in the sale or rental of housing.

(22) *Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).* Requires, among other things, that all agencies of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting in the discharge or runoff of pollutants, must comply with all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution.

(23) *Office of Management and Budget Circular A–95 Revised.* Furnishes guidance to Federal agencies for cooperation with state and local governments in the evaluation, review, and coordination of Federal and federally assisted programs and projects.

(24) *Executive Order 11724—Federal Property Council.* Directs the Administrator of General Services to conduct surveys of real property holdings of executive agencies on a continuing basis to identify properties which are not utilized, are underutilized, or are not being put to their optimum use. The Administrator of General Services shall also make reports as to which of these properties (not utilized, underutilized, not being put to optimum use) he recommends should be reported as excess property.

(25) *Executive Order 12088—Federal Compliance with Pollution Control Standards.* Requires the head of each Executive agency to ensure that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities. This will entail responsibility for compliance with applicable pollution control standards, coordination with other agencies, and the submission of an annual plan for the control of environmental pollution.

(26) *Executive Order 13005—Empowerment Contracting.* Requires the Secretary of Commerce to develop policies and procedures to ensure that agencies grant qualified large businesses and qualified small businesses appropriate incentives to encourage businesses in areas of general economic distress, in order to strengthen the economy and to improve the efficiency of the Federal procurement system by encouraging business development that expands the industrial base and increases competition.

(27) *Act of April 28, 1902 (40 U.S.C. 19).* Requires the Administrator of General Services to have charge of the public buildings and grounds in the District of Columbia, and to evict any person that is in unlawful occupation of any portion of these lands.

(28) *Executive Order 12699—Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction.* Requires Federal agencies responsible for the design and construction of each new Federal building and/or for the construction and lease of a new building for Federal use to ensure that the building is designed and constructed in accord with appropriate seismic design and construction standards.

(29) *Executive Order 11593—Protection and Enhancement of the Cultural Environment.* Requires Federal Agencies to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, archaeological or archaeological significance are preserved, restored and maintained.

§ 101–16.105 Policy implementation.

Each Federal Government real property services provider shall develop its operating procedures in conformance with the policies presented in this part for each functional area of specialization outlined in § 101–16.100(b). Also, Federal agencies shall ensure that the provisions of any contract with private sector real property services providers conform to the real property policy requirements of this part.

Subpart 101–16.2—Delegation of Authority

§ 101–16.200 Basic policy.

The Administrator of General Services is authorized to delegate and to authorize successive redelegations of the real property functions vested in the Administrator to any other Federal agency. The guiding principle in the delegation decision is whether the delegation is in the best interest of the Government, including but not limited to whether a delegation would be cost effective for the Government in the delivery of space. Federal agencies must conduct their real property functions within the parameters described within each specific delegation of authority document, and Federal agencies may only exercise the authority of the Administrator that is specifically provided within the written delegation of authority document. Specific guidance on delegations of authority is found in §§ 101–17.202–2, 101–18.104–1(a), 101–19.501, and 101–20.106–1 of this subchapter.

Note: The ''Can't Beat GSA Leasing Program'' provides Federal agencies with the

option to either use GSA when a new lease is necessary or conduct the lease procurement themselves. This delegation includes some conditions which agencies must meet when the procurement is not performed by GSA. These conditions include training in lease contracting and reporting data to GSA.

§ 101–16.201 Types of delegations.

Delegations of authority cover the following areas of responsibility:

(a) *Real estate leasing.* (1) Section 101–18.104 of this subchapter describes the existing types of delegations for lease acquisitions.

(2) *General purpose space.* The Administrator of GSA has issued a standing delegation of authority to the heads of all Federal agencies to accomplish all functions relating to leasing of general purpose space for terms of up to 20 years regardless of geographic location, subject to the conditions in the written delegation of authority instrument.

(3) *Administrative contracting officer (ACO) delegations.* An ACO, in addition to lease management authority, has limited contracting officer authority to perform such duties as paying and withholding lessor rent and modifying lease provisions that do not change the lease term length or the amount of square footage under lease.

When a Federal agency elects not to exercise the delegation of authority for general purpose space mentioned in paragraph (a) of this section, GSA may consider granting this ACO delegation when all of the following conditions exist:

(i) The Federal agency occupies 90 percent of the leased space or the Federal agency has the written concurrence of 100% of rent-paying occupants covered under the lease; and

(ii) The Federal agency has the technical capability to perform the leasing function.

(b) *Facility management.* Delegates authority to Federal agencies to accomplish functions concerned with the day-to-day operation and management of buildings, to accomplish individual repair and alteration projects, and to accomplish functions associated with lease management. The types of facility management delegations include the following:

(1) *Delegation of real property management and operation.* Delegates authority to Federal agencies to accomplish functions concerned with the day-to-day operation and management of buildings. These functions include building operations, maintenance, recurring repairs, alterations, historic preservation, concessions, and energy management of specified buildings subject to the conditions stated in the delegation instrument.

(i) Delegates real property management and operation authority when all of the following conditions exist:

(A) The Federal agency occupies at least 90 percent of the space in the Government controlled facility or the Federal agency has the concurrence of 100 percent of rent paying occupants; and

(B) The Federal agency satisfactorily demonstrates the ability to perform the delegated real property management and operation responsibilities.

(2) *Individual repair and alteration project delegation.* Delegates to Federal agencies the authority to perform individual repair and alterations projects. Repair and alterations authority is delegated to Federal agencies for reimbursable space alteration projects up to the simplified acquisition threshold, in accordance with § 101–20.106 of this subchapter. Repair and alterations authority may be delegated to Federal agencies for other individual alteration projects when the Federal agency demonstrates the ability to perform the delegated repair and alterations responsibility and when such a delegation will promote efficiency and economy.

(3) *Delegation of lease management authority (Contracting Officer Representative Authority).* When a Federal agency elects not to exercise the delegation of authority for general purpose space mentioned in paragraph (a) of this section, GSA may delegate authority to a Federal agency upon request to manage the administration of one or more lease contracts. A delegation of lease management authority is appropriate when all of the following conditions exist:

(i) The Federal agency occupies at least 90 percent of the space in the lease or the Federal agency has the written concurrence of 100% of rent-paying occupants covered under the lease; and

(ii) The Federal agency personnel satisfactorily demonstrate the ability to perform the delegated lease management responsibilities.

(c) *Disposal of real property.* Delegates authority to Federal agencies to utilize and dispose of real and related personal property and to grant approvals and make determinations as provided for in the delegation instrument. Disposal delegations to Federal agencies are infrequent. Delegation of disposal authority may be appropriate where low-value properties are involved and where the Federal agency has the technical expertise to perform the disposition functions. GSA may grant special delegations of authority to other Federal agencies for the utilization and disposal of certain real property through the procedures set forth in subpart 101–47.6.

(d) *Security.* Delegates authority to Federal agencies relating to the protection of persons and property at the locations identified in the delegation instrument. Security delegations to Federal agencies are based upon considerations such as whether a clear and unique security requirement exists; whether there is a critical national security issue; whether the agency has an intelligence or law enforcement mission; and/or whether the agency can show that the current security contractor is ineffective.

(e) *Public utilities.* Delegates authority to Federal agencies to negotiate and execute utility services contracts for the use and benefit of the delegated agency and to intervene in utility rate proceedings to represent the consumer interests of the Federal Government, subject to the conditions stated in the delegation instrument. The criteria that GSA uses in determining whether a delegation will be issued include whether the Federal agency has the technical expertise and adequate staffing, and whether there is an existing areawide contract.

Subpart 101–16.3—Real Estate

§ 101–16.300 Basic policy.

Federal agencies must provide real estate and related services for their use in an efficient and cost effective manner, after a determination that suitable Government-controlled real estate is not available.

§ 101–16.301 Program-specific authority.

Including, but not limited to, the Federal Property and Administrative Services Act of 1949, as amended; Public Buildings Act of 1959, as amended; Public Buildings Cooperative Use Act of 1976; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; the Architectural Barriers Act of 1968; the Randolph-Sheppard Act, as amended; the National Environmental Policy Act of 1969; the National Historic Preservation Act; Executive Order 12072, entitled ''Federal Space Management''; Executive Order 11988, entitled ''Floodplain Management''; Executive Order 11990, entitled ''Protection of Wetlands;'' Executive Order 13006, entitled ''Locating Federal Facilities on Historic Properties in our Nation's Central Cities.''

§ 101–16.302 Real estate and related services.

Federal agencies must provide real estate and related services, including leases, purchase options, building purchase, purchase of sites, condemnation, and relocation assistance. The real estate and related services include the following:

(a) *Leases.* Federal agencies must adhere to the following policies when acquiring space by lease:

(1) Federal agencies may consider leases of privately owned land and buildings only when needs cannot be satisfactorily met in Government-controlled space and:

(i) Leasing proves to be more advantageous than the construction of a new or alteration of an existing Federal building.

(ii) New construction or alteration is not warranted because requirements in the community are insufficient or indefinite in scope or duration.

(iii) Completion of a new building within a reasonable time cannot be ensured.

(2) Available space in buildings under the custody and control of the United States Postal Service (USPS) will be given priority consideration in fulfilling Federal agency space needs.

(3) Acquisition of space by lease will be on the basis most favorable to the Government, with due consideration to maintenance and operational efficiency, and only at charges consistent with prevailing scales for comparable facilities in the community.

(4) Acquisition of space by lease will be by negotiation except where the sealed bid procedure is required by 41 U.S.C. 253(a). Except as otherwise provided in 41 U.S.C. 253, full and open competition will be obtained among suitable locations meeting minimum Government requirements.

(5) When acquiring space by lease, the provisions of (101–17.205 of this subchapter regarding determination of the location of Federal facilities must be strictly adhered to. This implements Executive Order 12072.

(6) When acquiring space by lease, the provisions of section 110(a) of the National Historic Preservation Act of 1966 (16 U.S.C. 470), as amended, regarding the use of historic properties must be strictly adhered to.

(7) Federal agencies may enter into lease agreements with any person, copartnership, corporation, or other public or private entity, which do not bind the Government for periods in excess of twenty years for each such lease agreement.

(8) Federal agencies may not lease any space to accommodate computer and telecommunications operations; secure or sensitive activities related to the national defense or security; or a permanent courtroom, judicial chamber, or administrative office for any United States court, if the average rental cost of leasing such space would exceed the prospectus threshold. Federal agencies may lease such space only if the Administrator first determines that leasing such space is necessary to meet requirements which cannot be met in public buildings and submits such reasons to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

(b) *Leases with purchase options.* Give consideration to leasing with a purchase option when one or more of the following conditions exist:

(1) When the purchase option offers economic and other advantages to the Government and is consistent with the Government's goals;

(2) When the Government is the sole or major tenant of the building, and has a long-term need for the property;

(3) When otherwise in the best interest of the Government.

(c) *Building purchase.* Evaluate buildings considered for purchase on a case-by-case basis when one or more of the following conditions exist:

(1) When it is economically more beneficial to own and manage the property;

(2) When there is a long-term need for the property;

(3) When the property is an existing building, or a building nearing completion, that can be purchased and occupied within a reasonable time.

(4) Or when otherwise in the best interests of the Government.

(d) *Purchase of sites.* Locate proposed Federal buildings on sites that are most advantageous to the United States. Factors that may be considered include, but are not limited to, whether the site will contribute to economy and efficiency in the construction, maintenance and operation of the individual building, and how the proposed site relates to the Government's total space needs in the community. Site selections must take into consideration Executive Orders 12072 and 13006 (see § 101–19.002(a) of this subchapter). In addition, consideration will also be given to:

(1) Maximum utilization of Government-owned land (including excess land) whenever it is adequate, economically adaptable to requirements and properly located, where such use is consistent with the provisions of Executive Order 11724 of June 25, 1973 and subpart 101–47.8 of this chapter.

(2) A site adjacent to or in the proximity of an existing Federal building which is well located and is to be retained for long-term occupancy.

(3) Determine the environmental condition of proposed sites prior to purchase; such sites must be free from contamination, unless it is otherwise determined to be in the best interests of the Government to purchase a contaminated site.

(4) Consider purchase options to secure the availability of a site.

(5) Suitable sites in established civic or redevelopment centers which are well planned and properly financed with development initiated and insured.

(6) Policies regarding the determination of the location of Federal facilities shall be strictly adhered to in the process of developing building projects.

(e) *Condemnation.* Obtain the use of real property through the procedures set forth in subpart 101–18.2 of this subchapter.

(f) *Relocation assistance.* Eligible owners and tenants of property purchased for use by Federal agencies must receive appropriate relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. 4651–4655. The implementing regulations are found at § 105–51.005 of this chapter.

Subpart 101–16.4—Facility Management

§ 101–16.400 Basic policy.

Federal agencies must manage, operate, and maintain Government-owned and leased buildings in a manner that ensures quality space and services consistent with operational needs and that accomplish overall Government objectives. The management, operation, and maintenance of buildings and building systems must be cost effective, must be adequate to meet the agencies' missions, must meet nationally recognized standards, and must be at an appropriate level to maintain and preserve the physical plant assets, consistent with available funding.

§ 101–16.401 Program-specific authority.

Including, but not limited to, the Randolph-Sheppard Act, as amended; the Small Business Act, as amended; Executive Order 12902, entitled ''Energy Efficiency and Water Conservation at Federal Facilities''; and Executive Order 12873, entitled ''Federal Acquisition, Recycling, and Waste Prevention.''

§ 101–16.402 Occupancy services.

Federal agencies must provide occupancy services for real property assets.

(a) Federal agencies must manage, administer, and enforce the requirements of agreements (such as Memoranda of Understanding, etc.) and contracts that provide for the delivery of occupancy services.

(b) Federal agencies must provide occupancy services which substantially conform to nationally recognized standards. As needed, Federal agencies may adopt other standards for buildings and services in federally controlled facilities in order to conform to statutory requirements and to implement cost-reduction efforts. The occupancy services include the following:

(1) *Building services.* Federal agencies must provide building services such as custodial, solid waste management (including recycling), heating and cooling, landscaping and grounds maintenance, tenant alterations, minor repairs, building maintenance, integrated pest management, signage, parking, and snow removal, at appropriate levels to support Federal agency missions.

(2) *Concessions.* Federal agencies must provide concessions services where building population supports such services and when the availability of existing commercial services is insufficient to meet Federal agency needs. Concessions services consist of services such as dry cleaners, gift shops, vending facilities (onsite preparation facilities, prepackaged facilities, sundry facilities, and vending machines), cafeterias, employee health units, and public pay telephones. See Randolph-Sheppard Act, as amended, and subpart 101–20.2 of this subchapter.

(3) *Conservation.* Federal agencies must provide programs for the improvement of energy and water efficiency. These programs must promote and maintain an effective source reduction activity (reducing consumption of resources such as energy, water and paper), resource recovery activity (obtaining materials from the waste stream that can be recycled into new products), and reuse activity (reusing same product before disposition, such as reusing unneeded memos for scratch paper).

§ 101–16.403 Asset services.

Federal agencies must provide asset services such as repairs (in addition to those minor repairs identified in § 101–16.402(b)(1) entitled ''Building services'') and alterations for real property assets. GSA must provide asset services such as modernizations for real property assets. Asset services must be accomplished to maintain continuity of Government operations, to provide for continued efficient building operations, to extend the useful life of buildings and related building systems, and to provide a quality workplace environment that enhances employee productivity.

Subpart 101–16.5—Real Property Disposal

§ 101–16.500 Basic policy.

GSA must provide, in a timely, efficient, and cost effective manner, the full range of real estate services necessary to support the real property utilization and disposal needs of Federal agencies. Each executive landholding agency must make surveys of real property under its jurisdiction to identify property that is unutilized, underutilized, or not being put to optimum use and to ensure that adequate systems are in place to promote the effective utilization and disposal of such real property.

§ 101–16.501 Program-specific authority.

Including, but not limited to, the Federal Property and Administrative Services Act of 1949, as amended; the Stewart B. McKinney Homeless Assistance Act; Executive Order 12512, entitled ''Federal Real Property Management;'' National Environmental Policy Act of 1969, as amended; National Historic Preservation Act of 1966, as amended; Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; Superfund Amendments and Reauthorization Act of 1986, as amended.

§ 101–16.502 Real property disposal services.

GSA must provide for real property disposal services for real property assets under its custody and control and for Federal agencies. These real property disposal services include the following:

(a) *Utilization of excess property.* GSA must:

(1) Stimulate the identification and reporting by executive agencies of excess real property.

(2) Achieve the maximum utilization by executive agencies, in terms of economy and efficiency, of excess real property in order to minimize expenditures for the purchase of real property.

(3) Provide for the transfer of excess real property among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia.

(4) Resolve conflicting transfer requests that cannot be resolved by the involved agencies.

(b) *Surveys.* Each executive agency must:

(1) Survey real property under its control (including property assigned on a permit basis to other Federal agencies, or outleased to States, local governments, other public bodies, or private interests) at least annually to identify property which is not needed, underutilized, or not being put to optimum use. When other needs for the property are identified or recognized, the agency must determine whether continuation of the current use or another Federal or other use would better serve the public interest, considering both the Federal agency's needs and the property's location. In conducting each review, Federal agencies must be guided by § 101–47.801(b) of this chapter, and other applicable General Services Administration regulations.

(2) Maintain its inventory of real property at the absolute minimum consistent with economical and efficient conduct of the affairs of the agency.

(3) Promptly report to GSA real property which it has determined to be excess.

(c) *Disposal of surplus property.* Excess real property not needed for further Federal use must be determined by GSA as surplus to the needs of the Federal government and must be expeditiously made available for acquisition by State and local governmental units and nonprofit institutions or for sale by public advertising, negotiation, or other disposal action. Considerations regarding availability for public purposes based on highest and best use and estimated fair market value must be made by GSA on a case-by-case basis. See § 101–47.202–2(b) of this chapter for the requirements for reporting excess real property containing hazardous substance activity and, where hazardous substance activity has been identified, § 101–47.304–14 for required information to be incorporated into Invitation for Bids/Offers to Purchase.

(1) GSA may dispose of surplus real property by exchange for privately owned property only—

(i) For property management considerations such as boundary realignment or provision of access or

(ii) Where authorized by law, when the requesting Federal agency has received approval by the Office of Management and Budget and the appropriate oversight committees, and where the transaction offers substantial economic or unique program advantages

not otherwise obtainable by any other method of acquisition.

(2) GSA may outlease surplus real property for non-Federal interim use, pending its disposition, when both of the following conditions exist:

(i) The lease or permit is for a period not exceeding 1 year and is revocable on not to exceed 30 days' notice by the disposal agency; and

(ii) The use and occupancy will not interfere with, delay, or impede the disposal of the property.

(3) GSA, or landholding Federal agencies with the approval of GSA, may grant rights for non-Federal interim use of excess property reported to GSA, when it is determined that such interim use is not required for the needs of any Federal agency.

(d) *Public benefit conveyances.* Based on a highest and best use analysis, GSA may designate surplus real property as available to State and local governmental bodies and certain nonprofit institutions at up to 100 percent public benefit discount for public benefit purposes including education, health, park and recreation, homeless, historic monument, public airport, highway, correctional, ports, and wildlife conservation.

(e) *Negotiated sale.* GSA must obtain such competition as is feasible under the circumstances in all negotiations of disposals and contracts for disposal of surplus property.

(1) Negotiated sales may be made only:

(i) When the estimated fair market value of the property involved does not exceed $15,000;

(ii) When bid prices after advertising therefore are not reasonable (either as to all or some part of the property) or have not been independently arrived at in open competition;

(iii) When the character or conditions of the property or unusual circumstances make it impractical to advertise publicly for competitive bids and the fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation;

(iv) When the disposals will be to States, Commonwealth of Puerto Rico, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiations. Such negotiated sales to public bodies must be limited to where a public benefit will result from a negotiated sale which would not be realized from a competitive sale disposal (Such public purposes include administrative offices, police stations, fire houses, and economic development); or

(v) When negotiation is otherwise authorized by the Federal Property and Administrative Services Act of 1949 or other law, such as:

(A) Disposals of power transmission lines for public or cooperative power projects.

(B) Disposals for public airport utilization.

(2) Negotiated sales to public agencies must include an excess profits clause, which usually runs for a period of 3 years, in the offer to purchase and the conveyance document to eliminate the potential for windfall profits to the public agencies.

(3) A negotiated sale for *economic development* purposes means a transferee will develop or make substantial improvements to the property with the intention of re-selling or leasing the property in parcels to users to advance the community's economic benefit. This type of negotiated sale is acceptable where the expected public benefits to the community will be greater than the anticipated proceeds derived from a competitive public sale.

(f) *Public sales.* Surplus property that is not disposed of by public benefit discount conveyance or by negotiated sale is made available by competitive public sale. Awards must be made on the basis of the Government's estimate of value, price and other factors that are most advantageous to the Government.

(g) *Economy Act sales.* Under the Economy Act, GSA may provide sales services to other Federal agencies on a reimbursable basis. Even though these agencies have their own disposal authority, they are, in many instances, unable to dispose of/sell large real property inventories acquired through forfeiture, loan default, and drug seizures. Reimbursable charges must be for actual expenses and are not formulated to create a profit to GSA. Requests for sales services from other agencies under the Economy Act must not be accepted by GSA if they delay or otherwise impact the accomplishment of the mission objectives of the Federal Property and Administrative Services Act of 1949, as amended.

(h) *Appraisals.* For all real property transactions requiring appraisals, GSA must in all cases obtain, as appropriate, an appraisal of either the fair market value or the fair annual rental value of property available for disposal.

(1) Appraisals are not required when either of the following conditions exist:

(i) The property is to be disposed of without monetary consideration, or at a fixed price. This exception shall not apply to disposals that take any public benefit purpose into consideration in fixing the sale value of the property.

(ii) The estimated fair market value of property to be offered on a competitive sale basis does not exceed $50,000.

(2) GSA must have the property appraised by experienced and qualified appraisers familiar with the types of property to be appraised.

(3) Appraisal data required for the purposes of disposing of surplus property by negotiation under § 101–16.502(e)(1)(iii), (iv), or (v)(A) must be obtained under contractual arrangements with experienced and qualified real estate appraisers familiar with the types of property to be appraised. However, GSA may authorize any other method of obtaining an estimate of the fair market value or the fair annual rental it deems proper when the cost of obtaining such data from a contract appraiser would be out of proportion to the expected recoverable value of the property, or if for any other reason employing a contract appraiser would not be in the best interest of the Government.

Subpart 101–16.6—Design and Construction

§ 101–16.600 Basic policy.

GSA must provide for the highest quality of design and construction services for the construction of new Federal facilities and for the repair and alteration of existing Federal facilities in a timely, efficient, and cost effective manner to support the mission of Federal agencies. GSA must provide for Federal facilities in an architectural style and form which is distinguished and reflects the dignity, enterprise, vigor and stability of the Federal Government. GSA must follow national building codes that govern Federal construction to the maximum extent feasible, and give consideration to the requirements of local building codes. Federal buildings must be designed to have a long life expectancy, and must be able to accommodate continual changes due to renovations. GSA must ensure that buildings are cost effective, accessible to and usable by the physically handicapped, and that building service equipment must be designed to be accessible for maintenance, repair or replacement without causing significant disturbance in occupied space. GSA must consider ease of operation when selecting mechanical and electrical equipment.

§ 101–16.601 Program-specific authority.

Including, but not limited to, the Public Buildings Act of 1959;

Architectural Barriers Act of 1968; National Environmental Policy Act of 1969; National Historic Preservation Act of 1966, as amended; Rehabilitation Act of 1973, as amended; Americans with Disabilities Act of 1990.

§ 101–16.602 Design and construction services.

GSA must provide for design and construction services for real property assets under its custody and control for Federal agencies. The design and construction services include the following:

(a) *Site planning and landscape design.* The quality of GSA site design must be a direct extension of the building design and must make a positive contribution to the surrounding landscape.

(1) GSA must consider all non procedural requirements of local zoning laws. GSA must consider non procedural requirements of laws relating to setbacks, height, historic preservation and aesthetic qualities of a building.

(2) GSA must identify areas for future building expansion in the architectural and site design concept for all GSA buildings where an expansion need is identified to exist.

(3) GSA must assure that the landscape design creates a pleasant, dynamic experience for occupants and visitors to its facilities and that it is closely coordinated with the architectural characteristics of the building.

(4) GSA must comply with the requirements of the National Environmental Policy Act of 1969 for each project.

(b) *Architectural and interior design.* GSA must design Federal facilities that demonstrate distinction and quality.

(1) Buildings must reflect the local architecture through the use of building form, materials, colors, or detail. Building interiors must express a quality of permanence similar to that of the buildings' exterior.

(2) For new construction and major renovations, GSA must ensure that physically handicapped persons have full access to, and use of federally-controlled facilities in accordance with the Architectural Barriers Act of 1968 (Uniform Federal Accessibility Standards (UFAS)) or Americans with Disabilities Act of 1990 (ADA accessibility guidelines), whichever is more stringent. For minor renovations in existing buildings, GSA must meet minimum UFAS requirements. A more detailed explanation of these standards can be found in subpart 101–19.6 of this subchapter.

(3) GSA must utilize metric specifications in construction where metrication is the accepted industry standard, and to the extent that such usage is economically feasible and practical.

(4) GSA must provide for the design of security systems to protect Federal workers and visitors and to safeguard facilities against criminal activity and/or terrorist activity. Security design must support the continuity of government operations during civil disturbances, natural disasters and other emergency situations.

(c) *Engineering systems design.* GSA must provide for engineering systems for real property assets under its custody and control for Federal agencies. The engineering systems include the following:

(1) *Structural engineering.* GSA must have the capability to accommodate changing Federal agencies' requirements in the life cycle of Federal buildings.

(2) *Mechanical engineering.* GSA must encourage the use of building automation systems that are cost effective and enable ease of operation in Federal buildings.

(3) *Electrical engineering and communications systems.* GSA must assure that electrical and communications systems support the many types of equipment used in Federal buildings. These systems must provide ample capacity for increased requirements in the future.

Subpart 101–16.7—Art-in-Architecture

§ 101–16.700 Basic policy.

The architectural character and design of Federal buildings occupied by Federal agencies is enhanced through the commissioning of works of art. GSA should incorporate fine arts as an integral part of the total building concept in the design of new Federal buildings, and in the substantial repair and alteration of existing Federal buildings, as appropriate. The selected fine arts, including painting, sculpture, and artistic work in other media, must reflect the national cultural heritage and emphasize the work of living American artists.

§ 101–16.701 Art-in-architecture services.

GSA may provide Art-in-architecture services for real property assets under its custody and control. The Art-in-architecture services include the following:

(a) *Types of art.* GSA must commission artwork that is diverse in style and media.

(b) *Funding.* GSA funds the Art-in-architecture efforts by allocating to it a portion of the estimated cost of constructing or purchasing new Federal buildings, or of completing major repair and alteration of existing buildings. Funding for qualifying projects, including new construction, building purchases, other building acquisition, or prospectus-level repair and alteration projects must be in a range determined by the Administrator of General Services.

(c) *Community support.* To the maximum extent practicable, GSA should seek the support and involvement of local citizens in the selection of appropriate artwork. GSA should collaborate with the artist and community to produce works of art that reflect the cultural, intellectual, and historic interests and values of a community.

(d) *Commissioning of art.* To the maximum extent practicable, the commissioning and selection of art in Federal buildings should be a collaborative effort among GSA, the architect of the building, art professionals, and the local community.

(e) *Public affairs.* GSA must ensure that Art-in-architecture is given national visibility to facilitate participation by a large and diverse group of artists representing a wide variety of types of artwork.

Subpart 101–16.8—Historic Preservation

§ 101–16.800 Basic policy.

In order to protect, enhance and preserve historic and cultural property under its control, GSA must take into account the effects of its undertakings on historic and cultural properties, and give the Advisory Council on Historic Preservation (Advisory Council), the State Historic Preservation Officer (SHPO), and other consulting parties a reasonable opportunity to comment regarding the proposed undertakings. Historic and cultural properties are those which are included in, or eligible for inclusion in, the National Register of Historic Places (National Register).

(a) GSA must solicit information from consulting parties to assist it in carrying out its responsibilities under historic and cultural preservation laws and regulations. GSA must invite the participation of consulting parties through its normal public notification processes.

(b) Whenever a GSA undertaking adversely affects an historic or cultural property, all adverse impacts must be minimized to the extent that is feasible and prudent.

§ 101–16.801 Program-specific authority.

Including, but not limited to, the National Historic Preservation Act of 1966, as amended; the Public Buildings Cooperative Use Act of 1976; and Executive Order 13006, entitled ''Locating Federal Facilities on Historic Properties in our Nation's Central Cities.''

§ 101–16.802 Historic preservation services.

GSA must provide historic preservation services for real property assets under its custody and control. The historic preservation services include the following:

(a) *Identification of historic properties.* GSA must identify all National Register or National Register-eligible historic and cultural properties that are under its control. Properties that may be affected by the policies, plans, or other undertakings of GSA sponsored activities, must be examined for the presence of historic and cultural significance. If unable to reach agreement on eligibility with the State Historic Preservation Officer, GSA must request a determination of eligibility from the Keeper of the National Register (Keeper) for properties under its control that appear to meet the criteria of eligibility for inclusion in the National Register.

(b) *Nomination to the National Register.* GSA must nominate to the National Register all properties under its control determined eligible for inclusion in the National Register by the Keeper.

(c) *Property under GSA control.* (1) *Real property.* GSA must prepare a Historic Building Preservation Plan for each National Register or National Register-eligible property under its control. All reports must, when approved by the consulting parties, become a binding management plan for the property.

(2) *Direct and leased construction.* GSA must investigate for the presence of historic and cultural factors on all proposed sites for direct and leased construction.

(3) *Leased space.* Federal agencies must give consideration to historic properties which are suitable for office space or other commercial usage. In leasing historic property, Federal agencies gives a preference to such leasing actions.

(d) *Disposition of real property.* (1) *Property under the control of GSA.* GSA must review all proposed excess actions for the inclusion of National Register or National Register-eligible properties. GSA must not perform an undertaking which could alter, destroy, or modify an historic or cultural property until GSA has consulted with the SHPO and the Advisory Council.

(2) *Property under another agency's jurisdiction.* GSA must not accept property declared excess by another Federal agency nor act as an agent for transfer or sale of such properties until the holding agency has provided evidence that the Federal agency's National Historic Preservation Act responsibilities have been met.

(e) *Locating Federal Facilities on Historic Properties in Our Nation's Central Cities.* When operationally appropriate and economically prudent, and subject to the requirements of Section 601 of Title VI of the Rural Development Act of 1972, as amended, (42 U.S.C. 3122), and Executive Order 12072, when locating Federal facilities, Federal agencies shall give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists.

Subpart 101–16.9—Assignment and Utilization of Space

§ 101–16.900 Basic policy.

Federal agencies must provide a quality workplace environment that supports program operations, preserves the value of real property assets, ensures essential requirements for Federal workspace, and ensures the provision of child care and physical fitness facilities in the workplace when adequately justified. Federal agencies must promote maximum utilization of Federal workspace in order to maximize its value to the Government.

§ 101–16.901 Program-specific authority.

Including, but not limited to, the Rural Development Act of 1972, as amended; Executive Order 12072, entitled ''Federal Space Management''; Competition in Contracting Act of 1984 (CICA), as amended; Executive Order 12411, entitled ''Government Work Space Management Reforms''; Executive Order 12512, entitled ''Federal Real Property Management;'' and Executive Order 13006, entitled ''Locating Federal Facilities on Historic Properties in our Nation's Central Cities.''

§ 101–16.902 Assignment and utilization services.

Federal agencies must provide assignment and utilization services in a manner that will maximize the value of Federal real property resources and improve the productivity of the workers that are housed. The assignment and utilization services include the following:

(a) *Assignment of space.* Federal agencies must promote the optimum use of space for each assignment at the minimum cost to the Government, and must ensure that quality workspace is delivered and occupied in a timely manner.

(1) Federal agencies must assign space based on space requirements.

(2) In accordance with 40 U.S.C. 490b and § 101–17.214 of this subchapter, Federal agencies are authorized to allot space in Federal buildings to individuals or entities who will provide child care services to Federal employees.

(3) In accordance with 5 U.S.C. 7901 and § 101–17.213 of this subchapter, Federal agencies are authorized to allot space in Federal buildings for establishing fitness programs.

(b) *Utilization of space.* Federal agencies must promote efficient utilization of space in accordance with GSA standards. In order to maximize the use of vacant space, Federal agencies' space needs must be satisfied in existing Government-controlled space to the maximum extent practical. Available space in buildings under the custody and control of the U.S. Postal Service must also be given priority consideration. Where there is no space need, Federal agencies must make every effort to maximize the productive use of vacant space through out-granting (i.e., outlease, permit, license).

§ 101–16.903 Location of space.

Federal agencies must give first priority to the location of new offices and other facilities in rural areas (42 U.S.C. 3122). When Federal agency mission and program requirements call for location in an urban area, Federal agencies must give first consideration to central business areas (CBAs) and other designated areas (Executive Order 12072). In accordance with the Competition in Contracting Act (CICA), Federal agencies must consider whether restricting the delineated area to the central business area will provide for competition when acquiring leased space. Where it is determined that an acquisition should not be restricted to the CBA, Federal agencies may expand the delineated area in consultation with local officials. The CBA must continue to be included in such expanded areas. In accordance with Executive Order 13006, and subject to the requirements of Section 601 of Title VI of the Rural Development Act of 1972, as amended, (42 U.S.C. 3122), Executive Order 12072, and CICA (41 U.S.C. 253 et seq.),

when locating Federal facilities, Federal agencies shall give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists. Each Federal agency is responsible for identifying the delineated area within which it wishes to locate specific activities, consistent with its mission and program requirements, and in accordance with all applicable laws, regulations, and Executive orders. GSA is responsible for approving the final delineated area and shall confirm that the final delineated area is in compliance with the requirements of all applicable laws, regulations, and Executive orders.

Subpart 101–16.10—Safety and Environmental Management

§ 101–16.1000 Basic policy.

Federal agencies must provide for a safe and healthful work environment for Federal employees and the visiting public, protect Federal real and personal property, promote mission continuity, and provide reasonable safeguards for emergency forces if an incident occurs. GSA must assess risk, ensure decisionmakers are aware of risks, and act promptly and appropriately in response to risk.

§ 101–16.1001 Program-specific authority.

Including, but not limited to, the Occupational Safety and Health Act of 1970; Executive Order 12196, entitled ''Occupational Safety and Health Programs for Federal Employees''; Environmental Protection Agency (EPA) approved State plans; the National Environmental Policy Act; Executive Order 11988, entitled ''Floodplain Management''; Executive Order 11990, entitled ''Protection of Wetlands'' as amended; Clean Air Act, as amended; the Comprehensive Environmental Response, Compensation, and Liability Act; Executive Order 12699, entitled ''Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction''; the Solid Waste Disposal Act, as amended; and the Toxic Substances Control Act.

§ 101–16.1002 Occupancy services.

GSA must provide occupancy services for real property assets. The occupancy services include the following:

(a) *Asbestos.* Federal agencies must inspect and assess GSA-owned buildings for the presence and condition of asbestos-containing materials. Federal agencies must ensure that leased space is free of all asbestos containing materials, except undamaged asbestos flooring in the space or undamaged boiler or pipe insulation outside the space, in which case an asbestos management program conforming to Environmental Protection Agency guidance must be implemented.

(1) Federal agencies must manage in-place asbestos that is in good condition and not likely to be disturbed.

(2) Federal agencies must abate damaged asbestos, and asbestos likely to be disturbed. Federal agencies must perform a pre-alteration asbestos assessment for activities that may disturb asbestos.

(3) Federal agencies must not use asbestos in new construction, renovation/modernization or repair of GSA-owned space. Unless approved by GSA, Federal agencies must not obtain space with asbestos through purchase, exchange, transfer, or lease, except as identified in paragraph (a) of this section. In situations where space is obtained which has asbestos, an asbestos abatement program must ensure that the asbestos will not be damaged or subject to disturbance by routine operations, and the Federal agency must implement an asbestos management program conforming to EPA guidance and requirements.

(4) Federal agencies must communicate all written and oral asbestos information about the leased space to tenants.

(b) *Radon.* Federal agencies must abate radon in their space and ensure that lessors abate radon in space when radon levels exceed current EPA standards.

(1) Federal agencies must retest abated areas and ensure that lessors retest, as required, abated areas to ensure adherence to EPA standards.

(2) Federal agencies must test non-public water sources (in remote areas for projects such as border stations) for radon according to EPA guidance. Radon levels must be mitigated that exceed current applicable EPA standards. Federal agencies must retest, as required, to ensure adherence to EPA standards.

(c) *Indoor air quality.* GSA must assess indoor air quality of all GSA-controlled buildings during GSA safety and environmental facility assessments. Problems identified must be corrected. Federal agencies must respond to Federal agency complaints on air quality and take appropriate corrective action.

(d) *Lead.* Federal agencies must test space for lead-based paint in renovation projects that require sanding, welding or scraping painted surfaces. Lead based paint must not be removed from surfaces in good condition. Federal agencies must test all painted surfaces for lead in proposed or existing child care centers. Lead-based paint found must be abated in accordance with Department of Housing and Urban Development (HUD) Lead-Based Paint Guidelines. Federal agencies must test potable water for lead in all drinking water outlets in child care centers. Federal agencies must take corrective action when lead levels exceed the HUD Guidelines.

(e) *Hazardous materials and wastes.* Federal agencies must monitor the transport, use, and disposition of hazardous materials and waste in GSA-controlled buildings to ensure compliance with GSA, OSHA, Department of Transportation, EPA, and EPA-approved State and local requirements. In leased space, Federal agencies must ensure that all agreements with the lessor require that the leased space be free of hazardous materials according to applicable Federal, State, and local environmental regulations.

(f) *Underground storage tanks.* GSA must manage and close underground storage tanks, including heating oil and fuel oil tanks, in accordance with GSA, EPA, and EPA-approved State and local requirements. GSA must require the responsible party for tanks not owned or operated by GSA, to follow these requirements and to be responsible for the cost of compliance.

(g) *Fire prevention and fire protection engineering.* Federal agencies must follow accepted fire prevention practices in operating and managing buildings. Federally owned buildings are generally exempt from State and local code requirements in fire protection. Leased buildings are subject to local requirements and inspection.

(1) GSA must identify and estimate risks and appropriate reduction strategies for each Federal agency's building.

(2) Federal agencies must use the National Fire Protection Association (NFPA) codes and standards as a guide for its building operations.

(h) *Facility assessments.* GSA must evaluate facilities to ensure compliance with GSA's Safety and Environmental program. These evaluations must be conducted in accordance with schedules that are compatible with repair and alteration and leasing operations.

(i) *Risk reduction.* GSA must manage the execution of risk reduction projects. GSA regions, or Central Office, if

requested, must determine appropriate action for identifying hazards, initiating corrections, conducting follow-up, and documenting actions.

(j) *Incident investigation.* Federal agencies must investigate all incidents regardless of severity, e.g., fires, accidents, injuries, and environmental incidents. Boards of Investigation must be formed, with GSA representation, for incidents resulting in serious injury, death, or significant property losses.

(k) *Communication.* Federal agencies must inform occupant Federal agencies of the condition and management of their facility safety and environment.

(l) *Prevention.* Federal agencies must ensure that fire and accident prevention, and environmental prevention promotes clean, safe, useful, and properly maintained and preserved facilities. These activities will promote accident and fire prevention, and environmental practices among GSA staff, contractors, occupant agencies, and others, as appropriate.

§ 101–16.1003 Federal construction and lease construction projects.

GSA must ensure that required environmental issues are assessed throughout planning and project development. This will ensure that the environmental impacts of a project will be considered during the decision-making process.

Subpart 101–16.11—Security

§ 101–16.1100 Basic policy.

Federal agencies must provide for the security and protection of federally owned or controlled real estate, including the protection of persons and property.

(a) Federal agencies must, where feasible, upgrade and maintain security standards in each federally owned facility to the minimum standards specified in the June 28, 1995, Presidential Policy Memorandum for Executive Departments and Agencies, entitled, ''Upgrading Security at Federal Facilities.''

(b) GSA must establish Building Security Committees composed of representatives from each Federal agency at GSA controlled facilities.

§ 101–16.1101 Program-specific authority.

Including, but not limited to, the Protection of Public Property Act.

§ 101–16.1102 Law enforcement.

Federal agencies must manage, administer, and operate law enforcement functions to support their mission to protect real property assets, as well as occupants and visitors to federally owned or controlled facilities.

§ 101–16.1103 Security services.

Federal agencies must provide security services, including physical security, contract guard administration, training, and security systems. The security services include the following:

(a) *Physical security.* GSA must determine the specific type of security and physical protection for each building, facility, or space under its custody and control, including standards for the location and special security needs of day care centers.

(b) *Contract guard administration.* Federal agencies must allow contract guards to work in federally owned or controlled facilities only under direct supervision prior to obtaining the appropriate background investigations. Federal agencies must administer guard contracts and monitor and inspect contract guard personnel on a recurring basis.

(c) *Training.* Federal agencies must ensure the management, development, and implementation of mission related training for its special police officers.

(1) Federal agencies must ensure that security training takes into account the possibility of the threat of terrorism, terrorist attacks, or other acts of violence at federally controlled facilities.

(2) Federal agencies must ensure that the level of training received by contract guards meets or exceeds the Federal Protective Service (FPS) contract guard standards. These standards include 80 hours of classroom training on security related topics, First-Aid/CPR training/certification, and firearms training. Contract guard responsibilities include controlling building access at fixed positions, providing initial security screens, operating screening equipment, providing a patrol presence, and reporting incidents. The level of training required by FPS Police Officers include 8 weeks of law enforcement and security training at the Federal Law Enforcement Training Center (FLETC), chemical spray training, expandable baton training, 40 hours of in-service training on law enforcement topics on an annual basis, First-Aid/CPR training/certification, and 80 hours of refresher training at FLETC every 3 years. FPS Police Officer responsibilities include detaining suspects, arrest, investigating incidents, providing a patrol presence, responding to calls, monitoring guards, educating tenants, and performing safety and crime prevention activities.

(d) *Security systems.* GSA must maintain communication control centers to protect Federal workers and visitors and to safeguard facilities against criminal activity. GSA must maintain a physical security data base of all Federal office buildings.

Subpart 101–16.12—Public Utilities

§ 101–16.1200 Basic policy.

Federal agencies must provide services that ensure and promote economy and efficiency in the procurement of public utility services.

§ 101–16.1201 Program-specific authority.

Including, but not limited to, the Federal Power Act of 1920, as amended; Public Utility Holding Company Act of 1935, as amended; Clean Air Act of 1963, as amended; National Environmental Policy Act of 1969; Natural Gas Policy Act of 1978, as amended; Public Utility Regulatory Policy Act of 1978, as amended; The Small Business Act (SBA), as amended by Pub. L. 95–507; Powerplant and Industrial Fuel Use Act of 1978, as amended; Energy Policy Act of 1992, as amended; Executive Order 12902, entitled ''Energy Efficiency and Water Conservation at Federal Facilities''; and ''Federal Energy Regulatory Commission and Environmental Protection Agency'' rulings.

§ 101–16.1202 Public utilities services.

Federal agencies must provide rate intervention and utility contracting services for public utilities. GSA must provide technical assistance services for public utilities. The public utility services include the following:

(a) *Rate intervention.* Federal agencies must provide for representation in proceedings involving public utilities before Federal and state regulatory bodies.

(b) *Utility contracts.* Federal agencies must provide for the procurement of utility services (such as commodities and utility rebate programs), as required, and must procure from sources of supply that are the most advantageous to the Federal Government in terms of economy, efficiency, reliability, or quality of service.

(c) *Technical assistance services.* GSA must make available technical assistance or acquisition information on public utilities to other Federal agencies, mixed ownership Federal Government corporations, and the District of Columbia.

Dated: July 31, 1997.

David L. Bibb,

Acting Associate Administrator for Governmentwide Policy.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 69

[CC Docket No. 96–45; 97–160; FCC 97–256]

Federal-State Board on Universal Service and Forward-Looking Mechanism for High Cost Support for Non-Rural LECs

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On July 18, 1997, the Commission adopted a Further Notice of Proposed Rulemaking (FNPRM) to establish a forward-looking mechanism to determine high cost support for non-rural local exchange carriers (LECs). In the FNPRM, the Commission seeks further comment on the platform design and input variables the Commission should adopt in a forward-looking economic cost mechanism to estimate the costs of the telephone network necessary to provide universal service to high cost areas.

DATES: Interested parties may file comments concerning the platform designs of the switching, interoffice trunking, signaling, and local tandem components on or before August 8, 1997, and parties should submit corresponding reply comments on or before August 18, 1997. Comments concerning the platform design features determining customer location, including the geographic unit for cost calculations and the algorithm measuring customer distribution and line counts, should be submitted on or before September 2, 1997, and reply comments regarding these components should be submitted on or before September 10, 1997. Comments discussing the platform-design issues relating to outside plant investment, including the algorithms determining plant mix, installation and cable costs, drop lengths, structure sharing, the fiber-copper cross-over point, digital loop carriers, and the wireless threshold must be submitted on or before September 24, 1997, with reply comments submitted on or before October 3, 1997. Comments discussing all platform issues not otherwise addressed, including the components addressing general support facilities, expenses, and support areas, and all input values issues must be submitted by October 17, 1997, with reply comments due on or before October 27, 1997.

ADDRESSES: Parties should send their comments or reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties should also send copies of their comments to the individuals listed on the Service List included as Attachment A. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554. Commenters may also file informal comments or an exact copy of formal comments electronically via the Internet at <http://gullfoss.fcc.gov/cgi-bin/websql/cgi-bin/comment/comment.hts>. Only one copy of electronically-filed comments must be submitted. A commenter must note whether an electronic submission is an exact copy of formal comments on the subject line. A commenter also must include its full name and Postal Service mailing address its submission.

Parties are also asked to submit their comments and reply comments on diskette. Such diskette submissions are in addition to and not a substitute for the formal filing requirements addressed above. See section IV. C., paragraph 90, under Supplementary Information for further details. Parties submitting diskettes should submit them to Sheryl Todd of the Common Carrier Bureau, 2100 M Street, N.W., Room 8611, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Valerie Yates, Legal Counsel, Common Carrier Bureau, (202) 418–1500, or Sheryl Todd, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the FNPRM adopted and released by the Commission on July 18, 1997. The full text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW, Washington, DC.

The FNPRM divides the issues related to developing model platform components and input values into four broad groups, and establishes a series of comment and reply comment deadlines that, together, create a staged approach to the model development process during which the Common Carrier Bureau, acting pursuant to delegated authority, will provide guidance to the model proponents.

The FNPRM requests comment on platform and input issues related to the following groups of issues: switching, interoffice trunking, signaling, and local tandem investment; customer location; outside plant design and investment; and other miscellaneous issues including general support facilities, depreciation, expenses, and support areas. The FNPRM also requests comment on how the Commission should determine the measure of local usage that should be included in the definition of universal service.

Summary of Notice of Proposed Rulemaking

I. Modeling Forward-Looking Economic Cost

1. Introduction. In the May 1997 Report and Order on Universal Service the Federal Communications Commission adopted a plan for establishing universal service support mechanisms for rural, insular, and high cost areas that will replace the current patchwork of implicit subsidies with explicit support based on the forward-looking economic cost of providing supported services. The Commission adopted a forward-looking economic cost methodology that will calculate universal service support in four steps. First, the Commission will estimate the forward-looking economic costs of providing universal service in rural, insular, and high cost areas. Second, the Commission established a nationwide revenue benchmark calculated on the basis of average revenue per line. Third, the Commission will calculate the difference between the forward-looking economic cost and the benchmark. Fourth, federal support will be 25 percent of that difference, corresponding to the percentage of loop costs allocated to the interstate jurisdiction. The Commission further decided to use forward-looking economic cost studies conducted by state commissions that choose to submit such cost studies to determine universal service support.

2. In the Universal Service Order, the Commission concluded that support for universal service should be based on the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the services. The Commission additionally concluded that a state could elect to submit its own cost study to calculate the level of universal service support available to carriers in its state, if the state's study meets the criteria outlined in the Order. That study must be based on forward-looking economic cost principles, be supported by publicly available data and computations, and be the same cost

study that is used by the state to determine intrastate universal service support levels pursuant to section 254(f). In the Order, the Commission asked states to elect, by August 15, 1997, whether they will conduct their own forward-looking economic cost studies. States that elect to conduct such studies must file them with the Commission on or before February 6, 1998.

3. The Commission is currently considering two models, BCPM and Hatfield, to use as a mechanism to calculate forward-looking economic cost for providing universal service. The BCPM and Hatfield models produce dramatically different results, even when modeling a network over the same geographic area, because of differences in both their platform design and their input values. Both models are composed of modules representing the different components of an exchange network. These components include customer location, outside plant investment, switching, interoffice trunking, signaling, and local tandem investment, general support facilities, depreciation, other expenses, and the support area. Each module consists of related platform design assumptions and input values. The Commission concluded in the Order that the Commission would select a platform by the end of 1997, and that the Commission would select a complete mechanism, including inputs, by August 1998. The Commission's methodology will be implemented on January 1, 1999. In the FNPRM, the Commission has adopted specific procedures and documentation requirements to allow the Commission, state regulators, and the parties to compare and validate the models most effectively.

4. The Commission expects that all future submissions of the platforms of the two models will be flexible enough to incorporate revisions within the individual component algorithms. Because the design features for the components vary in complexity, the Commission concludes that a graduated submission and review process will permit the Commission, the states, and the public, to evaluate all features thoroughly. The Commission concludes that, besides affording the Commission sufficient time to evaluate the more complex platform components, requiring proponents to present individual components for final submission in stages will prevent constant revisions of an entire platform from disrupting the evaluation process.

A. Procedures for Revising the Models

5. Staged Platform Submission Schedule. The Commission requires that comments concerning the platform design of the switching, interoffice trunking, signaling, and local tandem components must be submitted on or before August 8, 1997, and that parties should submit corresponding reply comments on or before August 18, 1997. Comments concerning the platform design features determining customer location, including the geographic unit for cost calculations and the algorithm measuring customer distribution and line counts, must be submitted to the Commission on or before September 2, 1997 and reply comments regarding these components must be submitted on or before September 10, 1997. Comments discussing the outside plant investment components, including the algorithms determining plant mix, installation and cable costs, drop lengths, structure sharing, the fiber-copper cross-over point, digital loop carriers, and the wireless threshold must be submitted on or before September 24, 1997, with reply comments submitted on or before October 3, 1997. Comments discussing all platform issues not otherwise addressed, including the components addressing general support facilities, expenses, and support areas must be submitted by October 17, 1997, with reply comments due on or before October 27, 1997.

6. Commission Guidance. Before and during the initial comment and reply comment periods, the Commission intends to hold one or more public workshops on particular model platform components. Further, prior to the Commission's adoption of a particular platform in December 1997, the Common Carrier Bureau will issue orders and public notices on a regular basis explaining its analysis of the model submissions and industry comments and selecting particular design features. The Commission will work with the states throughout this process so that the selected mechanism reflects the concerns of state regulatory authorities in developing forward-looking economic cost methodologies for state universal service programs or for cost studies to be submitted in this proceeding.

7. Inputs Submission. Although the Commission has stated its intention to select default input values by August 1998, it must receive the proponents' input submissions in order to evaluate a model's performance. The Commission requires that comments regarding all input values be submitted by October 17, 1997. Reply comments must be submitted by October 27, 1997. In addition, commenters should provide explanation and documentation of their suggestions in order to establish that their suggestions are reasonable, accurate, and reflect forward-looking cost.

8. Additional Revision Procedures. The Commission requests that the current models be modified, if necessary, to generate output reports that: (a) Show costs by element of the network; (b) disaggregate study area expenses, investments, taxes, and return according to USOA accounts; and (c) calculate study area support as the difference between CBG cost and the benchmark for every CBG in a study area. Parties providing the models under consideration shall provide the Commission with a clear and comprehensive programmers' flow chart because the current models are unclear as to how the calculations are being made. The Commission also requests that the models be revised, if necessary, to employ the NECA telephone company study area names and identification codes in all subsequent revisions. In addition, to enable the Commission and commenters to manage their resources most effectively, the Commission requests that the parties submitting models give the Commission and commenters reasonable advance warning of the approximate date when they expect to release a new version of a model. Also, if a party intends to release a new version of a model that is designed to work with a software or hardware product that differs from the previous version, the Commission requests that party give the Commission and others reasonable advance notice of what hardware and software they must secure to operate and evaluate the new version of the model. Finally, the Commission requests that a party that releases a new version of a model clearly indicate the major changes that have been made, and, in particular, any additions to the model. The Commission requests that the model proponents file complete documentation including all third-party information, studies, and surveys used by the models. The Commission understands that some of this information is proprietary and cannot be released to the public, and encourages parties to use the Commission's procedures for submitting proprietary information to the Commission wherever necessary.

9. The models under consideration do not presently include any information on Alaska and insular areas. In the Order, however, the Commission

concluded that non-rural carriers in Alaska and the insular areas begin receiving support based on a forward-looking mechanism at the same time as other non-rural carriers (i.e., January 1, 1999). Accordingly, the Commission asks that parties discuss the input values or model design features that would allow the mechanism adopted in this proceeding to determine support for non-rural carriers in Alaska and insular areas.

10. Hybrid Models. The Commission will determine the design components of the platform and input values that will most accurately estimate carriers' forward-looking economic costs for the mechanism that it will adopt. Although they share some design features, BCPM and Hatfield differ in many respects and possess different strengths and weaknesses. The Commission encourages the proponents of Hatfield and BCPM to refine their models by incorporating portions of the other's model where appropriate. Whether the Commission chooses to create its own model or whether it relies upon a model developed by the industry, the Commission seeks comment on the ramifications of combining features of the two models. The Commission seeks comment on whether alternative platform components or assumptions, not currently included in either Hatfield or BCPM, could be incorporated into Hatfield, BCPM, or a hybrid model created by the Commission.

B. Platform Design Components and Input Values

i. Customer Location

11. Geographic Unit. A geographic unit is the size of the serving area over which cost is calculated. The Commission seeks comment on whether it should adopt an area smaller than a CBG as the geographic unit for customer location and cost calculation in the platform design. The Commission seeks comment on whether using CBGs, CBs, or grid cell data would allow the Commission to calculate the cost of providing universal service more accurately and would better target support. Advocates of using geographic units smaller than CBGs should also discuss the technical feasibility of their proposal and the availability of relevant data at the proposed level of detail.

12. Distribution of Customers. Customers may be clustered in towns, spread uniformly over regions, or otherwise distributed across CBGs. In dealing with the distribution of customers, the models use algorithms to project the customer distribution within a geographic unit in order to estimate the cost of the outside cables required to serve customers. In general, BCPM uses a uniform customer distribution algorithm, which assumes that customers are spread evenly across an entire CBG. In rural areas, BCPM eliminates areas from the CBG data that are more than 500 feet from any road, based on its assumption that households are located within 500 feet of a road. Several commenters criticized the assumption present in BCPM that households are evenly distributed across a geographic unit. In contrast to BCPM, Hatfield uses a clustering algorithm. The Hatfield algorithm first removes the empty space within each CBG by removing CBs when census data indicates that they do not contain any population. In low-population-density CBGs, the Hatfield algorithm clusters 85 percent of the population within a town. For dense areas, Hatfield uses a clustering algorithm that establishes two clusters if more than fifty percent of the CBG is empty and four clusters where 50 percent or less of the CBG is empty. Finally, in CBGs where the line density is so high that customer locations must necessarily be ''stacked,'' the Hatfield algorithm assumes that the population lives in multi-unit dwellings.

13. The Commission tentatively concludes that a clustering algorithm would more accurately distribute customers within some CBGs and would consequently generate more accurate estimates of loop length and, therefore, of the cost of the outside plant. Furthermore, the Commission tentatively concludes that, if a model presumes that customers are clustered, the accuracy of the position of the population cluster relative to the wire center is important to an accurate prediction of the necessary support amount. The Commission therefore tentatively concludes that the selected mechanism should calculate population clusters' proximity to wire centers with more precision that the models currently permit. The Commission seeks comment on these tentative conclusions and also seeks comment on how BCPM's uniform distribution algorithm and Hatfield's clustering algorithm could be modified to provide more accurate information regarding the locations of customers. The Commission also seeks comment on how to improve both models' accuracy in assigning CBGs to serving wire centers.

14. The Commission seeks comment on whether, instead of the methods currently used by either Hatfield or BCPM, an alternate method should be used to locate population in carrier serving areas. Generally, the Commission seeks comment on whether loop lengths should be more closely linked with actual loop statistics. The Commission seeks comment on whether a method that combines actual geographical maps, census data, and the location of the serving wire centers would estimate customer location, and therefore costs, better than the algorithms currently used by the models. The Commission specifically seeks comment on whether the following proposal would be a more accurate method by which to estimate the distribution of customers. In relation to locating residential population, the Commission notes that census data provide the number of households within a CB as well as internal point coordinates and polygon vertex coordinates. The Commission seeks comment on what currently available commercial mapping software, if any, could be used to identify the location of customers in all CBs within a service territory. The Commission further seeks comment on whether a model should impose a uniform grid over an ILEC's service territory in order to create subscriber population clusters, determining the size of the cluster according to the technology constraints of electronic systems that are used to provide universal service, such as Asymmetric Digital Subscriber Line (ADSL) and High bit rate Digital Subscriber Line (HDSL) technologies, rather than basing cluster sizes on census data. The Commission seeks comment on whether this approach is more representative of the engineering design of a network because it does not rely on census-mapping conventions. The Commission seeks comment on whether this proposal could be incorporated into either Hatfield, BCPM, or any hybrid model that the Commission may develop. The Commission also seeks comment on whether any alterations in either BCPM or Hatfield would be necessary to incorporate this proposal into either model or a potential hybrid model.

15. Line Count. The selected mechanism must estimate a line count at the wire center, CBG, or CB level if the Commission concludes that cost estimates should be developed at those levels. Both models use a ''closing factor,'' i.e. a ratio of line counts, as provided by the NECA and ARMIS databases, compared to the models' estimates, to adjust the estimates produced by their algorithms to reflect the actual ILEC line counts. Neither model clearly discloses the closing factors for all lines that are used in their line count calculations. Because reliable line counts are necessary for

determining accurate cost estimates, it appears that reasonable estimates of the number of lines in each CBG, CB, or grid cell are necessary to calculate universal service support, even if the Commission decides to provide support on a wire center basis. The Commission tentatively concludes that the sizes and uses of models' closing factors should be evident to the user so that they may be evaluated. The Commission seeks comment on whether the selected mechanism should adopt a maximum closing factor of 10 percent, as suggested by the state members of the Joint Board. The Commission also seeks comment on whether other data sources could be used to enhance the models' algorithms or be used to create an alternative method for determining line counts. The Commission seeks comment on whether, for example, the Commission should assign business lines to geographic units by using commercially produced maps that give the coordinates of all businesses located in the U.S. along with their employment by standard industrial classification (SIC) code. The Commission seeks comment on whether such a method should use some multiple of the employment data to estimate the number of business lines in each grid block. Alternatively, the Commission seeks comment on whether there are any databases that use zip code information or precise latitude and longitude (geo-coding) information that could be used to improve the line-count estimation process.

16. Interested parties may file comments on all issues regarding customer location on or before September 2, 1997, and reply comments on or before September 10, 1997.

ii. Outside Plant Investment

17. Outside plant investment includes every part of an ILEC's network infrastructure connecting the wire center to customer locations.

18. Plant Mix. The outside plant consists of a mix of aerial, underground, and buried cable. It appears that while both models have made many improvements, the failure of both BCPM and Hatfield to incorporate terrain factors into their plant-mix tables seriously undermines the accuracy of the outside plant costs predicted by each model. The Commission finds that an efficient carrier will vary its plant mix according to the population density of an area. The Commission, therefore, tentatively concludes that the assignment of plant mix defined by the selected mechanism should reflect both terrain factors and line density zones. Specifically, the Commission tentatively concludes that relatively more feeder and distribution cable should be assigned to aerial installation for all population density groups in wire centers characterized by ''hard rock'' conditions than those in wire centers with other terrain conditions. The Commission seeks comment on these tentative conclusions. The Commission also seeks comment on identifying the terrain that would lead an efficient firm to minimize forward-looking costs by using aerial plant and on whether climate conditions, such as the possibility that a hurricane will destroy aerial plant, will affect an efficient carrier's decision to deploy aerial plant.

19. The Commission directs the models' proponents to justify fully the default values they selected for their outside-structure plant mix, noting that recent installations of outside structure may more closely meet forward-looking design criteria than do historical installations. The Commission seeks comment on these issues and encourages parties to file documentation supporting suggestions to alter either Hatfield or BCPM's input values or default assumptions concerning plant mix. The Commission also seeks comment on the input values that will accurately reflect the level of impact that varying terrain conditions have on costs.

20. Installation and Cable Costs. The forward-looking economic cost mechanism must estimate the cost of installing wire and cable facilities as part of the overall cost of building a network to provide supported services. These costs can be expected to vary by soil type and line density zone. The default values for installation costs included in BCPM and Hatfield represent their proponents' estimates of the total cost of installing wire and cable facilities. Both BCPM and Hatfield make assumptions about soil conditions and population density to estimate the cost of installing buried and underground cable. Specifically, the models use different numbers of density zones. It appears that a greater number of density zones helps identify high and low cost areas more accurately; too many density zones, however, would make the data calculations too complex. The Commission tentatively concludes that the selected mechanism should specify costs for installation of aerial cable, buried cable, and underground cable that incorporate terrain factors and line density zones. The Commission seeks comment on this tentative conclusion.

21. In the Majority State Members' Second Report, state members expressed preference for BCPM's approach because they found that Hatfield's approach did not adequately account for the effect of different types of installation activity on outside plant costs, and because using a multiplier will overestimate costs in some areas and underestimate costs in other areas. Based on the majority state member's recommendations, the Commission tentatively concludes that the selected mechanism should adopt BCPM's approach of prescribing additional costs to account for additional expenses caused by difficult terrain, rather than Hatfield's approach of using cost multipliers. The Commission seeks comment on this tentative conclusion, on how this tentative conclusion would affect cost estimates, and on the appropriate input values for such additional expenses. In addition, the Commission seeks comment on the majority state members' conclusion that it is not reasonable to assume, as Hatfield does, that an installer could simply increase its use of distribution cable by 20 percent to avoid burying cable in difficult soil conditions.

22. The Commission tentatively concludes that the selected mechanism should specify costs per foot for conduit installation that vary by line density zone, as proposed in both BCPM and Hatfield. The Commission also tentatively concludes that the mechanism should define density zones based on lines per square mile, as in Hatfield. The Commission seeks comment on these tentative conclusions and on the number of density zones that should be included in the selected mechanism. The Commission invites comment on how to calculate forward-looking economic costs of conduit installation and welcomes data on any recent conduit installations, including conduit installed for purposes other than the construction of telephone networks.

23. The Commission tentatively concludes that materials and installation costs should be separately identified by both density zone and terrain type. The Commission seeks comment on the default input values that the selected mechanism should use, and asks parties to present supporting cost data. The Commission seeks comment on the accuracy of the values in BCPM's cost tables and of Hatfield's cost multipliers, and encourages parties to submit company records or other industrial data to support their position. The Commission also seeks comment on the cost of installing aerial, buried, and underground cable, regardless of whether it is used to provide telephone service, and encourage parties to submit detailed cost data on any recent cable installations. In addition, the Commission seeks comment on whether

it would be possible to use national statistical averages of contractor construction prices and independent verification of the cost of installation of distribution plant to verify these costs. The Commission also seeks comment on whether a labor cost variable should be incorporated into the selected mechanism.

24. Because the Commission has received no documentation confirming that feeder and distribution cable installation costs should differ, the Commission tentatively concludes that the selected mechanism will adopt Hatfield's assumption that such costs are identical. The Commission seeks comment on this tentative conclusion and encourage parties to submit documentation in support of their positions.

25. Drops. A drop is the connection between a residence or business and the distribution cable. In BCPM and Hatfield, several cost elements are combined under the general heading of drops. These cost elements include the cost of the copper or fiber loop that extends from the distribution cable to the residence or business, the terminal and splice investment, and the pedestal costs. BCPM estimates the drop length as the distance from the corner of the residential lot to the center of the residential lot. Hatfield assigns pre-determined loop lengths for each of seven density zones. The lengths are longer in low density areas than elsewhere. In general, the drop lengths are longer in BCPM than in Hatfield.

26. The Commission seeks comment on whether the selected mechanism should estimate drop lengths or should incorporate predetermined drop length assumptions. The Commission also seeks comment on the accuracy of Hatfield's assumed drop lengths. Because an efficient carrier's network must include drops in order to provide the supported services, the Commission tentatively concludes that the selected mechanism will determine the forward-looking economic cost of drops, including installation, terminal, splice, and pedestal costs. The Commission invites comment on the accuracy of the estimated costs of these items under the proposed models.

27. Structure Sharing. Structure sharing describes the practice of sharing facilities such as poles, trenches, and conduits with other utilities. BCPM assumes that an efficient telecommunications carrier will not benefit very much from sharing. BCPM's default input values assign between 50 and 100 percent of the costs of the poles and between 80 and 100 percent of the cost of trenches and conduits used by telephone companies to those companies. The Hatfield model assumes utilities will engage in substantial sharing; for the most part, Hatfield's default input values assign between 25 percent and 50 percent of the costs of shared facilities to telephone companies. Both models alter the percentages of costs they assume will be shared depending on the type of structure (buried, conduit, or aerial) and on the line density zone.

28. Because it appears that an efficient carrier would vary its sharing levels according to installation activity and terrain, as BCPM assumes, the Commission tentatively concludes that the selected mechanism should adopt BCPM's categories for installation activities and terrain conditions. The Commission seeks comment on BCPM's estimates for the relative frequency for each type of installation activity. The Commission tentatively concludes that the selected mechanism should also include line density zones in its estimates of sharing and the Commission seeks comment on whether, because it tentatively concludes above that Hatfield's line density zones are superior, the selected mechanism should use Hatfield's line density zones to estimate sharing. The Commission seeks comment on how BCPM's assumptions would need to be altered to accommodate Hatfield's line density zones.

29. The Commission tentatively concludes that Hatfield incorrectly assumes that carriers benefit from sharing for such cable and that the selected mechanism will assign 100 percent of costs to the telephone company for cable that is buried using a cable plow. The Commission also tentatively concludes that Sprint's suggested value of 66 percent is an acceptable aggregate default input value for the percent of costs assigned to the telephone company for all other shared facilities. The Commission also seeks comment on AT&T's contention that changes to the regulatory climate will increase the extent to which carriers are required or are willing to share structures.

30. Loop Design. The loop plant constitutes a significant part of the network cost that the models calculate. The two models, however, differ greatly in their assumptions regarding loop design and standards. In selecting the loop design components for the selected mechanism, the Commission seeks to implement its conclusion that the mechanism employ the least-cost, most-efficient and reasonable technology for providing the supported services and the Act's provision that universal service support be sufficient. The Commission will consider fiber-copper cross-over point, loop standards, and digital loop carriers in its selection process.

31. Fiber-Copper Cross Over Point. The fiber-copper cross-over point determines when carriers will use fiber cable instead of copper cable in their feeder plant. In addition, a carrier's decision regarding the fiber-copper cross-over point will affect whether that carrier uses loading coils, because loading coils are used to extend the viable length of copper cable.

32. The Joint Board recommended that the choice between fiber and copper should reflect the least-cost method of placing loop facilities, and the Commission agreed in the Order that ''the technology assumed must be the least-cost, most-efficient, and reasonable technology'' and that the ''model must include the capability to examine and modify the critical assumptions and engineering principles * * * includ[ing] * * * fiber-copper cross-over points * * *'' Neither the BCPM nor Hatfield proponents have submitted studies showing whether their cross-over points are designed to reflect the Commission's least-cost criterion.

33. The Commission tentatively concludes, based on the comments of NCTA/ETI and the recommendation of the majority state members of the Joint Board, that the BCPM maximum cross-over default value should be set at 18,000 feet rather than 12,000 feet, and seek comment on this tentative conclusion. The Commission seeks comment on whether the BCPM fiber/copper cross-over point can also be set at 18,000 feet when the copper loop length is extended to 18,000 feet. The Commission also seeks comment on the impact on the costs for digital loop carriers of their decision regarding the appropriate fiber-copper cross-over point.

34. Loop Standards. WorldCom contends that the Commission should specify one of more loop design standards in order to create greater certainty in loop modeling process. WorldCom states that the two loop standards that the Commission should consider are the Revised Resistance Design (RRD) and the Carrier Serving Area (CSA) Standards. WorldCom contends that because the CSA standard will also enable LECs to offer video dialtone services, which would have significant commercial value, the universal service fund should not pay for LEC entry into this new market against competitors that would not receive universal service funding. The Commission seeks comment on whether

it should adopt any loop design standards in the forward-looking economic cost mechanism, and if so, which standard should be adopted.

35. Digital Loop Carriers. Digital loop carriers (DLCs) connect fiber feeder cables and copper loops. DLCs transform electric signals carried on the copper loops into optical signals carried on fiber lines and vice versa. Most large DLCs can assign multiple subscriber lines to a single electronic channel rather than assigning one channel per subscriber line. Both Hatfield and the BCPM assume that, when they are to be used, DLCs would be one of two sizes, depending upon the number of subscriber lines connected to them. BCPM assumes the larger DLC will be used for more than 672 subscriber lines. Hatfield, by contrast, switches to the larger DLC at 384 subscriber lines, but allows adjustment of this level as a variable.

36. Although both Hatfield and BCPM assume extensive deployment of DLCs, their cost estimates differ significantly. The Commission seeks comment on the models' assumptions regarding the number of subscriber lines that should trigger the use of a large DLC. The Commission also requests comment on whether the models should consider use of DLCs of more than two sizes; the Commission particularly seeks comment on whether DLCs smaller than those used in the model are available and under what circumstances such smaller DLCs might be used. The Commission also requests comment on the impact of the fiber-copper cross-over on the number and size of DLCs needed in the network.

37. The Commission seeks comment on whether the models should also compare the cost of extending fiber to fewer points in the CBG, placing larger DLCs at those points, and running copper to customers including the possible additional cost of repeater electronics on the longer copper loops. The Commission seeks discussion of how to calculate the forward-looking economic cost of DLCs. Parties should discuss whether the models' current inputs for these costs are reasonable, as well as Sprint's proposed BCPM modification.

38. Wireless Threshold. Once the level of support a carrier will receive is determined, the carrier may use whatever technology it prefers to provide the supported services; the level of support it receives is not dependent upon the technology it uses. Both BCPM and Hatfield, however, estimate the costs of providing the supported services using engineering assumptions based on wireline technology.

39. In light of the contention by RUS that wireless service does not necessarily cost less than $10,000.00 per loop, the Commission seeks comment on whether the cost of a loop should be capped at $10,000.00 in all cases. The Commission agrees with the wireless commenters that, to the extent practical, the selected mechanism should estimate the cost of providing the supported services using wireless technology in areas where wireless technology is likely to be the least-cost, most efficient technology. The Commission notes, however, that it has received almost no information regarding how to estimate such costs, or the criteria that the selected mechanism should use to determine whether wireline or wireless service is more economical. Thus, the Commission seeks comment on the feasibility of including an additional component in the mechanism that would compare the cost of providing service via a wireless network with the cost of providing service via a wireline network and would choose the lowest-cost technology to calculate the costs of providing the supported services. The Commission seeks comment on whether, because wireless companies must currently determine whether it is economical for them to enter a particular market, wireless companies have already developed such models. The Commission strongly encourages commenters supporting the inclusion of engineering assumptions regarding wireless technology in the mechanism to submit models or other assumptions that they believe should be included. The Commission further encourages commenters to submit data about the cost and types of wireless networks and their components in support of their suggestions, and reminds commenters that any wireless component that might be added to the selected mechanism must also meet the Commission's criteria.

40. The Commission notes that BCM was first filed with the Commission in December 1995. The Commission seeks comment on the length of time necessary to develop a mechanism that compares the cost of wireless engineering with the cost or wireline engineering. Specifically, the Commission seeks comment on whether modeling wireless technology would be less complex than modeling wireline technology, and therefore whether a wireless platform could be developed by December 1997, and a complete mechanism, including inputs, by August 1998, in accordance with the Commission's schedule. In the alternative, the Commission seeks comment on whether the development of a competitive bidding mechanism would be a better way to capture the differing costs between wireline and wireless technology.

41. Because the Commission is uncertain whether or not it will be able to develop a mechanism that includes the cost of wireless technology within their schedule, it seeks comment on whether basing support amounts on the cost of wireline technology will be consistent with section 254 and with the Commission's universal service goals. The Commission tentatively concludes that providing support based on the cost of a wireless network to provide the supported services would meet the statutory directive that support be ''sufficient.'' The Commission seeks comment on this tentative conclusion. The Commission also seeks comment on whether basing support solely on wireline costs, when wireless technology may offer a less expensive option, would be consistent with the Commission's conclusion that the mechanism should use the least-cost, most-efficient technology available. The Commission additionally seeks comment on whether the models should include assumptions that would consider microwave, satellite, or other non-wireline technologies in situations where such technologies could allow the provision of universal service more cost-effectively than wireline technology.

42. Additional Outside Plant Input Value Issues. The Commission must determine what input values it should use for the following components of outside plant: manholes, poles, anchors, guys, aerial cable, and building attachments, network interface devices, service area interfaces, and fill factors. The Commission seeks data demonstrating the forward-looking economic cost for each component, including materials and installation, for inclusion in the selected mechanism.

43. Poles, Anchors, Guys, Aerial Cable, and Building Attachments. The Commission seeks comment on what the accurate input values should be for the forward-looking economic cost of materials and installation for poles. The Commission seeks comment on the reasonableness of the type of materials chosen by each model. The Commission also seeks comment on whether installation costs for poles should vary with terrain. Commenters should submit cost documentation in support of their suggested input values. The Commission also seeks comment on whether BCPM's materials and installation cost estimates for anchors and guys are accurate, and whether

Hatfield's pole materials and installation costs are sufficient to cover the cost of anchors and guys. The Commission also seeks comment on whether the selected mechanism should identify separately costs for poles, guys, and anchors. Parties should submit cost data in support of their suggested input values. Because both models include them, the Commission tentatively concludes that the selected mechanism should include pole spacing input values. The Commission seeks comment on this tentative conclusion and on the pole spacing input values that we should use. In light of the models' similar input values, the Commission seeks comment on whether the models' input values for these costs are accurate or on whether averaging the two sets of input values would provide an accurate calculation of these costs. Commenters should submit cost documentation in support of their suggested input values.

44. The Commission tentatively concludes that the selected mechanism should include feeder and distribution cable costs for both copper and fiber. The Commission seeks comment on the forward-looking costs of copper and fiber cable. The Commission specifically seeks comment on whether, as the BCPM proponents contend, buried cable and underground cable are less expensive than aerial cable. Commenters should submit cost documentation in support of their suggested input values.

45. Network Interface Devices. A network interface device (NID) is a device that connects the wiring that belongs to a customer, and is located inside a customer's premises, to the loop facilities outside a customer's premises. The Commission tentatively concludes that it should prescribe NID costs in the selected mechanism. The Commission tentatively concludes that Hatfield correctly separates the cost of protection blocks from the cost of the NID, and correctly distinguishes between the cost of a residential NID and a business NID, and that the selected mechanism should incorporate these distinctions. The Commission seeks comment on these tentative conclusions, and on the correct input values that should be used for NID and related costs. Such comments should be supported with cost data wherever possible.

46. Service Area Interfaces. The Service Area Interface (SAI) is the physical interface between distribution and feeder cable. The SAI is usually located outside buildings, but is located inside buildings when the feeder plant terminates in the basement of a high-rise building. The Commission tentatively concludes that the selected mechanism should include the cost of SAI for various cable sizes, and should assume different costs for indoor and outdoor cable as Hatfield does. The Commission seeks comment on this tentative conclusion. In light of the wide disparities in SAI costs assigned by the mechanisms, the Commission seeks comment on the forward-looking economic costs of SAIs, and encourages parties to submit additional data on these costs.

47. Fill Factors and Utilization. A cable fill factor is the percentage of the total usable capacity of cable that is expected to be used rather than the amount available in reserve. The Commission notes that, over time, the models' estimates for fill factors have converged. The Commission seeks comment on the fill factor that should be used for the selected mechanism. In light of the similarities between the models, the Commission seeks comment on whether their input values are accurate and how the differences between the values may be reconciled. The Commission encourages parties to submit engineering data or other relevant documentation in support of the fill factor that they favor.

48. Dates for Comments on Outside Plant Investment. Interested parties may file comments regarding the design of the outside plant investment components, including the algorithms determining plant mix, installation and cable costs, drop lengths, structure sharing, the fiber-copper cross-over point, digital loop carriers, and the wireless threshold on or before September 24, 1997, and reply comments on or before October 3, 1997. Interested parties may file comments regarding all input values regarding outside plant input investment on or before October 17, 1997, and reply comments on or before October 27, 1997.

iii. Switching

49. Mix of Host, Stand-Alone, and Remote Switches. Switches can be designated as either host switches, stand-alone switches, or remote switches. Both a host switch and a stand-alone switch can provide a full complement of switching services without relying on another switch. A remote switch relies on a host switch to supply a complete array of switching functions and for interconnection with other switches. Proponents of both models claim that they detect no difference in switching costs based on the type of switch used, and therefore their models do not distinguish among the different switch types. A review of 1996 depreciation filings, however, shows that large ILECs are purchasing fewer host switches and more remote switches. Suggesting that choices about switch type could affect the total cost computed more than the models currently suggest, the Joint Board expressed concern that the models did not distinguish among types of switches. The Commission, therefore, tentatively concludes that the selected mechanism should include an algorithm that will place host switches in certain wire centers and remote switches in other wire centers. Based on ILECs' decisions, as revealed in the depreciation filings, to deploy more remote switches, the Commission tentatively concludes that the host-remote arrangement is more cost-effective in many cases than employing stand-alone switches. The Commission seeks comment on this tentative conclusion, and urges parties to provide engineering and cost data to demonstrate the most cost-effective deployment of switches in general and host-remote switching arrangements in particular. The Commission also seeks detailed comment describing how to design an algorithm to predict this deployment pattern. The Commission seeks comment on how to obtain information that would verify or refute the assertion of the models' proponents that there is no cost difference between host switches and remote switches.

50. Capacity Constraints. BCPM does not include any switch capacity limitations, but Hatfield includes a number of switch capacity constraints. The Commission tentatively concludes that the selected mechanism should assign more than one switch to a wire center whenever the mechanism predicts that any one of a set of capacity constraints would be exceeded. The Commission seeks comment on this tentative conclusion and on what capacity constraints the selected mechanism should adopt. Parties are encouraged to provide technical data to support any proposed capacity constraints.

51. Switch Costs. In the Order, the Commission agreed with the state members of the Joint Board that estimating the switching investment cost is a significant unresolved problem of the cost models. Proponents of the models are apparently having difficulty acquiring accurate estimates of switch costs because of the lack of public information on those costs. The Joint Board concluded that the convergence of the models' switch cost estimates should alleviate this lack of information. They urged the Commission and its staff to perform additional analysis and to

obtain more reliable switch cost information.

52. BCPM switching cost estimates are based on the results of a survey of large ILECs that asked ILECs to report the switching costs they use as inputs for ILEC Switching Cost Information System (SCIS) model runs. BCPM model proponents estimated a switching curve based on the answers to the survey. The Hatfield model combines public information and information from other unnamed industry sources to develop switching cost estimates. The model proponents fit a logarithmic curve to three data points to determine the relationship between switch-cost per line and switch-line size. Hatfield reduces the per-line cost of the switch below the logarithmic curve by assuming more efficient use of trunk and line cards.

53. Pursuant to the Joint Board's recommendation, Commission staff examined information regarding switching costs from several sources. The Commission's found data supports the models' assumptions, and imply that the current switching costs of small companies should be higher than the current switching costs of large companies. The Commission, therefore, tentatively concludes that the selected mechanism should incorporate the Commission staff's estimates of switching costs because these estimates are based on filings with the Commission that record actual ILEC switch purchases. The Commission seeks comment on this tentative conclusion. The Commission also seeks comment on whether there is an alternative data source for these costs that would provide a better estimate of the current cost of switches. The Commission also seeks comment on the reasonableness of using the default input values from BCM2, as suggested by Sprint. In addition, the Commission seeks comment on whether it should incorporate the cost of growth lines into their switching cost estimate and, if so, how it should incorporate these costs, and what data sources it should use for the cost of growth lines.

54. Percent of Switch Assigned to Port and to Provision of Universal Service. The models differ with respect to the percentage of switch costs they assign to the port and the percentage of switch costs that is assigned to the provision of universal service. The models divide the switch investment between two basic functions: port and usage. BCPM uses local-usage dial equipment minutes (DEM) to divide switch costs between the costs of providing universal service and the costs of providing all other services. In contrast, Hatfield assigns 30 percent of switch cost to port costs and assigns all of the port costs to the cost of providing universal service. Hatfield further divides the 70 percent of switch cost it assigns to usage between local traffic and toll traffic on the basis of conversation minutes and includes the cost of local traffic in the cost of universal service. The BCPM proponents state that both models could be adjusted so that they assign less than 100 percent of local usage to the provision of universal service, and vary the portion of traffic sensitive access usage assigned to the provision of universal service.

55. The Commission tentatively concludes that switch costs should be divided between line-side port and usage costs. The Commission tentatively concludes, however, not to adopt either of the models' assumptions regarding the percentage of the switch investment that is associated with the port. The Commission seeks comment on these tentative conclusions and on whether it can use the information that ILECs must file in response to their *Access Charge Reform Order* to determine the percentage of the switch investment to be allocated to the port function. The Commission also seeks comment on a reasonable percentage of switch costs to include in the port function.

56. In light of the difficulty in obtaining information on switching costs and the proportion of the switch to be included in the port function, the Commission seeks comment on whether it should undertake a detailed engineering study of several of the large host switches currently being deployed by ILECs (such as the Nortel DMS–100 and the Lucent 5ESS) and associated remote switches and smaller switches (such as the Nortel DMS–10) to ascertain what portions of the switch equipment are associated with the port function. The Commission seeks comment on whether such an engineering study could result in useful information about the portions of switch that are associated with the port function and the costs of that equipment. The Commission also seeks comment on whether alternative data sources are available for the purpose of estimating current switching cost. If so, the Commission seeks comment on how to obtain and use that information. The Commission tentatively concludes that all of the port cost and a percentage of the usage cost are costs of providing universal service. The Commission tentatively concludes that the percentage of the usage cost that should be assigned to the cost of providing universal service should be determined by the amount of local usage included in the definition of supported services that it will adopt, as a percentage of total usage that the model predicts on the network. The Commission seeks comment on these tentative conclusions.

57. Interested parties may file comments on the platform design relating to switching on or before August 8, 1997, and reply comments on or before August 18, 1997. Interested parties may file comments on the input values relating to switching on or before October 17, 1997, and reply comments on or before October 27, 1997.

iv. Interoffice Trunking, Signaling, and Local Tandem Investment

58. The Commission recognizes two uses for interoffice trunking, signaling, and local tandem facilities: (1) The completion of local calls and (2) transport to an IXC point of presence (POP). Because transport for interexchange service is not a supported service, the selected mechanism will estimate only the cost of interoffice trunking, signaling, and local tandem facilities used for the completion of local calls. BCPM employs a simple multiplier to estimate the portion of total interoffice trunking, signaling, and local tandem costs that should be attributed to supported services. Hatfield treats these facilities on a more disaggregated basis. Both models allow the user to alter the input values to their transport equations. Because interoffice trunking, signaling, and local tandem facilities are an integral part of the network necessary to provide the supported services, the Commission tentatively concludes that the selected mechanism should calculate specific cost estimates for the interoffice elements necessary to provide these functionalities. Because Hatfield's platform design can generate cost estimates at this level of specificity, but BCPM's cannot, the Commission tentatively concludes that only Hatfield's platform is currently adequate in this regard. The Commission seeks comment on this tentative conclusion and on the accuracy of Hatfield's transport algorithm. The Commission also seeks comment on the accuracy of the specific interoffice trunking, signaling, and local tandem input values proposed by Hatfield.

59. Interested parties may file comments concerning design issues on or before August 8, 1997, and reply comments on or before August 18, 1997. Interested parties may file comments on the issues relating to input values on or before October 17, 1997, and reply comments on or before October 27, 1997.

v. General Support Facilities

60. General support facilities (GSF) include the investment and expenses related to vehicles, land, buildings, and general purpose computers. General purpose computers comprise the largest share of the investment and expenses in this category; buildings also comprise a large share. BCPM computes investment in the GSF category for items other than buildings as a percentage of all other plant investment. Building investment is computed as a percentage of switching equipment investment. BCPM sets GSF expenses at a fixed amount per line based on data from its ILEC surveys. Hatfield also segregates some buildings from the GSF category in computing GSF investment but, instead of segregating all buildings as BCPM does, Hatfield only segregates buildings that house switches (i.e., wire center buildings). To compute GSF investment not related to wire center buildings that house switches, Hatfield uses ARMIS data to compute a ratio of ILECs' GSF investment to ILECs' total-plant-in-service investment. This ratio is then applied to the total-plant-in-service investment that the model computes to arrive at the amount of GSF investment not related to wire center buildings. For investment in wire center buildings, Hatfield uses a table of values based on a set number of square feet per switch in use and number of lines served. For GSF expenses, Hatfield uses the ARMIS ratios described above to reach an expense amount. The Commission concluded in their *Access Charge Reform Order* that the current allocation of GSF costs enables ILECs to recover through regulated interstate access charges costs associated with the ILECs' nonregulated billing and collecting functions.

61. The Commission requests comment on the appropriate platform assumptions to compute GSF investment and expenses. The Commission seeks comment on how it may remove costs for nonregulated activities from costs for regulated activities to incorporate the appropriate amount of GSF investment and expenses into a forward-looking mechanism. The Commission also seeks comment on whether a more accurate GSF computation would depend on factors tied to the cost of computers, because much GSF investment and expense is for general purpose computers. Assuming GSF investment is tied more closely to computer costs, the Commission also seeks comment on whether the selected mechanism should account for the increasing use of computers by businesses generally. Also, because a large share of GSF expense is attributable to the cost of land, the Commission tentatively concludes that GSF expenses should vary by state with reference to differences in land values. The Commission requests comment on this tentative conclusion. Commenters should critique the assumptions regarding GSF investment and expenses that are currently included in BCPM and Hatfield. Commenters advocating a platform that requires an input ratio to calculate GSF expenses should discuss what that input ratio level should be, and provide supporting cost data if possible.

62. Interested parties may file comments regarding GSF issues on or before October 17, 1997, and reply comments on or before October 27, 1997.

vi. Depreciation

63. Economic depreciation measures the periodic reduction in the market value of an asset over time. When calculating depreciation expenses, the models do not simulate the periodic reduction in the market value of the assets. Rather, they use ''adjusted projected lives'' to recover the current costs of the assets. Under this approach, the annual depreciation charges associated with an asset are computed by dividing the asset's current cost by its adjusted projected life. A shorter life will increase the annual depreciation expense.

64. Commenters disagree on the depreciation rates to be used as inputs to the models. In light of the Commission's conclusion that depreciation should be computed within the range specified in their rules, the Commission tentatively concludes that it should adopt, as an input to their forward-looking cost mechanism, depreciation expenses that reflect a weighted average of the rates authorized for carriers that are required to submit their rates to us. The Commission requests comment on this tentative conclusion. Further, the Commission seeks comment on whether adjusted projected lives should reflect the asset lives of facilities and equipment dedicated to providing only the supported services or whether the asset lives should reflect a decision to replace existing plant with plant that can provide broadband services.

65. As noted in the Order, the Commission intends to issue a notice of proposed rulemaking in the near future to consider changes to the Commission's depreciation rules. The Commission cannot be certain, however, that its new rules will be effective in time for states to incorporate them in their cost studies, which they must file in February 1998. Accordingly, the Commission tentatively concludes that the Commission should use the range prescribed in the Commission's current rules for purposes of this proceeding, with the understanding that it could adjust the depreciation inputs to their mechanism in light of the outcome of their depreciation rulemaking. The Commission seeks comment on this tentative conclusion, and on whether the states should also be permitted to adjust their cost studies to incorporate any changes to the depreciation rules. In addition, the Commission asks parties to discuss how the inclusion of depreciation rates in the selected mechanism would be affected by changes in the Commission's depreciation rules.

66. Interested parties may file comments on depreciation issues on or before October 17, 1997, and reply comments on or before October 27, 1997.

vii. Expenses

67. BCPM estimates expenses on a per-line basis. These estimates are derived from a survey of ILECs. BCPM permits users to vary expense estimates for small, medium, and large companies, although the default values for BCPM do not vary with company size. In general, Hatfield estimates most expenses based on ARMIS data, expressed as ratios of investment. BCPM estimates total expenses, as detailed above, at $11.34 per line per month. Hatfield's estimates of total expenses vary based on investment or other costs.

68. The Commission seeks comment on how to establish forward-looking expenses for the selected mechanism. The Commission seeks comment on which expenses should be calculated on a per-line basis, as BCPM does, and which should be calculated as a ratio of investment, as Hatfield does. The Commission tentatively concludes that the selected mechanism should provide the user with the capability to calculate each category of expense based on either line count or other investment, at the user's election, and request comment on this tentative conclusion. The Commission also seeks comment on whether it should forecast expenses and, if so, what forecasting technique it should use. The Commission tentatively concludes that users should be able to use different expense estimates for small, medium, and large companies, as the BCPM allows. The Commission seeks comment on this tentative conclusion. The Commission also seeks comment on whether there are

measures, other than lines and investment to which specific expenses should be tied.

69. The Commission seeks comment on the accuracy of BCPM's default input value of $11.34 per line, and urge the proponents of BCPM to submit the survey upon which they base their expense inputs. The Commission seeks comment on how this value should vary for small, medium, and large companies. The Commission seeks comment on whether the selected mechanism should use ARMIS data, data from a survey of ILECs, or data from some other source.

70. Plant Specific Expenses. Plant specific expenses include such expenses as maintenance of facilities and equipment expenses. BCPM estimates the following plant specific expenses on a per-line basis: network support (USOA Account 6110); general support (6120); Central Office Equipment (COE) switching (6210); operator systems (6220); COE transmission (6230); information origination/termination (6310); and cable and wire facilities (6410). Hatfield estimates central office switching expenses as a percentage of investment in digital switching equipment, and circuit equipment expense as a percentage of investment for all circuit equipment based on a New England Incremental Cost Study rather than an ARMIS ratio of expenses to investment. Hatfield estimates NID expense as a yearly per-line expense. Hatfield uses separate expense ratios for aerial, buried, and underground cable, while BCPM uses a per-line estimate for cable maintenance that does not vary with the plant mix. Because the two models differ in their listing of plant specific expenses, the two resulting expense estimates may not be comparable. Neither model allows plant specific expenses to vary with climate or soil type.

71. BCPM's default per-line per-month values for plant specific expenses are: network support—$0.15; general support—$1.20; COE switching—$0.34; operator systems—$0.01; COE transmission—$0.23; information origination/termination—$0.07; and cable and wire facilities—$2.76. Hatfield's default central office switching expense factor is 2.69 percent of digital switching investment. Hatfield's default circuit equipment expense factor is 0.015 percent of circuit equipment investment. Hatfield's default for NID expenses is $1.00 per line per year. The state Joint Board members recommend that plant specific operating costs be calculated as a percentage of investment, and suggest the following percentages: 3.5 percent for cable and wire; 2.8 percent for central office switching; and 2 percent for transmission. The state members also recommend the use of nationwide factors that do not vary by company.

72. The Commission seeks comment identifying and discussing the complete set of forward-looking plant-specific expenses for which universal service support should be available, and discussing whether each of these expenses is best estimated on a per-line basis or by some other method. The Commission seeks comment on whether the platforms of BCPM and Hatfield are comparable with respect to their expense assumptions, whether one of the two generates superior expense calculations, or whether expense assumptions of the two should be combined, either in one of the two existing models or in a hybrid model, to estimate expenses most accurately. The Commission seeks comment on what specific input values for each of these expenses should be. In addition, the Commission seeks comment on whether maintenance expense estimates should depend upon plant mix and, in particular, whether an increase in the use of aerial cable also increases maintenance expenses. The Commission also seeks comment on whether plant specific expenses should vary with such characteristics as climate or soil type.

73. Plant Non-Specific Expenses. Plant non-specific expenses include such expenses as engineering, network operations, and power expenses. BCPM estimates the following plant non-specific expenses on a per-line basis: other property plant (USOA Account 6510); network operations (6530); and access (6540). Hatfield calculates network operations expense as a percentage of ARMIS-reported network operations expense. BCPM's default per-line per-month plant non-specific expenses are: other property plant—$0.03; network operations—$1.33; and access $0.00. Hatfield's default value for network operations expense is 50 percent of ARMIS-reported network operations expense. Hatfield contends that this percentage is reasonable because forward-looking network operations expenses are significantly lower than ARMIS-reported expenses for network operations. Hatfield asserts that ARMIS-reported expenses reflect excessive staffing at end offices. The Commission seeks comment on the complete set of forward-looking plant non-specific expenses that should be covered by universal service support, and whether the Commission should estimate each of these expenses on a per-line basis or by some other method. The Commission also seeks comment discussing what specific input values for each of these expenses should be.

74. Customer Services. Customer services expenses include marketing, billing, and directory listing expenses. BCPM estimates the following customer services expenses on a per-line basis: marketing (USOA Account 6610) and services (6620). Hatfield estimates the cost of bill generation and billing inquiries for end users as a fixed, per-line expense. Hatfield includes a per-line directory listing expense and assigns local number portability expenses on a per-line basis. Hatfield also assigns carrier-to-carrier customer service expenses (associated with the provision of unbundled network elements) on a per-line basis. Hatfield excludes marketing (USOA Account 6610) entirely. BCPM's per-line per-month default values for customer services expenses are: marketing—$0.35 and services—$2.42. State Joint Board members suggest that BCPM's services expenses should be reduced 29 percent to $1.75 to exclude operator services and directory assistance. They also recommend excluding marketing expenses from the cost of supported services. Hatfield's default per-line customer service expenses, which are based on ARMIS data, are: billing—$1.22 per month; directory listing—$0.15 per month; local number portability—$0.25 per month; and carrier-carrier customer service—$1.69 per month. The Commission seeks comment identifying and discussing the complete set of forward-looking customer service expenses that should be covered by universal service support, and whether each of these expenses is best estimated on a per-line basis or by some other method. The Commission also seeks comment on specific input values for each of these expenses.

75. Corporate Operations. Corporate operations expenses include general, administrative, human resources, legal, and accounting expenses. BCPM estimates the following corporate operations expenses on a per-line basis: executive and planning (USOA Account 6710); general and administrative (6720); and uncollectibles (6790). Hatfield estimates corporate overhead expense as a percentage of total capital costs and operations expenses. BCPM's per-line per-month default input values for corporate operations expenses are: executive and planning—$0.14; general and administrative—$2.15; and uncollectibles—$0.17. Hatfield's default corporate overhead expense is 10.4 percent of the total of capital costs and operations expenses. The Commission seeks comment identifying and discussing the complete set of forward-

looking corporate operations expenses that should receive universal service support, and whether each of these expenses is best estimated on a per-line basis or by some other method. The Commission seeks comment on what the specific input values for each of these expenses should be.

viii. Other

76. Interested parties may file comments on the issues relating to expenses on or before October 17, 1997, and reply comments on or before October 27, 1997.

77. The Commission also seeks comment on any other issues related to the platform and inputs to the forward-looking cost models that are currently under consideration. Any such comments should be supported by specific data and analysis of the models. The Commission seeks comment on whether it should develop a method to adjust the costs estimated by their cost mechanism on an annual basis, and if so how it should do so. The Commission seeks comment on whether the adjustment mechanism should be tied to inflation and include an offset similar to their price cap mechanisms. Alternatively, the Commission seeks comment on whether it should use the actual cost estimates provided by the selected mechanism for a fixed number of years, and re-evaluate and modify the mechanism at the end of that period. Interested parties may file comments on these issues on or before October 17, 1997, and reply comments on or before October 27, 1997.

C. Support Area

78. A support area is the geographic area used to determine universal service support levels. The support area need not be the same as the geographic area used by the selected mechanism to calculate the cost of providing the supported services. The support area may be an aggregation of those geographic areas used to determine cost. For example, Hatfield uses CBGs to determine cost and density zones, which are an aggregation of CBGs with similar line densities, to calculate support. In the Order, the Commission concluded that support areas should be no larger than wire centers. While the Commission agreed with the Joint Board that the use of smaller support areas would allow for better targeting of support and minimize the possibility of ''cream-skimming,'' the Commission was uncertain that any mechanism that it could adopt would accurately predict the number of customers in such small areas.

79. To determine the level of support a particular carrier should receive, the Commission must know the number of lines in the support area. Carriers currently do not associate lines with a particular CBG, CB, or grid cell. They do, however, keep records of the number of lines served by each wire center. The Commission seeks comment on whether it should provide support according to geographic areas other than the geographic areas used to calculate cost. The Commission tentatively concludes that the ability of carriers to associate lines with CBGs, or other small areas will determine how the Commission defines support areas in the future. The Commission seeks comment on the feasibility of geo-coding households, as proposed by SBC and Sprint. Interested parties may file comments on these issues on or before October 17, 1997, and reply comments on or before October 27, 1997.

II. Support for Local Usage

80. The Joint Board recommended that support for voice-grade access to the public switched network should include a local usage component. In the Order, the Commission agreed with the Joint Board that the Commission should determine the measure of local usage to be supported by federal universal service mechanisms. The Commission concluded that ''consumers might not receive the benefits of universal service support unless we determine a minimum amount of local usage that must be included within the supported services'' because carriers receiving universal service support might charge high per-minute rates that prevent service from being affordable. The Commission also observed that, unless the definition of universal service includes a usage component, carriers using technologies (such as wireless) that can provide basic access relatively inexpensively but that entail higher usage-based costs would have an artificial advantage over carriers using technologies that have higher basic access costs and lower usage-based costs.

81. The Commission tentatively concludes that a local usage component should be included in the definition of universal service to ensure that customers realize the benefits of universal service support even if they cannot afford high per-minute charges. Failing to include a local usage component in the definition of universal service would create a bias in favor of carriers (such as wireless carriers) that provide service with facilities that allow relatively inexpensive access to the network but that have higher usage costs. This bias would be exacerbated if the Commission later set support levels using competitive bidding. Carriers able to provide relatively inexpensive access could underbid competitors, yet customers might not receive affordable service because of high usage-based charges.

82. The Commission seeks comment on the level of local usage that should be included. The Commission could prescribe this level to be the number of minutes per month used by the average customer subscribing to flat-rate local service. Alternatively, the Commission could define the level as the product of the average number of calls that are included in carriers' measured-rate service and the average call length. The Commission seeks comment on other potential ways to calculate the local usage component. The Commission also seeks comment on whether it should consider the impact of increased Internet usage on average call length and, if so, how. Finally, the Commission requests comment on whether the local usage component should differ for residential and business service. Commenters submitting usage data are requested to segregate those data between residential and business users.

83. The Commission also seeks comment on the connection, if any, between the amount of usage that the models assume to determine specifications such as switch size and average cost per minute, and the amount of usage that should be supported as part of the definition of universal service. The Commission tentatively concludes that no necessary connection exists between these two measures of usage because they serve different purposes within the support mechanisms. For example, Hatfield currently determines per-minute switched cost based on all usage (local and toll), but determines support based only on local usage. Similarly, the Commission tentatively concludes that the forward-looking economic cost methodology that it will employ should consider all local usage to determine switching capacity and to compute average cost per minute, and that it should determine the amount of local service to include in the definition of universal service without regard to these other measures of usage. Interested parties may file comments on all of the issues relating to the level of local usage on or before October 17, 1997, and reply comments on or before October 27, 1997.

Procedural Matters

III. Ex Parte Presentations

84. This is a non-restricted notice-and-comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, 1.1206.

IV. Initial Regulatory Flexibility Act Certification

85. Section 603 of the Regulatory Flexibility Act (RFA)[1] requires an Initial Regulatory Flexibility Analysis (IRFA) in notice and comment rulemaking proceedings, unless the Commission certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.''[2] It further requires that the IRFA describe the impact of the proposed rule on small entities. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632.[3] The Small Business Administration (SBA) defines a ''small business concern'' as one that ''(1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[4] Section 121.201 of the Small Business Administration regulations defines a small telecommunications entity in SIC code 4813 (Telephone Companies Except Radio Telephone) as any entity with 1,500 or fewer employees at the holding company level.[5] The Commission has determined that the RFA is inapplicable to this FNPRM because the non-rural LECs affected by the proceeding do not meet these criteria.

86. The Commission has not adopted a definition of a ''small LEC.'' Out of an abundance of caution, however, the Commission did include rural LECs in the regulatory flexibility analysis accompanying the Order as if rural LECs fell within the definition of ''small entity'' for regulatory flexibility purposes.[6] The Commission notes that the term ''rural'' LEC, which is statutorily defined, is based on the population density of and number of access lines in the area served.[7] For purposes of this certification, however, the Commission need not make a conclusive finding on whether the rural LECs are small entities for purposes of the RFA, for even if rural LECs were ''small entities'' under the RFA, the Commission would still certify that no regulatory flexibility analysis is necessary because none of the proposals in the FNPRM, if adopted, would affect rural LECs. This FNPRM seeks comment only on the mechanisms the Commission should use to estimate the forward-looking economic costs that non-rural LECs would incur to provide universal service in rural, high cost and insular areas. In this FNPRM, the Commission does not consider or adopt a forward-looking economic cost mechanism for rural LECs. As discussed in the Final Regulatory Flexibility Analysis in the Order, the Commission has permitted rural carriers to shift to a forward-looking economic cost mechanism more gradually than larger carriers.[8]

87. The Commission therefore certifies, pursuant to section 605(b) of the RFA, that these proposals would not have significant economic impact on a substantial number of small entities.[9] The Commission will send a copy of this Certification, along with this FNPRM, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A), and to the Chief Counsel for Advocacy of The Small Business Administration, 5 U.S.C. 605(b). A copy of this initial certification will also be published in the **Federal Register**.

C. Deadlines and Instructions for Filing Comments

88. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments concerning the platform designs of the switching, interoffice trunking, signaling, and local tandem components must be submitted on or before August 8, 1997, and parties should submit corresponding reply comments on or before August 18, 1997. Comments concerning the platform design features determining customer location, including the geographic unit for cost calculations and the algorithm measuring customer distribution and line counts, on or before September 2, 1997, and reply comments regarding these components should be submitted on or before September 10, 1997. Comments discussing the platform-design issues relating to outside plant investment, including the algorithms determining plant mix, installation and cable costs, drop lengths, structure sharing, the fiber-copper cross-over point, digital loop carriers, and the wireless threshold must be submitted on or before September 24, 1997, with reply comments submitted on or before October 3, 1997. Comments discussing all platform issues not otherwise addressed, including the components addressing general support facilities, expenses, and support areas, and all input values issues must be submitted by October 17, 1997, with reply comments due on or before October 27, 1997.

89. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments also must clearly identify the specific portion of this Further Notice of Proposed Rulemaking to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the outline of this Notice, such comments must be included in a clearly labelled section at the beginning or end of the filing. Irrespective of the length of their comments or reply comments, parties shall include a table of contents in their documents.[10]

90. Parties should send their comments or reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554. Commenters

[1] *See* 5 U.S.C. 601 *et seq.* The RFA was amended by the ''Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), Title II of the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions in the **Federal Register**.''

[4] 15 U.S.C. 632.

[5] 13 CFR 121.201.

[6] Order at paras. 885, 892, 944–50. *See also* 13 CFR 121.902(b)(4).

[7] We define ''rural'' as those carriers that meet the statutory definition of a ''rural telephone company'' set forth at 47 U.S.C. 153(37).

[8] Order at paras. 885, 944–50.

[9] 47 U.S.C. 605(b).

[10] *Cf.* 47 CFR § 1.49(b).

may also file informal comments or an exact copy of formal comments electronically via the Internet at <http://gullfoss.fcc.gov/cgi-bin/websql/cgi-bin/comment/comment.hts>. Only one copy of electronically-filed comments must be submitted. A commenter must note whether an electronic submission is an exact copy of formal comments on the subject line. A commenter also must include its full name and Postal Service mailing address in its submission. Parties are also asked to submit their comments and reply comments on diskette. Such diskette submissions are in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sheryl Todd of the Common Carrier Bureau, 2100 M Street, N.W., Room 8611, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect 5.1 for Windows or compatible software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. Each diskette should contain only one party's comments in a single electronic file. The diskette should be accompanied by a cover letter.

Ordering Clauses

91. It is ordered, pursuant to Sections 1, 4(i) and (j), and 254 of the Communications Act as amended, 47 U.S.C. §§ 151, 154(i), 151(j), and 254, that the Further Notice of Proposed Rulemaking is hereby adopted and comments are requested as described above.

92. It is further ordered, pursuant to §§ 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, that authority is delegated to the Common Carrier Bureau to issue orders in this proceeding directing model proponents to make certain changes in their models in order for those models to remain under consideration in this proceeding.

List of Subjects

47 CFR Part 54

Universal service.

47 CFR Part 69

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Attachment A, Service List

The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, 1919 M Street, NW., Room 814, Washington, DC 20554

The Honorable Rachelle B. Chong, Commissioner, Federal Communications Commission, 1919 M Street, NW., Room 844, Washington, DC 20554

The Honorable Susan Ness, Commissioner, Federal Communications Commission, 1919 M Street, NW., Room 832, Washington, DC 20554

The Honorable James H. Quello, Commissioner, Federal Communications Commission, 1919 M Street, NW., Room 802, Washington, DC 20554

The Honorable Julia Johnson, State Chair, Chairman, Florida Public Service Commission, 2540 Shumard Oak Blvd., Gerald Gunter Building, Tallahassee, FL 32399–0850

The Honorable David Baker, Commissioner, Georgia Public Service Commission, 244 Washington Street, SW., Atlanta, GA 30334–5701

The Honorable Sharon L. Nelson, Chairman, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Dr. SW., P.O. Box 47250, Olympia, WA 98504–7250

The Honorable Laska Schoenfelder, Commissioner, South Dakota Public Utilities Commission, State Capitol, 500 East Capitol Street, Pierre, SD 57501–5070

Martha S. Hogerty, Missouri Office of Public Council, 301 West High Street, Suite 250, P.O. Box 7800, Jefferson City, MO 65102

Tom Boasberg, Federal Communications Commission, Office of the Chairman, 1919 M Street, NW., Room 814, Washington, DC 20554

Charles Bolle, South Dakota Public Utilities Commission, State Capitol, 500 East Capitol Street, Pierre, SD 57501–5070

Deonne Bruning, Nebraska Public Service Commission, 300 The Atrium, 1200 N Street, P.O. Box 94927, Lincoln, NE 68509–4927

James Casserly, Federal Communications Commission, Commissioner Ness's Office, 1919 M Street, NW., Room 832, Washington, DC 20554

Rowland Curry, Texas Public Utility Commission, 1701 North Congress Avenue, P.O. Box 13326, Austin, TX 78701

Bridget Duff, State Staff Chair, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399–0866

Kathleen Franco, Federal Communications Commission, Commissioner Chong's Office, 1919 M Street, NW., Room 844, Washington, DC 20554

Paul Gallant, Commissioner Quello's Office, Federal Communications Commission, 1919 M Street, NW., Room 802, Washington, DC 20554

Emily Hoffnar, Federal Staff Chair, Federal Communications Commission, Accounting and Audits Division, Universal Service Branch, 2100 M Street, NW., Room 8617, Washington, DC 20554

Lori Kenyon, Alaska Public Utilities Commission, 1016 West Sixth Avenue, Suite 400, Anchorage, AK 99501

Debra M. Kriete, Pennsylvania Public Utilities Commission, North Office Building, Room 110, Commonwealth and North Avenues, P.O. Box 3265, Harrisburg, PA 17105–3265

Sandra Makeeff, Iowa Utilities Board, Lucas State Office Building, Des Moines, IA 50319

Philip F. McClelland, Pennsylvania Office of Consumer Advocate, 1425 Strawberry Square, Harrisburg, PA 17120

Thor Nelson, Colorado Office of Consumer Counsel, 1580 Logan Street, Suite 610, Denver, CO 80203

Barry Payne, Indiana Office of the Consumer Counsel, 100 North Senate Avenue, Room N501, Indianapolis, IN 46204–2208

Timothy Peterson, Deputy Division Chief, Federal Communications Commission, Accounting and Audits Division, 2100 M Street, NW., Room 8613, Washington, DC 20554

James Bradford Ramsay, National Association of Regulatory Utility Commissioners, 1100 Pennsylvania Ave., NW., P.O. Box 684, Washington, DC 20044–0684

Brian Roberts, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102

Kevin Schwenzfeier, NYS Dept of Public Service, 3 Empire State Plaza, Albany, NY 12223

Tiane Sommer, Georgia Public Service Commission, 244 Washington Street, SW., Atlanta, GA 30334–5701

Sheryl Todd (plus 8 copies), Federal Communications Commission, Accounting and Audits Division, Universal Service Branch, 2100 M Street, NW., Room 8611, Washington, DC 20554

[FR Doc. 97–20958 Filed 8–6–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. 74–14; Notice 120]

RIN 2127–AG39

Anthropomorphic Test Dummy; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes modifications to the Hybrid III test dummy, which is specified by the agency for use in compliance testing under Standard No. 208, *Occupant crash protection*. The agency is proposing minor modifications to the test dummy's clothing and shoes and to the hole diameter in the femur flange in the pelvis bone flesh. The changes would facilitate compliance testing, while having practically no effect on Standard No. 208 test results.

DATES: Comments must be received by October 6, 1997.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. Stanley Backaitis, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–4912. Fax: (202) 366–4329.

For legal issues: Mr. Stephen P. Wood, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–366–2992).

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 208, *Occupant Crash Protection*, currently permits the use of either the Hybrid III test dummy or the older Hybrid II dummy in compliance testing. Effective September 1, 1997, however, the Standard will specify the use of only a single dummy, the Hybrid III dummy. The specifications for the Hybrid III dummy appear in subpart E of 49 CFR part 572.

The Hybrid III dummy is the most human-like test dummy currently available and represents a number of advances over the earlier dummy. Among other things, the Hybrid III dummy has more human-like seated posture, head, neck, chest, and lumbar spine designs that meet biofidelic impact response requirements. It also has the capability to monitor almost four times as many injury-indicating parameters as compared with the Hybrid II dummy. NHTSA decided to specify exclusive use of the Hybrid III dummy in a final rule published in the **Federal Register** (58 FR 59189) on November 8, 1993.

The Hybrid III dummy has seen widespread use in recent years. A number of manufacturers use that dummy for Standard No. 208 certification purposes and in their research and developmental testing. NHTSA also uses the Hybrid III dummy in its New Car Assessment Program (NCAP). This program involves testing new cars and trucks by crashing them into a fixed collision barrier at 35 mph, which is five mph faster and 36 percent more severe than the crash test specified in Standard No. 208.

II. NHTSA Proposal

A. General

NHTSA has decided to propose two modifications to the Hybrid III dummy. First, the agency is proposing to amend the specifications for the Hybrid III dummy's clothing and shoes. The purpose of this change is to make the requirements consistent with compliance testing practices. Second, the agency is proposing to specify a hole diameter in the pelvis bone flesh. The purpose of this change, which is consistent with a Society of Automotive Engineers (SAE) Task Force recommendation, is to facilitate femur flange (shank portion) insertion during its attachment to the pelvis bone.

NHTSA has tentatively concluded that the Hybrid III dummy specifications should be changed to incorporate these minor modifications. The agency believes that the proposed modifications would facilitate testing and would provide additional information from which a more realistic assessment of the effectiveness of occupant protection systems could be made, without effecting the dummy impact responses for either Standard No. 208 or NCAP testing.

B. Dummy Clothing and Shoes

Sections S8.1.9.1 and S8.1.9.2 of Standard No. 208 specify that the test dummies are clothed in formfitting cotton stretch garments with midcalf length pants. The use of mid-calf pants was a carry-over from the General Motors original specifications for the Hybrid III dummy, but it is unclear why use of midcalf length pants were specified in compliance tests. The drawing (78051–293) states:

STYLE—PANTY—BELOW THE KNEE
SIZE—LARGE
COLOR—TEAROSE
MAY BE PURCHASED FROM:
SEMCO SALES,
623 CASS,
DETROIT, MICHIGAN 48226
1428 PL PANTIES OR EQUIVALENT

First Technology Safety Systems contacted NHTSA in writing and the Motor Industry Research Association (MIRA of United Kingdom) orally about what it viewed as a conflict between the Hybrid III's specifications and the length of stretch pants actually used on the Hybrid III dummy in Standard No. 208 compliance testing. While paragraph S8.1.9.1 and S8.1.9.2 specify use of midcalf length pants, all compliance and most development laboratories use above-the-knee length pants.

MIRA notified the agency that the pants, undershirt, and shoes are not available anymore from the supply sources referenced in the drawings of those items and users are having difficulty finding such articles in the market. MIRA requested that NHTSA clarify where such articles may be procured and what specifications should be used to ensure that the correct items are procured.

Other dummy users indicated similar procurement difficulties and a preference to procure shoes and garments for the dummy in the open commercial market and not from one specific source. They stated that neither the specified articles nor the supply sources are available anymore and they would prefer to procure them under general product description guidelines.

The agency agrees with these observations and finds that many commercially available articles would serve the intended purposes. Accordingly, NHTSA has decided to propose amending Standard No. 208 to allow the users to equip the Hybrid III dummies with commercially available shoes and cotton stretch light weight above-the-knee length panties and undershirt that fit the general description guidelines rather than having to procure them from a designated supplier. The agency notes that such a change would reflect what has become common procurement and use practice among manufacturers and NHTSA contractors performing compliance tests.

In compliance tests, the panties are either cut off above the dummy knees or rolled up above the knees for two reasons. First, S11.5 of Standard No. 208 requires the legs to be positioned with a specified distance between the ''outboard knee clevis flange surfaces.'' To measure this distance, the panties must be rolled up above the knees for dummy positioning. Second, the dummy knees are often marked with chalk to determine where knee contact with the vehicle interior occurs during the test. It does not work well by chalking the dummy panties, as the panties often ride up the dummy's legs during the crash event. While this information is not required by Standard No. 208, it is helpful.

NHTSA would remove drawings related to shoes and garments from the Hybrid III drawing set (78051–292, –293, –294, and –295) and incorporate appropriately worded modifications in § 571.208 S8.1.9.1 and S8.1.9.2 in which the shoes and garments to be used on the Hybrid III dummy are described, if today's proposal is adopted. NHTSA believes that this change would not affect the stringency of Standard No.

208's requirements or result in any difference in costs to manufacturers.

C. Access Hole Diameter in the Pelvis Flesh

In response to a June 30, 1995 notice of proposed rulemaking (NPRM) (60 FR 34213, Docket 74–14, Notice 96), the American Automobile Manufacturers Association (AAMA) stated that the access holes in the pelvis flesh should be enlarged to facilitate the insertion of the femur flange (shank portion) for their attachment to the pelvis bone. That organization stated that the holes' diameter has not been specified even though the holes are shown on the drawing. AAMA claimed that the pelvis flesh may be damaged when the femur flange is inserted through the existing two inch diameter holes (as scaled from the drawing). It recommended that the holes' diameter should be enlarged to 2 5/16 inches, a change it believed would accommodate insertion of the femur flange without tearing the flesh material. In support of its request, AAMA stated that the SAE Hybrid III Family and SAE Hip Calibration Task Forces have recognized the need to address this issue. AAMA stated that such a change would not significantly affect dummy kinematics or instrumentation readings.

NHTSA has decided to propose specifying the diameter of the hole in the pelvis flesh as 2 5/16 inches. The agency believes that the larger size would facilitate testing by making insertion of the femur shaft less cumbersome. The larger hole would permit easier slip-through of the section of the femur shaft containing the rubber bumper. The larger hole therefore may prevent an occasional hang up of the urethane bumper's edge against the inner edge of the hole in the pelvis flesh. As a result, the flesh with the enlarged hole would be less susceptible to damage during the femur flange insertion process. The agency anticipates that the loads on the femur shaft, because of a looser fit within as it compresses the pelvis flesh, would be no different whether the hole is 2 inches in diameter or 2 5/16 inches in diameter. The agency requests comment about the effect of specifying a larger hole diameter.

D. Optional Use of Lumbar Spine Load Cell

In response to the June 30, 1995 NPRM, GM submitted a petition requesting that the Hybrid III specifications in Part 572 Subpart E be amended to include, as an option, use of an available lower lumbar spine load cell assembly in place of the standard Hybrid III lumbar adapter. GM stated that the optional transducer would allow additional, useful information to be obtained during Standard No. 208 testing.

NHTSA believes that it is unnecessary to amend Part 572 to allow manufacturers to use the lumbar spine load cell assembly. As explained below, a manufacturer may use the lumbar spine load cell assembly, at its discretion.

NHTSA notes that a ''compliance test'' is a test conducted by or for the agency to determine if a vehicle meets the performance requirements of a Federal motor vehicle safety standard. In contrast, a ''certification test'' is a test conducted by or for a manufacturer to assure itself that the vehicle will meet the performance requirements of the particular standard. A compliance test is conducted in accordance with the standard to facilitate a possible enforcement action. On the other hand, a manufacturer has discretion about how it conducts a certification test. It may, at its discretion, use a load cell. Accordingly, a manufacturer does not need the agency to approve use of the optional test cell since the manufacturer alone decides how to conduct its certification tests.

III. Effective Dates

NHTSA is proposing to make the amendments effective 45 days after publication of a final rule. The agency is proposing such an early effective date because the modifications resulting from this proposal would only affect the drawings related to the dummy and would not affect compliance testing or certification.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''non-significant'' under the Department of Transportation's regulatory policies and procedures. The proposed amendments would not require any vehicle design changes but would instead only require minor modifications in the test dummies used to evaluate a vehicle's compliance with Standard No. 208. The agency believes that the proposed clothing and pelvis modifications would not affect the cost of new dummies. Therefore, the impacts of the proposed amendments would be so minimal that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I hereby certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. § 605(b)).

The proposed rule would affect passenger car and light truck manufacturers, few of which are small entities. As described above, there would be no significant economic impact on those vehicle manufacturers that are small entities.

The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR § 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies'' has a small business size standard of 1,000 employees or fewer.

For passenger car and light truck manufacturers, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Because each manufacturer serves a niche market, often specializing in replicas of ''classic'' cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most five hundred cars manufactured per year by U.S. small businesses.

In contrast, in 1996, there are approximately nine large manufacturers manufacturing passenger cars and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks per year. NHTSA does not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

NHTSA also notes that the cost of new passenger cars or light trucks would not be affected by the proposed rule.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposed rule.

D. National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 572

Motor vehicle safety, Incorporation by reference.

In consideration of the foregoing, it is proposed that 49 CFR Parts 571 and 572 be amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 would be amended by revising S8.1.8.2, as published at 58 FR 59191, November 8, 1993, with an effective date of September 1, 1997, to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

S8.1.8.2 Each test dummy is clothed in a formfitting cotton stretch short sleeve shirt with above-the-elbow sleeves and above-the-knee length pants. The weight of the shirt or pants shall not exceed 0.25 pounds each. Each foot of the test dummy is equipped with a size 11XW shoe which meets the configuration size, sole, and heel thickness specifications of MIL–S 13192 change ''P'' and whose weight is 1.25 ± 0.2 pounds.

* * * * *

PART 572—[AMENDED]

3. The authority citation for Part 572 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Subpart E—Hybrid III Test Dummy

4. Section 572.31 would be amended by revising paragraphs (a)(1), (a)(3), (a)(4), and the table in paragraph (b), to read as follows:

§ 572.31 General description.

(a) * * *

(1) The Anthropomorphic Test Dummy Parts List, dated [a new date would be inserted], and containing 16 pages, and a Parts List Index, dated [a new date would be inserted], containing 8 pages.

* * * * *

(3) A General Motors Drawing Package identified by GM Drawing No. 78051–218, revision [a new revision letter would be inserted], and subordinate drawings.

(4) Disassembly, Inspection, Assembly and Limbs Adjustment Procedures for the Hybrid III dummy, dated [a new date would be inserted].

* * * * *

(b) * * *

[new revision letters would be inserted in the table for the drawings for leg assemblies]

* * * * *

4. Section 572.34 would be amended by revising paragraph (b) to read as follows:

§ 572.34 Thorax.

* * * * *

(b) When impacted by a test probe conforming to 572.36(a) at 22 fps +/−0.40 fps in accordance with paragraph (c) of this section, the thorax of a complete dummy assembly (78051–218, revision (a new revision letter would be inserted)), without shoes, shall resist with a force of 1242.5 pounds +/−82.5 pounds measured by the test probe and shall have a sternum displacement measured relative to spine of 2.68 inches +/−0.18 inches. The internal hysteresis in each impact shall be more than 69% but less than 85%. The force measured is the product of pendulum mass and deceleration.

* * * * *

Issued on August 1, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–20726 Filed 8–6–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Reopening of the Comment Period for the Draft Recovery Plan for the Aquatic and Riparian Species of Pahranagat Valley

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the reopening of the comment period for public review of a draft recovery plan for the aquatic and riparian species of Pahranagat Valley. This plan undertakes an ecosystem approach by discussing the recovery needs of three native, endangered fish species. The Service solicits any additional review and comment from the public on this draft plan.

DATES: Additional comments on the draft recovery received by November 5, 1997 will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Acting State Supervisor, Nevada State Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Suite 125C, Reno, Nevada 89502 (telephone: 702–784–5227), or the Assistant Regional Director, Klamath and California Ecoregions, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–6241). Written comments and materials regarding the plan should be addressed to Mr. Chester C. Buchanan, Acting State Supervisor, at the above Reno, Nevada address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada address.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Byers at the above Reno, Nevada address (telephone: 702–784–5227).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification or delisting, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing participation plans developed with all affected parties and interests.

On May 28, 1997, the Service received a letter from the County Commissioners of Lincoln County, Nevada, requesting the extended comment period. The Service appreciates the assistance of the Commissioners and therefore reopens the comment period on this plan. After completing the plan, the Service will continue to work with the Commissioners and other local parties in the implementation of the recovery plan.

Three native, endangered fish species are endemic to the Pahranagat Valley in Lincoln County, Nevada. The Pahranagat roundtail chub is found in only 12 km of the Pahranagat River. The White River springfish is found only in the spring pool of Ash Spring. The Hiko White River springfish is found in the spring pools of Hiko and Crystal Springs. Populations of Pahranagat roundtail chub vary between 150 to 250 adult fish. The White River springfish population is stable with approximately 7,000 fish. The Hiko White River springfish population is critically low (<35) in Crystal Spring and more common (approximately 5,500 fish) in Hiko Spring. The principle causes of decline for these species are habitat modification and nonnative fish introductions. Critical habitat has been designated for the two subspecies of springfish. Ninety-five percent of the habitats occupied by these species are on private lands. Recovery of these species will require removal and/or control of nonnative fishes, and restoration and protection of occupied habitats developed in cooperation with local landowners.

Public Comments Solicited

The Service solicits any and all additional written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Act, 16 U.S.C. 1533(f).

Dated: July 30, 1997.

David L. McMullen,

Acting Regional Director.

[FR Doc. 97–20783 Filed 8–6–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List the Harlequin Duck (Histrionicus histrionicus) in Eastern North America as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the eastern North America population of the harlequin duck (*Histrionicus histrionicus*) as an endangered or threatened species throughout its range under the Endangered Species Act of 1973, as amended. The Service finds that the petition presents substantial scientific or commercial information indicating that listing the population may be warranted. The Service is initiating a status review to determine if listing the population is warranted.

DATES: The finding announced in this document was made on July 31, 1997. To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by October 6, 1997.

ADDRESSES: Information, comments, or questions concerning this petition should be submitted to the Field Supervisor, New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge Street, Concord, New Hampshire 03301–4986. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Linda Welch at the Maine Field Office, U.S. Fish and Wildlife Service, 1033 South Main Street, Old Town, Maine 04468 (telephone 207/827–5938).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to promptly commence a review of the status of the species if one has not already been initiated under the Service's internal candidate assessment process.

The Service has made a 90-day finding on a petition to list the eastern North America population of the harlequin duck (*Histrionicus histrionicus*) as endangered or threatened. The petition, dated September 21, 1995, was submitted by the Northern Rockies Biodiversity Project, Whitefish, Montana and by the Biodiversity Legal Foundation, Boulder, Colorado and was received by the Service on September 25, 1995.

When it received the petition the Service was under a moratorium on listing actions as a result of the passage of Public Law 104–6, which, along with a series of continuing budget resolutions, eliminated the Service's endangered species listing budget through April, 1996. This suspension of the listing program prohibited the Service from processing the petition to list the eastern North America population of the harlequin duck. In addition, the moratorium resulted in a substantial backlog of listing actions, which prompted the Service to issue guidance instituting a biological priority-based system for reducing the listing backlog. This system placed emergency listings and finalization of proposed rules to list species ahead of petition findings (61 FR 64475). For these reasons, this 90-day finding was made well over 90 days after the petition was received.

The petitioners contend that the eastern North America population of the harlequin duck has undergone a precipitous decline, that there are a number of threats to the population which will cause further declines, and that, therefore, urgent protective measures are necessary. Anecdotal historical observations cited in the petition and in the more recent published literature suggest that the species may have undergone a precipitous decline in the late 1800's and early 1900's and that a somewhat less precipitous decline has continued through the present time. The petitioners described possible threats to the population that are present throughout all or a significant portion of its range, including, but not limited to, oil pollution and spills, land use practices, illegal hunting, and hydropower development. The petitioners also discussed the population's vulnerability to demographic factors and loss of genetic diversity due to the low numbers of individuals.

The Service has reviewed the petition, the literature cited in the petition, information in the Service's files, information submitted by State wildlife agencies and other knowledgeable individuals, and all other currently available information. On the basis of the best scientific and commercial information available, the Service finds that the petition presents substantial information that listing this population may be warranted.

Listing Factors and Basis for Determination

A species can be determined to be endangered or threatened due to one or more of five factors described in section 4(a)(1) of the Act. These five factors are: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. The Service has found that there is substantial information indicating that listing the eastern North America population of the harlequin duck as endangered or threatened may be warranted due to one or more of these five factors.

In reviewing the information, the Service found that—(1) There is substantial information to show that numbers of the Harlequin ducks in the eastern population have declined in the past and a lesser level of decline may be continuing; (2) there is substantial information that shows that oil spills have occured and could occur in the future causing adverse impacts on the population's wintering areas.

Information Solicited

When it makes a finding that substantial information exists to indicate that listing a species may be warranted, the Service is also required to promptly commence a review of the status of the species. The Service is soliciting additional information concerning the following: (1) Whether the eastern North America population of the harlequin duck is distinct from the Pacific, Greenland, and Iceland populations; (2) the size and distribution of the eastern North America population; (3) the status and trends of breeding and wintering groups of the eastern North America population; and (4) whether or not the eastern North America population is endangered or threatened based on the listing criteria described in section 4(a)(1) of the Act.

Author

The primary author of this document is Debbie Mignogno, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

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

Dated: July 31, 1997.

Jay L. Gerst,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–20672 Filed 8–6–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970728182–7182–01; I.D. 071697A]

RIN 0648–AG16

Magnuson-Stevens Act Provisions; Financial Disclosure

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

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to revise the rules of conduct and financial disclosure regulations applicable to Regional Fishery Management Council (Council) nominees, appointees, and voting members. The proposed revisions would implement a provision of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that was amended by the Sustainable Fisheries Act (SFA) in 1996. The new provision prohibits Council members from voting on matters that would have a significant and predictable effect on a financial interest disclosed in accordance with existing regulations. The recusal requirement will not become effective until the Secretary of Commerce (Secretary) promulgates final regulations, which is scheduled to occur by October 11, 1997.

DATES: Comments must be received by September 8, 1997.

ADDRESSES: Comments should be sent to Dr. Gary C. Matlock, F/SF, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the collection-of-information requirement contained in this rule should be sent to the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Margaret Frailey Hayes, Assistant General Counsel for Fisheries, NOAA Office of General Counsel, 301–713–2231.

SUPPLEMENTARY INFORMATION:

Background

In the 1986 amendments to the Magnuson Fishery Conservation and Management Act (Public Law 99–659), Congress created a requirement for voting members and Executive Directors of each Council to disclose any financial interest they held in the harvesting, processing, or marketing of fishery resources under the jurisdiction of their respective Council. The financial interests of the member included those held by that member, the spouse, minor child, or partner of the member, and any organization (other than the Council) in which the member was serving as an officer, director, trustee, partner, or employee. If they disclosed their financial interests as required by the statute, the amendments exempted Council members and Executive Directors from the provisions of 18 U.S.C. 208, which generally prohibit persons from making decisions on behalf of the Federal Government during their employment when a conflict of interest arises. If a member did not comply with the financial disclosure requirements, the prohibitions and penalties of 18 U.S.C. 208 would apply.

Congress intended that Council members could have a direct financial interest in fisheries. Governors are required to nominate persons who are ''knowledgeable'' or ''experienced'' regarding the conservation and management or commercial or recreational harvest of the fishery resources within the jurisdiction of the Council (16 U.S.C. 302(b)(2)(A)). Congress also believed, however, that the public has a right to know of any voting Council member's financial interests in fishery matters under the purview of a Council. Council members could, therefore, participate in matters of general public concern that were likely to have a direct and predictable effect on their financial interests in harvesting, processing, or marketing activities in a fishery if such interests were disclosed on the member's statement of financial interests. Even if their financial interests were reported, however, they could not participate in a particular matter primarily of individual concern, such as a contract, in which they had a financial interest under rules now codified at 50 CFR 600.225(b)(8)(i).

On October 11, 1996, the President signed into law the SFA, which made numerous amendments to the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). This proposed rule would amend 50 CFR 600.225, Rules of Conduct, and 50 CFR 600.235, Financial Disclosure, to implement the SFA amendments to the Magnuson-Stevens Act concerning recusal of Council members from votes involving matters in which they have a financial interest.

The proposed regulations would remove 50 CFR 600.225(b)(8)(ii), which prohibits a Council member from voting on any matter of general public concern that is likely to have a ''direct and predictable effect'' on a member's financial interest unless it has been disclosed. That language would be replaced with new § 600.235(c), described below under ''Financial Disclosure.''

The proposed rules would retain the first sentence in 50 CFR 600.225(b)(8), which prohibits any Council member from participating in a ''particular matter primarily of individual concern'' in which he or she has a financial interest. Examples of such matters are contracts with the member's employer, grants to the member's academic institution, and management measures that affect only the member's business and a few other fishery participants.

Section 302(j) of the Magnuson-Stevens Act requires the disclosure by ''affected individuals'' of financial interests in any harvesting, processing, or marketing activity that is being, or will be undertaken, within any fishery under the jurisdiction of the individual's Council. The financial interests include those of the affected individual's spouse, minor child, or partner, or any organization other than the Council in which the individual is serving as an officer, director, trustee, partner, or employee.

The SFA defines ''affected individuals'' as persons nominated by a Governor, and voting members appointed by the Secretary of Commerce from among those nominees, under section 302(b)(2) of the Magnuson-Stevens Act. The term also includes the Indian representative on the Pacific Council, if he or she is not subject to disclosure or recusal requirements under Indian tribal government laws.

Voting members of Councils who are excluded from the definition are Regional Administrators of NMFS, and the principal state officials and designees named by Governors under section 302(b)(1) of the Magnuson-Stevens Act. Council Executive Directors, who previously had been subject to the financial disclosure reporting requirements, are no longer ''affected individuals.''

Financial Disclosure

The SFA's most significant revision to section 302(j) of the Magnuson-Stevens Act is the addition of a provision that prohibits an affected individual from voting on a Council decision that would have a significant and predictable effect on the affected individual's financial interests in harvesting, processing, or marketing activities. That effect exists if there is a close causal link between the Council decision and an ''expected and substantially disproportionate benefit'' to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery.

This rule would define ''expected and substantially disproportionate benefit'' as a quantifiable positive or negative impact with regard to a matter likely to affect a fishery or sector of the fishery in which the affected individual has a significant interest, as indicated by (1) a greater than 10 percent interest in the total harvest of the fishery or sector of the fishery in question, (2) a greater than 10 percent interest in the marketing or

processing of the total harvest of the fishery or sector of the fishery in question, or (3) full or partial ownership of more than 10 percent of the vessels using the same gear type within the fishery or sector of the fishery in question.

We interpret the statutory term ''benefit'' to include both positive and negative impacts on the member's financial interest. The purpose of the 1996 amendments was to address real or perceived conflicts of interest, i.e., situations where Council members might have a greater incentive to protect their own financial interests than to consider the welfare of all fishery participants and the national interest. In this context, actual or perceived conflicts of interest occur when a member's income or investment is threatened, just as much as when they may be augmented. Avoiding a negative is as advantageous as gaining a positive.

To limit ''benefit'' to positive impacts would unfairly bias the Council system toward preservation of the status quo. If members who stood to gain from a proposed Council action could not vote, but members who might suffer a loss from the same action could do so, proposals for change would be handicapped.

The choice of a particular percentage as indicative of a ''significant'' interest is a difficult one. The Councils manage fisheries as small as seven vessels and as large as thousands of vessels. The agency is considering a tiered approach, with different percentage indicators for different-sized sectors of the fishing industry, but has been unable to construct a workable model. We invite comments and specific suggestions on dealing with this issue.

Affected individuals who have financial interests in businesses or not-for-profit organizations closely related to harvesting, processing, or marketing activities are covered by section 302(j) of the Magnuson-Stevens Act and must disclose those interests. Examples are suppliers of bait, manufacturers of fishing gear, business or economic consultants to the fishing industry, and representatives of environmental organizations that address fisheries issues. Because the effects of Council decisions on this type of financial interest are unlikely to be ''significant or predictable,'' we do not foresee recusals by such individuals under proposed § 600.235(c); however, such individuals could not participate in a ''particular matter primarily of individual concern'' under § 600.225(b)(8).

Under the proposed rule, an affected individual who is a representative of an association of fishermen, processors, or dealers would be required to disclose, in addition to his/her own interests, the financial interests of the association in harvesting, processing, or marketing activities that are or will be undertaken within any fishery under the jurisdiction of his or her Council. The financial interests of the association would be considered as separate from the financial interests of its individual members. A vote on a Council decision that might have a significant and predictable effect on the members of the association would not be considered to have a significant and predictable effect on the financial interests of the representative.

Procedures

An affected individual would be able to recuse him or herself by simply announcing an intent not to vote on a Council decision that is likely to have a direct and predictable effect on that individual's financial interest.

The proposed regulations would provide that, if an affected individual has a significant interest that prohibits him or her from voting, he or she may still participate in Council deliberations on that matter.

The proposed regulations would set out the process for raising the issue of whether a Council decision would have a significant and predictable effect on an individual's financial interest, the information that would be considered in making that determination, and procedures for review of a determination. The proposed regulations would specify the NOAA General Counsel attorney advising the Council as the designated official who would determine whether the affected individual must recuse him or herself. The determination by the NOAA attorney would be based upon the information contained in the member's financial disclosure report and any other reliable and probative information provided in writing. All information provided would be made part of the public record for the decision.

If the NOAA attorney determines that the member may not vote, the member may state for the record how he or she would have voted.

Any Council member would be able to file a request for review of the determination to the NOAA General Counsel within 10 days of the determination. The member whose vote is at issue would have an opportunity to respond to such request for review by another Council member. The NOAA General Counsel would issue a decision within 30 days from the date of receipt of the request for review. As specified in section 302(j)(7)(E) of the Magnuson-Stevens Act, if the General Counsel's decision reverses a recusal determination, that decision may not be treated as cause to invalidate or reconsider the Council's action.

The proposed regulations would implement the part of section 307(1) of the Magnuson-Stevens Act that makes it unlawful for an affected individual to knowingly and willfully fail to disclose or to falsely disclose any financial interest required to be disclosed or to knowingly vote on a Council decision in violation of section 302(j). The penalties for violation include removal of the affected individual from the Council and/or a civil penalty of up to $100,000 per violation.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would implement statutory provisions of the SFA relative to the disclosure of financial interests of Council nominees, appointees, and members in harvesting, processing, or marketing activities that are or will be undertaken in fisheries under the jurisdiction of the individual's Council. Certain Council members may be required to recuse themselves from voting on a Council decision that would have a significant and predictable effect on a financial interest disclosed in accordance with these regulations. This proposed rule would have no effect on the conduct of business of any small entities. As such, no Initial Regulatory Flexibility Analysis has been prepared.

This rule contains a collection-of-information requirement subject to the PRA. The financial disclosure form that must be completed by affected individuals has been approved by OMB under control number 0648–0192.

Public reporting burden for this collection of information is estimated to average 0.58 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completining and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to OMB and NMFS (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, National Oceanic and Atmospheric Administration, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: August 1, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.225, the last sentence in paragraph (b)(4) is removed, and paragraph (b)(8) is revised to read as follows:

§ 600.225 Rules of conduct.

* * * * *

(b) * * *

(8) No Council member may participate personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a particular matter primarily of individual concern, such as a contract, in which he or she has a financial interest.

3. Section 600.235 is revised to read as follows:

§ 600.235 Financial disclosure.

(a) *Definitions.* For purposes of this section:

(1) ''Affected individual'' means an individual who is—

(i) Nominated by the Governor of a state or appointed by the Secretary to serve as a voting member of a Council in accordance with section 302(b)(2) of the Magnuson-Stevens Act; or

(ii) A representative of an Indian tribe appointed to the Pacific Council by the Secretary under section 302(b)(5) of the Magnuson-Stevens Act who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government.

(2) ''Designated official'' means an attorney designated by the NOAA General Counsel.

(b) *Reporting.* (1) The Magnuson-Stevens Act requires the disclosure by each affected individual of any financial interest of the affected individual in any harvesting, processing, or marketing activity, or related industry, that is being, or will be, undertaken within any fishery under the jurisdiction of the individual's Council, and of any such financial interest of the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88–195, ''Statement of Financial Interests for Use by Voting Members and Nominees of Regional Fishery Management Councils'' (Financial Interest Form), or such other form as the Secretary may prescribe.

(2) The report must be filed by each nominee for Secretarial appointment with the Assistant Administrator by April 15 or, if nominated after March 15, 1 month after nomination by the Governor. A seated voting member appointed by the Secretary must file a Financial Interest Form with the Executive Director of the appropriate Council within 45 days of taking office; must file an update of his or her statement with the Executive Director of the appropriate Council within 30 days of the time any such financial interest is acquired or substantially changed by the affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee; and must update his or her form annually and file that update with the Executive Director of the appropriate Council by February 1 of each year.

(3) The Executive Director must, in a timely manner, provide copies of the financial disclosure forms and all updates to the NMFS Regional Administrator for the geographic area concerned, the Regional Attorney who advises the Council, the Department of Commerce Assistant General Counsel for Administration, and the NMFS Office of Sustainable Fisheries. The completed financial interest forms will be kept on file in the office of the NMFS Regional Administrator for the geographic area concerned and at the Council offices, and will be made available for public inspection at such offices during normal office hours.

(4) Councils must retain the disclosure form for each affected individual for at least 5 years after the expiration of that individual's last term.

(c) *Restrictions on voting.* (1) No affected individual may vote on any Council decision that would have a significant and predictable effect on a financial interest disclosed in his/her report filed under paragraph (b) of this section.

(2) As used in this section, a Council decision will be considered to have a ''significant and predictable effect on a financial interest'' if there is a close causal link between the decision and an expected and substantially disproportionate benefit to the financial interest of any affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee, relative to the financial interests of other participants in the same gear type or sector of the fishery.

(3) ''Expected and substantially disproportionate benefit'' means a quantifiable positive or negative impact with regard to a matter likely to affect a fishery or sector of the fishery in which the affected individual has a significant interest, as indicated by:

(i) A greater than 10 percent interest in the total harvest of the fishery or sector of the fishery in question;

(ii) A greater than 10 percent interest in the marketing or processing of the total harvest of the fishery or sector of the fishery in question; or

(iii) Full or partial ownership of more than 10 percent of the vessels using the same gear type within the fishery or sector of the fishery in question.

(d) *Voluntary recusal.* An affected individual who believes that a Council decision would have a significant and predictable effect on that individual's financial interest disclosed under paragraph (b) of this section may, at any time before a vote is taken, announce to the Council an intent not to vote on the decision.

(e) *Participation in deliberations.* Notwithstanding paragraph (c) of this section, an affected individual may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

(f) *Requests for determination.* (1) At the request of an affected individual, the designated official shall determine for the record whether a Council decision would have a significant and

predictable effect on that individual's financial interest. The determination will be based upon a review of the information contained in the individual's financial disclosure form and any other reliable and probative information provided in writing. All information considered will be made part of the public record for the decision. The affected individual may request a determination by notifying the designated official—

(i) Within a reasonable time before the Council meeting at which the Council decision will be made; or

(ii) During a Council meeting before a Council vote on the decision.

(2) The designated official may initiate a determination on the basis of—

(i) His or her knowledge of the fishery and the financial interests disclosed by an affected individual; or

(ii) Written and signed information received within a reasonable time before a Council meeting or, if the issue could not have been anticipated before the meeting, during a Council meeting before a Council vote on the decision.

(3) At the beginning of each Council meeting, or during a Council meeting at any time reliable and probative information is received, the designated official shall announce the receipt of information relevant to a determination concerning recusal, the nature of that information, and the identity of the submitter of such information.

(4) If the designated official determines that the affected individual may not vote, the individual may state for the record how he or she would have voted. However, a reversal of that determination under paragraph (g) of this section may not be treated as cause for invalidation or reconsideration of the Council's decision.

(g) *Review of determinations.* (1) Any Council member may file a written request to the NOAA General Counsel for review of the designated official's determination. A request for review must be received within 10 days of the determination.

(2) A request must include a full statement in support of the review, including a concise statement as to why the Council's decision did or did not have a significantly disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery, and why the designated official's determination should be reversed.

(3) If the request for review is from a Council member other than the affected individual whose vote is at issue, the requester must provide a copy of the request to the affected individual at the same time it is submitted to the NOAA General Counsel. The affected individual may submit a response to the NOAA General Counsel within 10 days from the date of his/her receipt of the request for review.

(4) The NOAA General Counsel must complete the review and issue a decision within 30 days from the date of receipt of the request for review. The NOAA General Counsel will limit the review to the record before the designated official at the time of the determination, the request, and any response.

(h) *Exemption from other statutes.* The provisions of 18 U.S.C. 208, regarding conflicts of interest, do not apply to an affected individual who is in compliance with the requirements of this section for filing a financial disclosure report.

(i) *Violations and penalties.* It is unlawful for an affected individual to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required by this section, or to knowingly vote on a Council decision in violation of this section. In addition to the penalties applicable under § 600.735, a violation of this provision may result in removal of the affected individual from Council membership.

[FR Doc. 97–20851 Filed 8–6–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970730185–7185–01; I.D. 070797B]

RIN 0648–AJ13

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to implement the provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). For the red snapper fishery in the Gulf of Mexico Exclusive Economic Zone (EEZ), the regulatory amendment would: Change the opening date for the 1997 fall commercial fishing season from September 15 to September 2; restrict the harvest of red snapper during the 1997 fall commercial season to an initial period of September 2 to September 15 and, thereafter, to a monthly period from the first to the 15th of each month until the commercial fishery is closed (all openings and closings would be at noon on the date indicated); establish a recreational fishery quota; and authorize the Regional Administrator, Southeast Region, NMFS, to close the recreational fishery for red snapper in the EEZ when the recreational quota is reached or is projected to be reached. The intended effect of this proposed rule is to maximize the economic benefits from the red snapper resource within the constraints of the rebuilding program for this overfished resource and to comply with a requirement of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that separate recreational and commercial fishing quotas be established for Gulf red snapper that result in fishery closures when quotas are taken.

DATES: Written comments must be received on or before August 22, 1997.

ADDRESSES: Comments on the proposed rule must be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the framework regulatory amendment, which includes an environmental assessment, a regulatory impact review (RIR), and an addendum, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Phone: 813–228–2815; Fax: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the EEZ of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

The Council has proposed adjusted management measures (a regulatory amendment) for the Gulf red snapper fishery for NMFS' review, approval, and implementation. These measures were developed and submitted to NMFS under the terms of the FMP's framework procedure for annual adjustments in

total allowable catch and related measures for the red snapper fishery (framework procedure). The proposed rule would implement the measures contained in the Council's regulatory amendment.

Red Snapper Total Allowable Catch (TAC)

The Council proposed no change to the current red snapper TAC of 9.12 million lb (m lb) (4.14 million kg (4.14 m kg)). This TAC is consistent with the provisions of the red snapper stock rebuilding program, provided: That Gulf shrimping effort, which results in the mortality of juvenile red snapper, remains relatively constant; and that a minimum of an additional 33 percent reduction in the mortality of juvenile red snapper in shrimp trawl bycatch is achieved in 1997 followed by a 44 percent reduction each year thereafter. The Council has addressed this bycatch reduction objective in Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico that would, if approved and implemented, require bycatch reduction devices in virtually all shrimp trawls used in the EEZ. However, given the earliest possible implementation time for Amendment 9, assuming its approval by NMFS, it is unlikely that the necessary 33 percent additional bycatch reduction for 1997 will be achieved. The Council and NMFS will have to consider necessary and appropriate management actions in subsequent years to ensure that the current red snapper stock rebuilding program is not compromised (e.g., appropriate adjustments in the red snapper TAC).

Proposed Management Measures Associated with Red Snapper TAC

The Council proposes that the 1997 fall commercial red snapper season begin on September 2, instead of September 15, to allow the fishery to begin at a time with traditionally better weather, thereby minimizing potential adverse impacts on fishing operations, particularly those of smaller vessels. September 2 was chosen instead of an earlier date to avoid recreational/commercial fishery conflicts during the Labor Day weekend when there is customarily a greater than usual number of weekend recreational fishery participants. Opening and closing the 1997 commercial season during daylight hours (noon instead of 12:01 a.m., local time) is expected to aid law enforcement activities and improve fishermen's compliance with regulations. The Council believes that allowing commercial harvest only during the first 15 days of each month would help to extend the fishing season and thereby provide market benefits outweighing the increased administrative costs and short periods of derby-style fishing associated with the additional fishery openings and closings.

Section 407(d) of the Magnuson-Stevens Act requires that the FMP establish a red snapper quota for the recreational fishery that, when reached, results in a prohibition on the retention of red snapper caught during recreational fishing. The proposed rule would establish a recreational quota of 4.47 m lb (2.03 m kg), the same amount as the current recreational allocation under the TAC. The proposed mechanism for future closure of the recreational red snapper fishery upon reaching its quota complies with section 407(d). This fishery closure provision should avoid a recreational fishery harvest in excess of its quota and thereby contribute to recovery of the overfished red snapper resource.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce, based on the Council's regulatory impact review (RIR) that assesses the economic impacts of the management measures proposed in this rule on fishery participants, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The RIR indicates that the provision for closure of the recreational fishery for red snapper when its quota is taken may have adverse economic effects, although not significant for purposes of the Regulatory Flexibility Act (RFA), on a portion of the firms that own and operate fishing vessels for reef fish on a for-hire basis (charter vessels and headboats). All such firms are considered small entities for purposes of the RFA. If a closure of the recreational fishery for red snapper occurs, these firms may experience revenue losses since customer demand in the for-hire sector of the recreational fishery is based significantly upon the expectation of catching and retaining red snapper. During a closure of the red snapper recreational fishery, some customers may not be willing to forgo the catch of red snapper in favor of other species that might be caught on a given vessel and trip. The possible effects of a fishery closure include a reduction in the number of customers, a reduction in the price that may be charged for a trip, and the need for vessels to move to different fishing locations that offer an acceptable level of substitute species.

The for-hire sector of the recreational reef fish fishery includes an estimated 920 small entities—838 charter fishing vessels and 82 headboat vessels. Of these entities, 26 headboats operating in Texas and Louisiana (about 2.6 percent of the total number of for-hire vessels) are heavily dependent on red snapper. Under a closed red snapper recreational fishery, these particular entities may incur significant negative economic impacts if there are no reasonable substitute species for their customers to catch and retain. Only a very small fraction of these vessels (less than 2 percent), if any, would be expected to cease business operations as a result of a red snapper fishery closure. There will always be some period when the recreational fishery for red snapper is open, substitute species may be sufficiently attractive to customers to maintain business operations during the red snapper closure, and some vessels may be able to move their red snapper fishing operations to open areas such as the South Atlantic. The remaining 56 headboats and all the charter vessels are less dependent on red snapper catches because of the availability of other species or because red snapper do not occur in their fishing areas. In summary, a recreational red snapper fishery closure would affect only about 3 percent or less of the for-hire small businesses to a significant degree.

It is not expected that any of the other agency criteria for determining significant impacts for purposes of the RFA would be met for small entities engaged in the recreational red snapper fishery. In conclusion, a substantial number of the for-hire vessels would not be significantly affected by the provision for a closure of the red snapper recreational fishery.

Regarding the commercial red snapper fishery, the proposal to open the fishing season approximately 15 days/month consecutively and then close the season for the balance of the month is expected to have a negative effect on revenues for the estimated 1,818 small entities engaged in this fishery. However, since only 28 percent of the annual commercial quota is available for the fall season, prices would have to fall more than 18 percent if annual gross revenues were to fall by 5 percent. Price changes of this magnitude are not expected. Therefore, changes in annual gross revenues are not expected to reach the 5 percent threshold for significance. No new annual compliance costs or significant additional capital costs are associated with the rule and less than 2 percent, if any, of the small entities are expected to cease business operations. It is not expected that any of the other agency criteria for significance would be met for small businesses engaged in the commercial red snapper fishery.

As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 30, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.34, paragraph (l) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) *1997 closures of the commercial fishery for red snapper.* During 1997, the possession of red snapper in or from the Gulf EEZ and on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1), from noon on September 15 to noon on October 1, and thereafter from noon on the 15th of each month to noon on the first of each succeeding month until the commercial red snapper season is closed in accordance with § 622.43(a)(1). All times are local times.

3. In § 622.42, paragraph (a) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) *Gulf reef fish*—(1) *Commercial quotas.* The following quotas apply to persons who fish under commercial vessel permits for Gulf reef fish, as required under § 622.4(a)(2)(v).

(i) Red snapper—4.65 million lb (2.11 million kg), round weight, apportioned in 1997 as follows:

(A) 3.06 million lb (1.39 million kg) available February 1, 1997.

(B) The remainder available at noon on September 2, 1997, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

(ii) Deep-water groupers (i.e., yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind), and, after the quota for shallow-water grouper is reached, scamp, combined—1.60 million lb (0.73 million kg), round weight.

(iii) Shallow-water groupers (i.e., all groupers other than deep-water groupers, jewfish, and Nassau grouper), including scamp before the quota for shallow-water groupers is reached, combined—9.80 million lb (4.45 million kg), round weight.

(2) *Recreational quota for red snapper.* The following quota applies to persons who harvest red snapper other than under commercial vessel permits for Gulf reef fish and the commercial quota specified in paragraph (a)(1)(i) of this section—4.47 million lb (2.03 million kg), round weight.

* * * * *

4. In § 622.43, paragraph (a)(1) is revised to read as follows:

§ 622.43 Closures.

(a) * * *

(1) *Gulf reef fish*—(i) *Commercial quotas.* The bag and possession limits specified in § 622.39(b) apply to all harvest or possession in or from the Gulf EEZ of the indicated species, and the sale or purchase of the indicated species taken from the Gulf EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero under paragraph (a)(1)(ii) of this section.

(ii) *Recreational quota for red snapper.* The bag and possession limit for red snapper in or from the Gulf EEZ is zero.

* * * * *

[FR Doc. 97–20772 Filed 8–6–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 152
Thursday, August 7, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–040–5]

Agency Information Collection Activities; OMB Approval Received

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Office of Management and Budget's approval of a collection of information contained in the Animal and Plant Health Inspection Service final rule amending the regulations pertaining to genetically engineered plants introduced under notification and to the petition process for the determination of nonregulated status.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Jenkins, APHIS Information Collection Coordinator, AIM, APHIS, suite 2C42, 4700 River Road Unit 103, Riverdale, MD 20737–1235, (301) 734–5360.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1997, we published in the **Federal Register** (62 FR 23945–23958, Docket No. 95–040–2) a final rule amending the regulations at 7 CFR part 340, ''Genetically Engineered Organisms and Products; Simplification of Requirements and Procedures for Genetically Engineered Organisms.'' This rule contains information collection requirements. On July 24, 1997, the Office of Management and Budget (OMB) approved the collection of information requirements with respect to this final rule under OMB control number 0579–0085 (expires September 30, 1998).

Done in Washington, DC, this 1st day of August 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–20818 Filed 8–6–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–069–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared for these field tests.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to telephone before visiting on (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Evaluation, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7710. For copies of the environmental assessments and findings of no significant impact, contact Ms. Linda Lightle at (301) 734–8231; e-mail: llightle@aphis.usda.gov. Please refer to the permit numbers listed below when ordering the documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or there must be a notification, specific requirements met, and approval by the Animal and Plant Health Inspection Service (APHIS) before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
97–071–01r ..	University of Wisconsin	6–3–97	*Rhizobium* and *Sinorhizobium* bacterial strains genetically engineered to enhance yield on host legumes.	Wisconsin.
97–083–02r ..	Sanford Scientific, Inc	6–3–97	Geranium plants genetically engineered for disease resistance and extended flower life.	California.
97–087–02r ..	Pure Seed Testing, Inc	6–24–97	Creeping bentgrass plants genetically engineered for tolerance to the herbicide glufosinate and to contain the proteinase inhibitor gene derived from potato.	Oregon.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA)(42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 31st day of July 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–20752 Filed 8–6–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Farm Service Agency

Inviting Preapplications for Rural Cooperative Development Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $1.7 million in competing Rural Cooperative Development Grant (RCDG) funds for fiscal year (FY) 1997. This action will comply with legislation which authorizes grants for establishing and operating centers for rural cooperative development. The intended effect of this notice is to solicit preapplications for FY 1997 and award grants before September 15, 1997.

DATES: The deadline for receipt of a preapplication is August 20, 1997. Preapplications received after that date will not be considered for FY 1997 funding.

ADDRESSES: Entities wishing to apply for assistance should contact the Rural Development State Offices to receive further information and copies of the preapplication package.

FOR FURTHER INFORMATION CONTACT: James E. Haskell, Assistant Deputy Administrator, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3250. Telephone (202) 720–8460.

SUPPLEMENTARY INFORMATION: The Rural Technology and Cooperative Development Grants (RTCDG) program was established by interim rule on August 12, 1994 (59 FR 41386–98) and published as a final rule February 12, 1996 (61 FR 3779–87) and was authorized by section 310B(f) through (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. § 1932). The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) removed ''technology'' from RTCDG, thereby directing the focus of the program specifically to cooperative development. The 1996 Act also clarified that public bodies were not eligible applicants, and modified application requirements and applicant selection criteria. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. The program is administered through Rural Development State Offices acting on behalf of RBS. RBS is one of the successors of the Rural Development Administration pursuant to the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354).

Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria. The priorities described in this paragraph will be used by RBS to rate preapplications. RBS review of preapplications will include the complete preapplication package submitted to the Rural Development State Office. Points will be distributed according to ranking as compared with other preapplications on hand. All factors will receive equal weight with points awarded to each factor on a 5, 4, 3, 2, 1 basis depending on the applicant's ranking compared to other applicants.

(a) Preference will be given to applications that:

(1) demonstrate a proven track record in administering a nationally coordinated, regionally or State-wide operated project;

(2) demonstrate previous expertise in providing technical assistance in rural areas;

(3) demonstrate the ability to assist in the retention of business, facilitate the establishment of cooperatives and new cooperative approaches, and generate employment opportunities that will improve the economic conditions of rural areas;

(4) demonstrate the ability to create horizontal linkages among businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets;

(5) commit to providing technical assistance and other services to underserved and economically distressed rural areas of the United States;

(6) commit to providing greater than a 25 percent matching contribution with private funds and in-kind contributions;

(7) evidence transferability or demonstration value to assist rural areas outside of project area; and

(8) demonstrate that any cooperative development activity is consistent with positive environmental stewardship.

Fiscal Year 1997 Preapplication Submission

Due to the short preapplication period for FY 1997 funds, qualified applicants should begin the preapplication process as soon as possible. Preapplications must include a clear statement of the goals and objectives of the project and a plan which describes the proposed project as required by the statute and 7 CFR part 4284, subpart F. Each preapplication received in the State Office will be reviewed to determine if the preapplication is consistent with the eligible purposes outlined in 7 CFR part 4284, subpart F. Preapplications without supportive data to address

selection criteria will not be considered. Copies of 7 CFR part 4284, subpart F, will be provided to any interested applicant by making a request to the Rural Development State Office or RBS National Office.

Preapplications must be completed and submitted to the State Rural Development Office as soon as possible but no later than August 20.

For ease of locating information, each preapplication must contain a detailed Table of Contents containing page numbers for each component of the preapplication. The preapplication must also contain a project summary of 250 words or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals, relevance of the project, and a listing of all organizations involved in the project. The project summary should immediately follow the Table of Contents.

The National Office will score applicants based on the grant selection criteria contained in 7 CFR part 4284, subpart F, and will select awardees subject to the availability of funds and the awardee's satisfactory submission of a formal application and related materials in accordance with subpart F. Entities submitting preapplications that are selected for award will be invited by the State Office to submit a formal application prior to September 15. It is anticipated that grant awardees will be selected by September 15, 1997.

Dated: July 30, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–20739 Filed 8–6–97; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Glenwhite Run Watershed, Pennsylvania

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR, Part 1500); and the Natural Resources Conservation Service (formerly the Soil Conservation Service) Guidelines (7 CFR, Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Glenwhite Run Watershed, Blair and Cambria Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Oertly, State Conservationist, USDA—Natural Resources Conservation Service, One Credit Union Place, Suite 340, Harrisburg, Pennsylvania 17110–2993, telephone (717) 782–2202.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Janet L. Oertly, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for water quality improvement. The planned works of improvement involve eight treatment sites that are the source of ground and surface water pollution. Treatment of these sites will involve the installation of waterways, diversions, and passive treatment systems.

The ''Notice of a Finding of No Significant Impact'' (FONSI) has been forwarded to the U.S. Environmental Protection Agency. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The environmental assessment and basic data may be reviewed by contacting Janet L. Oertly.

No administrative action on implementation of the proposal will be taken until thirty (30) days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Janet L. Oertly,

Statement Conservationist.

[FR Doc. 97–20777 Filed 8–6–97; 8:45 am]

BILLING CODE 3410–16–M

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, August 29, 1997, at the Atlanta Federal Center, Dining Room Two, 61 Forsyth Street, SW (at Martin Luther King, Jr. Drive), Atlanta, Georgia 30303. The purpose of the meeting is to: (1) Discuss the status of the Commission; (2) discuss civil rights conference plans; (3) discuss civil rights problems and/or progess in the State and nation; and (4) hold a brief new member orientation session.

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, 404–562–7000 (TDD 404–562–7004). 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, July 30, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–20836 Filed 8–6–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky 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 Kentucky Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Thursday, September 4, 1997, at the Louisville Free Public Library, Western Branch, 604 S. 10th Street, Louisville, Kentucky 40203. The purpose of the meeting is to: (1) Release the report, Bias and Bigotry in Kentucky; (2) discuss the status of the Commission; (3) discuss plans for adopting a new project; and (4) 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 Emily C. Boone, 502–585–3430, or Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). 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, July 30, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–20835 Filed 8–6–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

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 September 17, 1997, at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, Louisiana 70130. The purpose of the meeting is to plan future activities.

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, July 28, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–20837 Filed 8–6–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

Date and Time: Friday, August 15, 1997, 9:30 a.m.

Place: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

Status:

Agenda

I. Approval of Agenda
II. Approval of Minutes of July 11, 1997 Meeting
III. Announcements
IV. Equal Education Opportunity Reports
V. GPRA Performance Plan
VI. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 97–20982 Filed 8–5–97; 12:41 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Industrial Reports Program—Wave I (Voluntary).

Form Number(s): M37G, M37L, MQ22D, MQ28B, MQ32D, MQ34E, MQ36C.

Agency Approval Number: 0607–0393.

Type of Request: Revision of a currently approved collection.

Burden: 2,924 hours.

Number of Respondents: 1,337.

Avg Hours Per Response: 2 hours and 11 minutes.

Needs and Uses: The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions.

For clearance purposes, the approximately 72 CIR surveys are divided into ''waves.'' Each wave has an associated voluntary and mandatory clearance package, making 6 separate clearances. Each year, one wave (2 clearance packages) is submitted for review.

In this request, we are discontinuing a CIR report on electric lightbulbs because of funding issues and moving a CIR report on plumbing fixtures from another wave because of survey content changes.

Affected Public: Businesses or other for-profit organizations.

Frequency: This request contains monthly, quarterly, and annual counterpart reports.

Respondent's Obligation: Monthly and quarterly reports are voluntary. Annual counterpart reports are mandatory.

Legal Authority: Title 13 USC, Sections 61, 131, 182, 224, and 225.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 31, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–20757 Filed 8–6–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: United States Census 2000 Dress Rehearsal.

Form Number(s): There are too many forms to list here, however the basic form numbers are: DX–1 (Short-form), DX–2 (Long-form), and DX–806 (Reinterview form).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 110,950 hours.

Number of Respondents: 453,000.

Avg Hours Per Response: Short-Form—10 minutes; Long-form—38 minutes; Reinterview—5 minutes.

Needs and Uses: The objective of the Census 2000 Dress Rehearsal is to provide an operational demonstration of procedures and systems planned for use in Census 2000. From the dress rehearsal we will produce prototype redistricting products (Pub. L. 94–171) as well as other 100 percent and sample data products. The dress rehearsal will include some procedures and systems that have not been demonstrated operationally in any prior field or processing activity because they are needed to meet new requirements.

The dress rehearsal is a full-scale demonstration of all data collection and processing systems planned for Census 2000. New procedures being considered for Census 2000, such as user friendly forms easily available in many locations, multiple contacts with each household, digital capture of forms, and statistical estimation techniques have all been tested individually in earlier operations. The dress rehearsal will provide a census-like environment to demonstrate, simultaneously, the efficacy of these procedures planned for use in Census 2000.

The three sites chosen for the dress rehearsal are: Sacramento, California; Columbia, South Carolina and surrounding counties; and Menominee American Indian Reservation, Wisconsin.

Because of timing issues the questions on Race and Ethnicity that will be asked during the dress rehearsal are not included on the questionnaires submitted with this request. These questions are being determined by OMB under Directive 15 and will be submitted separately for review.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 141 and 193.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 1, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–20788 Filed 8–6–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal to Collect Information on Transactions of U.S. Affiliates With Their Foreign Parents

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 comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 6, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: R. David Belli, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50(OC), Washington, D.C. 20230 (Telephone: 202–606–9800).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent (Form BE–605) and Transactions of U.S. Banking Affiliate with Foreign Parent (Form BE–605 Bank), obtain quarterly sample data on transactions and positions between foreign-owned U.S. business enterprises and their foreign parents. The data are needed for compiling the U.S. balance of payments accounts, the international investment position of the United States, and the national income and product accounts. The data are also needed to measure the amount of foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. and foreign economies, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States.

The survey is being revised to bring it into conformity with the proposed design of the BE–12 Benchmark Survey of Foreign Direct Investment in the United States—1997. Beginning with the report covering the first quarter of 1998, BEA plans to raise the exemption level for reporting to $30 million (measured by the foreign-owned U.S. business enterprise's total assets, sales or gross operating revenues, or net income or loss) from $20 million, thereby reducing respondent burden for small companies. It also plans to request, for the first time, that trade in services between U.S. affiliates and their foreign parents be reported once each year by type of service.

II. Method of Collection

Forms BE–605 and BE–605 Bank are quarterly reports that must be filed within 30 days after the end of each quarter (45 days after the final quarter of the respondent's fiscal year) by every U.S. business enterprise that is owned 10 percent or more by a foreign investor and that has total assets, sales, or net income (or loss) of over $30 million. Potential respondents are those U.S. business enterprises that reported in the last benchmark survey of foreign direct investment in the United States, along with those affiliates that subsequently entered the direct investment universe. The data collected are sample data covering transactions and positions between foreign-owned U.S. business enterprises and their foreign parents. Universe estimates are developed from the reported sample data.

III. Data

OMB Number: 0608–0009.

Form Number: BE–605/BE–605 Bank.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 3,950 per quarter; 15,800 annually.

Estimated Time Per Response: 1¼ hours.

Estimated Total Annual Burden: 19,750 hours.

Estimated Total Annual Cost: $592,500 (based on an estimated reporting burden of 19,750 hours and an estimated hourly cost of $30).

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 has 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: July 31, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–20755 Filed 8–6–97; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal To Collect Information on the Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of a U.S. Business Enterprise

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 comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 6, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: R. David Belli, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50(OC), Washington, D.C. 20230 (Telephone: 202–606–9800).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate (Form BE–13) and the Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters Into a Joint Venture with, a Foreign Person (Form BE–14) obtain initial data on new foreign direct investment in the United States. The survey collects identification information on, and limited financial and operating data for, the U.S. entity being established or acquired. It also collects identification information on the new foreign owner. The data are needed to measure the amount of new foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. economy, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States.

This survey is being revised to bring it into conformity with the proposed design of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997. Beginning with reports covering 1998 transactions, BEA plans to raise the exemption level for reporting to $3 million (measured by the acquired or established company's total assets) from $1 million, thereby reducing respondent burden for small companies. A concomitant requirement that a report be filed for all acquisitions of 200 or more acres of U.S. land will not be changed. BEA also proposes to base industry coding of reporting companies on the new North American Industry Classification System (NAICS) in place of the current system, which is based on the U.S. Standard Industrial Classification System. No changes are being proposed for Form BE–14, except that the exemption for reporting is raised to correspond to the new threshold for Form BE–13.

II. Method of Collection

The BE–13 survey must be filed by every U.S. business with over $3 million of assets or 200 or more acres of U.S. land that is acquired to the extent of 10 percent or more, or is established, by a foreign investor. It is a one-time report that must be filed within 45 days of the acquisition or establishment. An exemption claim must be filed for transactions that do not meet the exemption levels of $3 million of assets or 200 acres of land. The BE–14 survey is filed by a person who assists in an investment transaction, such as a real estate broker or attorney, or who enters into a U.S. joint venture with a foreign person. Its purpose is to provide BEA with the name and address of the newly established or acquired U.S. company, so that a BE–13 form can be mailed to it for completion.

III. Data

OMB Number: 0608–0035.

Form Number: BE–13/BE–14.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,200 annually.

Estimated Time Per Response: 1½ hours.

Estimated Total Annual Burden: 1,800 hours.

Estimated Total Annual Cost: $54,000 (based on an estimated reporting burden of 1,800 hours and an estimated hourly cost of $30).

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 has 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: July 31, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–20756 Filed 8–6–97; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 912]

Expansion of Foreign-Trade Subzone 183A Dell Computer Corporation; Austin, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Foreign Trade Zone of Central Texas, Inc., grantee of Foreign-Trade Zone 183, for authority to expand Foreign-Trade Subzone 183A at the Dell Computer Corporation plant in Austin, Texas, was filed by the Board on March 27, 1997 (FTZ Docket 24–97, 62 FR 17147, 4/9/97); and,

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and

that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand Subzone 183A is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 25th day of July 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 97–20736 Filed 8–6–97; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit From Thailand; Preliminary Results and Partial Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial termination of antidumping duty administrative review.

SUMMARY: In response to requests by respondents Siam Food Products Public Company Ltd. (SFP), The Thai Pineapple Public Company, Ltd. (TIPCO), and Thai Pineapple Canning Industry Corp., Ltd. (TPC), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand. The review covers three manufacturers/exporters of the subject merchandise. The period of review (POR) is January 11, 1995, through June 30, 1996.

We have preliminarily found that sales of subject merchandise have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the export price (EP) or constructed export price (CEP) and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

EFFECTIVE DATE: August 7, 1997.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler, at (202) 482–1442, or Kris Campbell, at (202) 482–3813; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations, codified at 19 CFR part 353, as they existed on April 1, 1997.

Background

On July 18, 1995, the Department published in the **Federal Register** an antidumping duty order on canned pineapple fruit from Thailand. *See* 60 FR 36775. On July 8, 1996, the Department published a notice providing an opportunity to request an administrative review of this antidumping duty order for the period January 11, 1995, through June 30, 1996. *See* 61 FR 35712. On July 31, 1996, we received timely requests for review from the following respondents: SFP; TIPCO; TPC; Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd. (collectively referred to hereafter as ''Dole''); Thai Bonanza International Corp., Ltd. (Thai Bonanza); and Vita Food Factory (Vita Food). On September 5, 1996, we issued an antidumping questionnaire to the six companies that had requested a review.

Thai Bonanza and Vita Food withdrew their requests for review on September 9, 1996, and Dole withdrew its request for review on November 7, 1996. Because there were no other requests for review of these companies from any other interested parties, and because the letters withdrawing the requests for review were timely filed, we are terminating the review with respect to these companies in accordance with 19 CFR 353.22(a)(5).

On December 12, 1996, Maui Pineapple, Ltd. (the petitioner) alleged that SFP and TPC had each sold the foreign like product at prices below their respective cost of production (COP). On January 13, 1997, we initiated a sales-below-cost investigation with respect to these two companies. We also initiated a COP investigation of sales by TIPCO because we disregarded sales below the COP in the last completed segment of the proceeding for this company. See ''Cost of Production Analysis'' below.

On January 29, 1997, we published a notice of postponement of the preliminary results. *See* 62 FR 4250.

Scope of Review

The product covered by this review is canned pineapple fruit. For purposes of this review, CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although these HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Verification

As provided in section 782(i) of the Act, we verified sales and cost information provided by all three respondents. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification reports placed in the case file.

Export Price and Constructed Export Price

For the price to the United States, we used EP or CEP as defined in sections 772(a) and 772(b) of the Act, as appropriate.

TPC

In accordance with sections 772 (a) and (c) of the Act, we calculated an EP for sales where the merchandise was sold directly by TPC to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. In accordance with sections 772 (b), (c) and (d) of the Act, we calculated a CEP for sales that took place after importation into the United States and for which U.S. sales activities, including the setting of prices, took place in the United States through affiliated U.S. resellers. EP and CEP were based on the packed FOB, CIF, or delivered price to unaffiliated

purchasers in, or for exportation to, the United States. As appropriate, we made deductions for discounts and rebates, including early payment discounts, promotional allowances, freight allowances, and billback discounts and rebates. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included inland freight from plant to port of exportation, foreign brokerage and handling, other miscellaneous foreign port charges, international freight, marine insurance, U.S. customs brokerage, U.S. customs duty, harbor maintenance fees, merchandise processing fee, and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer).

In accordance with section 772(d)(1) of the Act, we deducted from CEP selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses (credit costs, introduction allowances, and warranty expenses), and indirect selling expenses (incurred by TPC in Thailand and by TPC's affiliated reseller in the United States). We increased the reported indirect selling expenses for sales through TPC's affiliated U.S. reseller to account for unreported expenses found at verification. We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act.

No other adjustments to EP or CEP were claimed or allowed.

We relied on the date of contract as the date of sale for all of TPC's EP sales. The preamble to the Department's post-URAA regulations states that while the Department will normally rely on the date of invoice as the date of sale (*i.e.*, the date on which the material terms of sale are established), the Department will use another date if the material terms of sale are finally established on that alternative date. *See* 62 FR 27296, 27349 (May 19, 1997). While these regulations do not govern the instant review, they do describe the Department's current practice with respect to date of sale. *See id.* at 27378. The terms of all of TPC's EP sales during the POR were set by contract, and there were virtually no changes to the contracted terms of these sales. (Out of hundreds of sales, there was only a single instance of changes to the terms of the contracts.) Therefore, for these sales, we have found that the date of contract provides a more appropriate basis for date of sale than the date of invoice. As for TPC's CEP sales, these are made from inventory within a few days of receipt of purchase order. Although at verification we found that the terms of CEP sales almost never change from those shown on the purchase order, we also found that purchase orders were received in a variety of different formats, and that the dates of purchase order were not systematically recorded. Therefore, for TPC's CEP sales we have based the date of sale on the date of the invoice issued by TPC's affiliated resellers.

TIPCO

In accordance with sections 772 (a) and (c) of the Act, we calculated an EP for all of TIPCO's sales, since the merchandise was sold either directly by TIPCO or indirectly through its U.S. affiliate, TIPCO Marketing Co. (TMC), to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. Sales through TMC involved direct shipment from TIPCO to the unaffiliated customer, without any merchandise entering TMC's physical inventory; further, TMC's involvement in the sales process for indirect sales was limited to that of a processor of sales documentation and did not extend in any way to negotiation of sales terms or other selling functions. We calculated EP based on the packed FOB or CIF price to unaffiliated purchasers for exportation to the United States. We made deductions from EP for rebates. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign movement expenses (brokerage and handling, port charges, liner expenses, stuffing expenses, and inland freight), international freight, U.S. customs duties, and U.S. brokerage and handling.

No other adjustments to EP were claimed or allowed.

For all sales by TIPCO, the material terms of sale were initially set on the date of purchase order but were frequently modified up to the date of invoice. Therefore, in accordance with the date of sale methodology described above, we have relied on the date of invoice as the date of sale.

The merchandise involved in certain U.S. sales reported by TIPCO was produced by unaffiliated suppliers. We did not include in our analysis sales of merchandise produced by one such supplier because we determined that this supplier had knowledge that the merchandise was destined for export to the United States. *See Memorandum from Case Analysts to Office Director: Verification of Sales by the Thai Pineapple Public Co., Ltd.*, July 30, 1997, at 5–6. We included TIPCO's other U.S. sales involving merchandise produced by unaffiliated suppliers in our analysis because we determined that these suppliers did not have knowledge of exportation to the United States. *Id.* We compared these U.S. sales to the constructed value (CV) of identical merchandise produced by TIPCO, as facts available, because: (1) There were no appropriate third-country matches involving merchandise produced by the same suppliers and (2) TIPCO did not provide information regarding these suppliers' production costs.

SFP

In accordance with sections 772 (a) and (c) of the Act, we calculated an EP for all of SFP's sales, since the merchandise was sold directly by SFP to the first unaffiliated purchaser in the United States prior to importation, and a CEP was not otherwise warranted based on the facts of record. We made deductions from EP for discounts. We also made deductions for foreign inland movement expenses in accordance with section 772(c)(2)(A) of the Act.

No other adjustments to EP were claimed or allowed.

For all sales by SFP, the material terms of sale were initially set on the date of purchase order but were frequently modified up to the date of invoice. Therefore, in accordance with the date of sale methodology described above, we have relied on the date of invoice as the date of sale.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of foreign like product each respondent sold in the exporting country did not permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1)(B)(ii)(II) of the Act, because the quantity of each company's sales in its home market was less than five percent of the quantity of its sales to the U.S. market. In accordance with section 773(a)(1)(C) of the Act, and consistent with our practice, we therefore based NV on the prices at which the foreign like products were first sold for consumption in each respondent's largest third-country market, *i.e.*, the United Kingdom for SFP, and Germany for TIPCO and TPC. *See* Memoranda from the team to Richard Moreland, dated February 24, 1997, regarding the selection of third-country market for each respondent.

TPC

Third-country market prices were based on the packed, ex-factory or delivered prices to unaffiliated purchasers in Germany. We made

adjustments for differences in packing in accordance with section 773(a)(6)(A) of the Act. We also made adjustments for movement expenses consistent with section 773(a)(6)(B) of the Act; these included inland freight from plant to port of exportation, foreign brokerage and handling, other miscellaneous foreign port charges, and international freight. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56. For comparison to EP, we made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, letter of credit charges, and bank charges) and adding U.S. direct selling expenses (credit expenses, letter of credit charges, bank charges, and warranties). For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales and adding U.S. direct selling expenses other than those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act (*i.e.,* we added expenses for letters of credit and bank charges incurred by TPC in Thailand). We also made adjustments, where applicable, for indirect selling expenses incurred on third-country sales to offset commissions in EP and CEP calculations; specifically, we deducted from normal value the lesser of (1) the amount of commission paid on a U.S. sale for a particular product, or (2) the amount of indirect selling expenses incurred on the third-country market sales for a particular product.

No other adjustments to NV were claimed (except for a CEP offset; *see* ''Level of Trade'' section below), or allowed.

We relied on the date of contract as the date of sale for all of TPC's third country sales. As discussed in the ''Export Price and Constructed Export Price'' section above, while the Department will normally rely on the date of invoice as the date of sale, the Department will use another date if the material terms of sale are finally established on that alternative date. The terms of all of TPC's third-country sales during the POR were set by contract, and there were virtually no changes to the contracted terms of these sales. (Out of hundreds of sales, there were only three instances of changes to the terms of the contracts.) Therefore, for these sales, we have found that the date of contract provides a more appropriate basis for date of sale than the date of invoice.

TIPCO

Third-country market prices were based on the packed, ex-factory or delivered prices to unaffiliated purchasers in Germany. We made adjustments for differences in packing in accordance with section 773(a)(6)(A) of the Act. We also made adjustments for movement expenses consistent with section 773(a)(6)(B) of the Act; these included foreign movement expenses (brokerage and handling, port charges, liner expenses, stuffing expenses, and inland freight), and international freight. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in COS in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses and bank charges) and adding U.S. direct selling expenses (credit expenses, bank charges, and warranties). We also made adjustments, where applicable, for indirect selling expenses incurred on third-country sales to offset U.S. commissions in EP calculations; specifically, we deducted from normal value the lesser of (1) the amount of commission paid on a U.S. sale for a particular product, or (2) the amount of indirect selling expenses incurred on the third-country market sales for a particular product.

No other adjustments to NV were claimed or allowed.

For all sales by TIPCO, the material terms of sale were initially set on the date of purchase order but were frequently modified up to the date of invoice. Therefore, in accordance with the date of sale methodology described above, we have relied on the date of invoice as the date of sale.

SFP

Third-country market prices were based on the packed, ex-factory or delivered prices to unaffiliated purchasers in the United Kingdom. We made adjustments for differences in packing in accordance with section 773(a)(6)(A) of the Act. We also made adjustments for foreign movement expenses consistent with section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in COS in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses and bank charges) and adding U.S. direct selling expenses (credit expenses, bank charges, and warranties). We also made adjustments, where applicable, for indirect selling expenses incurred on third-country sales to offset U.S. commissions on EP sales; specifically, we deducted from normal value the lesser of (1) the amount of commission paid on a U.S. sale for a particular product, or (2) the amount of indirect selling expenses incurred on the third-country market sales for a particular product.

No other adjustments to NV were claimed or allowed.

For all sales by SFP, the material terms of sale were initially set on the date of purchase order but were frequently modified up to the date of invoice. Therefore, in accordance with the date of sale methodology described above, we have relied on the date of invoice as the date of sale.

Level of Trade/CEP Offset

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the URAA at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales of the foreign like product in the comparison market at the same level of trade as the U.S. sale, the Department may compare the U.S. sale to sales at a different level of trade in the comparison market.

When CEP sales have been made in the United States, as is the situation in TPC's case, section 773(a)(7)(B) of the Act establishes that a CEP ''offset'' may be made provided that two conditions exist: (1) NV is established at a level of trade that is at a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not permit a determination that there is a pattern of consistent price differences between sales at different levels of trade in the comparison market.

Our practice is to determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. *See Notice of Final Results: Antidumping Duty Administrative Review of Antifriction*

Bearings from France et al., 62 FR 2081, 2105 (January 15, 1997). *See also* 19 CFR 351.412 of the Department's revised regulations (62 FR 27296, 27414–27415 (May 19, 1997)) for a concise description of this practice.

In implementing these principles in this review, we obtained information from each respondent about the marketing stage involved in the reported U.S. and third-country market sales and a description of the selling activities performed by the respondents for each channel of distribution. Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and third-country market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

TPC

During the POR, TPC made sales through different channels of distribution in the U.S. and German markets. In the United States, TPC made both direct sales to unaffiliated customers and sales through affiliated U.S. resellers Mitsubishi International Corporation (MIC) and MC Foods, Inc. (MFI). In Germany, TPC made both direct sales and indirect sales through an affiliated reseller in the Netherlands, Princes Foods B.V. (Princes).

We compared the selling activities performed by TPC for EP sales to the activities performed by TPC and MIC/MFI for CEP sales (after excluding those selling activities related to the expenses deducted under section 772(d) of the Act), and found them to be both limited in scope and essentially identical. The functions that TPC performed on both direct and indirect sales were limited to negotiation of prices, processing of purchase orders, and invoicing. Therefore, we have preliminarily found that there is a single level of trade in the United States for both EP and CEP sales. Similarly, we compared the selling functions and activities performed by TPC for direct sales to Germany to the functions and activities performed by TPC and Princes for indirect sales to Germany. These activities were also limited to negotiating prices with German customers, invoicing those customers, and making limited sales calls. In essence, the only difference in selling activity between TPC's direct and indirect sales to Germany is that indirect sales involved the issuance of an additional invoice among affiliated parties, and this difference does not establish a significantly more advanced marketing stage. Therefore, we have considered TPC's direct and indirect sales to Germany as being at a single level of trade.

Because the selling functions performed for TPC's sales in the two markets are essentially the same, irrespective of channel of distribution, we find that all of TPC's sales were made at a single level of trade. Therefore, no level of trade adjustment or CEP offset is warranted in the calculation of TPC's antidumping margin.

SFP and TIPCO

In this review, SFP and TIPCO claimed that all of their sales were made at a similar channel of distribution (direct sales to customers in export markets), and involved identical selling functions, irrespective of market. In examining these selling functions, we found that sales activities were indeed limited to negotiation of prices, processing of purchase orders/contracts, invoicing, and collection of payment; there was little or no strategic and economic planning, advertising or sales promotion, technical services, technical assistance, or after-sale service performed in either market. Therefore, for these two respondents we have preliminarily found that there is a single (and identical) level of trade in both markets, and no level of trade adjustment is required for comparison of U.S. sales to third-country sales.

Cost of Production Analysis

As stated above, based on timely allegations filed by the petitioner, the Department initiated cost of production (COP) investigations of SFP and TPC to determine whether sales were made at prices below the COP. *See* Memorandum from the team to Barbara Stafford, dated January 10, 1997.

Because we disregarded sales below the COP in the last completed segment of the proceeding for TIPCO (*i.e.*, the less-than-fair-value investigation), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by TIPCO in the third-country comparison market.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the cost of materials, fabrication and general expenses, and packing costs. We relied on the submitted COPs, except in the following specific instances where the submitted costs were not appropriately quantified or valued.

General—Fruit Cost Allocation

The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records if such records are in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with production of the merchandise. In addition, as the statute indicates, the Department considers whether an accounting methodology, particulary an allocation methodology, has been historically used by the company. *See* section 773 (f)(1)(A) of the Act.

During the POR, TIPCO, SFP and TPC abandoned their historical fruit cost allocation methodology. We reviewed each of the newly adopted fruit cost allocation methodologies, and found that all three were based on the relative weight of the fruit contained in the CPF produced. As discussed in the final determination in the underlying investigation (*see Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29553, 29561 (June 5, 1995)), allocating fresh pineapple fruit costs to various pineapple products solely on the basis of weight (*i.e.*, a quantitative factor) is inappropriate. Cores and shells are used in juice production, while trimmed and cored pineapple cylinders are used in CPF production. Because these various parts of a pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts of the pineapple equally by using a weight-based allocation methodology. The revised fruit cost allocation methodologies which each company changed to during the POR were weight-based and did not incorporate any measure of the qualitative factor of the different parts of the pineapple. As a result, such methodologies, although in conformity with Thai GAAP, do not reasonably reflect the costs associated with production of CPF.

Therefore, for each company, we recalculated the fruit cost allocated to CPF based on a net realizable value (NRV) methodology. As described in the final determination of the underlying investigation, this NRV methodology reasonably reflects costs associated with CPF production. *See id.* at 29560. The NRV methodology was based on company-specific historical amounts for sales and separable costs during the five-year period of 1990 through 1994.

In addition to the revised fruit cost allocation described above, we made the following company-specific adjustments to the submitted costs.

TIPCO

1. We revised packing medium cost for juice packed products and the can costs to reflect corrections obtained at verification. *See* Cost Verification Report from William H. Jones to Christian B. Marsh, dated July 3, 1997.
2. We adjusted certain costs incurred prior to the split-off point which were improperly allocated.
3. We revised TIPCO's general and administrative (G&A) expenses to exclude foreign exchange gains generated by accounts receivable.
4. We revised TIPCO's financial expenses using its consolidated financial expenses.

SFP

1. We revised the total pineapple fruit costs to include year-end adjustments for physical inventory, plantation costs, and skin and core revenues. *See* Cost Verification Report from William H. Jones to Christian B. Marsh, dated July 3, 1997 (SFP cost verification report).
2. We revised the costs of cans, sugar, labor, overhead and packing to reflect corrections obtained at verification. *See* SFP cost verification report.
3. We revised SFP's G&A rate to reflect the expenses incurred during the fiscal year ended September 30, 1995.
4. We revised SFP's net financial expense to reflect expenses and short-term interest income for the fiscal year ended September 30, 1995.

TPC

1. We revised the can and packing material cost to reflect corrections obtained at verification. *See* Cost Verification Report from Theresa L. Caherty to Christian B. Marsh, dated July 2, 1997 (TPC cost verification report).
2. We revised the packing costs to include fixed packing costs and to correct errors found at verification. *See* TPC cost verification report.
3. We calculated a single weighted-average cost for products with identical physical characteristics.
4. We recalculated TPC's financial expense rate to include interest expenses incurred to include net foreign exchange losses from loans, investments and operations; and to include short-term interest revenue.

B. Test of Third-Country Comparison Market Sales Prices

We compared the adjusted weighted-average COP for each respondent to the third-country comparison market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the revised COP to the third-country comparison market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in ''substantial quantities'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and based on comparisons of price to weighted-average COPs for the POR we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Where all contemporaneous sales of a specific product were made at prices below the COP, we calculated NV based on CV, in accordance with section 773(a)(4) of the Act.

We found that, for certain CPF products, TIPCO, SFP and TPC made third-country comparison market sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

Constructed Value

For those CPF products for which we could not determine the NV based on comparison market sales either because (1) there were no contemporaneous sales of a comparable product or (2) all contemporaneous sales of the comparison product failed the COP test, we compared export prices to CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the COM of the product sold in the United States, plus amounts for general expenses, third-country comparison market profit and U.S. packing costs. We calculated each respondent's CV based on the methodology described in the ''Calculation of COP'' section of this notice, above. In accordance with section 773(e)(2)(A), we used the actual amounts incurred and realized by TIPCO, SFP and TPC in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country to calculate general expenses and third-country comparison market profit.

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 353.56 for COS differences. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales and adding U.S. direct selling expenses except those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act (*i.e.*, we added letter of credit expenses and bank charges). We also made adjustments, where applicable, for indirect selling expenses incurred on third-country market sales to offset U.S. commissions in EP and CEP comparisons; specifically, we deducted from normal value the lesser of (1) the amount of commission paid on a U.S. sale for a particular product, or (2) the amount of indirect selling expenses incurred on the third-country market sales for a particular product.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates published by the Federal Reserve, in effect on the dates of the U.S. sales. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate

involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate. However, for the preliminary results in this review we have determined that a fluctuation did not exist during the POR, and we have not substituted the benchmark for the daily rate.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period January 11, 1995, through June 30, 1996:

Manufacturer/exporter	Margin (percent)
Siam Food Products Public Company Ltd	13.25
The Thai Pineapple Public Company, Ltd	33.06
Thai Pineapple Canning Industry Corp., Ltd	6.54

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within ten days of publication. If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated, on an importer-specific basis, an assessment rate by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total entered value of subject merchandise sold during the POR. This rate will be used for the assessment of antidumping duties on the relevant entries of subject merchandise during the POR. Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of canned pineapple fruit from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for SFP, TIPCO, and TPC will be the rate established in the final results of this administrative review; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 24.64 percent, the ''all others'' rate established in the less-than-fair-value investigation. *See* 60 FR 36775, 36776 (July 18, 1995).

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 751(d) of the Act (19 U.S.C. 1675(a)(1)), 19 CFR 353.22, and 19 CFR 353.25.

Dated: July 31, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–20733 Filed 8–6–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–807]

Ferrovanadium and Nitrided Vanadium From the Russian Federation: Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from Shieldalloy Metallurgical Corporation (Shieldalloy), the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on ferrovanadium and nitrided vanadium from the Russian Federation (Russia). This notice of preliminary results covers the period January 4, 1995, through June 30, 1996. The Department is now rescinding this review in part with respect to one exporter, Odermet, Ltd., who had no shipments of the subject merchandise during the period of review. For the second exporter, Galt Alloys, Inc.(Galt), the review indicates the existence of dumping margins during this period for sales of merchandise from one producer.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties equal to the difference between the export price (EP) and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: August 7, 1997.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Mary Jenkins, AD/CVD Enforcement II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4136 or (202) 482–1756, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 353 (April 1, 1997).

Background

The Department published an antidumping duty order on

ferrovanadium and nitrided vanadium from the Russian Federation on July 10, 1995 (60 FR 35550).

The Department published a notice of ''Opportunity To Request an Administrative Review'' of the antidumping duty order for this review period on July 8, 1996 (61 FR 35712). On July 17, 1996, Shieldalloy requested that the Department conduct an administrative review of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia for exporters Galt and Odermet, Ltd. We published a notice of initiation of the review on August 15, 1996 (61 FR 42416).

In a letter dated September 9, 1996, Odermet, Ltd., stated that it made no shipments of the subject merchandise during the review period. In response to our query, Customs provided no indication that Odermet had shipped the merchandise during the review period.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for the preliminary results of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. On April 7, 1997, the Department extended the time limit for the preliminary results in this case (*see Ferrovanadium and Nitrided Vanadium from the Russian Federation; Notice of Extension of Time Limit for Antidumping Duty Administrative Time Limit for Antidumping Duty Administrative Review*, 62 FR 16542, April 7, 1997). The Department is conducting this administrative review in accordance with section 751 of the Act.

Recission

We have determined that during the period of review (POR), Odermet did not export the subject merchandise to the United States. Therefore, we rescind this review with respect to Odermet.

Scope of the Review

The products covered by this administrative review are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of this order. Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (*i.e.*, more weight than any other element, except iron in some instances) and at least 4 percent by weight of iron. Nitrided vanadium includes compounds containing vanadium as the predominant element, by weight, and at least 5 percent, by weight, of nitrogen. Excluded from the scope of this order are vanadium additives other than ferrovanadium and nitrided vanadium, such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials, such as slag, boiler residues, fly ash, and vanadium oxides.

The products subject to this order are currently classifiable under subheadings 2850.00.20, 7202.92.00, 7202.99.5040, 8112.40.3000, and 8112.40.6000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

The POR is January 4, 1995, through June 30, 1996, covering one exporter, Galt.

Fair Value Comparisons

Galt, a U.S. company, reported that it purchased merchandise produced by two producers—SC-Vanadium Tulachermet (Tulachermet) and Chusovoy Metallurgical Works (Chusovoy)—and re-sold the merchandise to customers in the United States and other countries via a warehouse in Europe. Galt reported that neither producer is affiliated with Galt and at the time of each producer's sale to Galt, neither producer knew the ultimate destination of the merchandise. Thus, for purposes of the fair value comparison, Galt's sales to its first unaffiliated U.S. customer form the basis of export price.

However, these producers knew at the time of the sale that the merchandise was destined for exportation. Further, the subject merchandise was merely transhipped through the intermediate country. Therefore, in accordance with section 773(a)(3), normal value is determined in the country of origin using the factors of production methodology, as discussed below.

Both Tulachermet and Chusovoy responded to the Department's initial antidumping questionnaire, but Chusovoy did not respond to the Department's supplemental questionnaire. Tulachermet has continued to cooperate with the Department's requests for information.

Under section 776(a)(2) (A) and (B) of the Act, the Department shall use facts otherwise available in making its determinations if an interested party withholds or fails to provide information at the time and in the manner requested. In this instance, the NV information necessary to calculate antidumping duties for Galt's sales of Chusovoy-produced merchandise is not on the record because Chusovoy failed to provide requested information by the established deadline. The limited information that Chusovoy submitted is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination in this review. As a result, pursuant to sections 776(a) and 782(e) of the Act, the Department must resort to facts available.

Section 776(b) of the Act permits the Department to use an adverse inference in selecting from facts available if the Department finds that an interested party has not cooperated to the best of its ability in responding to a request for information. By failing to respond, Chusovoy has not cooperated to the best of its ability. Therefore, we find it appropriate to apply adverse facts available with regard to Galt's sales of Chusovoy-produced merchandise. At the same time, both Galt and its second Russian supplier, Tulachermet, fully cooperated with the Department. Thus, under section 776(b) of the Act, an adverse inference is not warranted with respect to sales of Tulachermet's merchandise.

The information submitted by Galt and Tulachermet meets the requirements of section 782(e) of the Act:

(1) The information is timely;

(2) The information is verifiable;

(3) The information is not so incomplete that it cannot serve as a reliable basis for our determination;

(4) These parties have acted to the best of their abilities in providing the requested information; and

(5) The information can be used without undue difficulties. Accordingly, we have relied upon the information submitted by Galt and Tulachermet.

Consistent with our current practice, we have calculated a single rate applicable to the exporter, Galt. This rate reflects the use of adverse facts available for Galt's sales of Chusovoy merchandise as well as calculated margins for Galt's sales of Tulachermet merchandise (*see, e.g., Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Ukraine*, 60 FR 16433, March 30, 1995). However, we will continue to examine whether, given the facts of this case, applying separate ''combination rates'' (*i.e.*, rates for each specific exporter/producer combination) would be more appropriate. Therefore, we invite comments from interested parties on this issue.

Selection of Adverse Facts Available Rate for Sales of Chusovoy-Produced Merchandise

Section 776(b) authorizes the Department to use as adverse facts

available information derived from the petition, a final determination from a segment of the proceeding, or other information placed on the record. Because information from the petition and prior segments of the proceeding constitute secondary information, the Department must, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal, as stated in section 776(c) of the Act.

In light of Chusovoy's failure to respond, we have determined that the information in the petition is the most appropriate facts available. To corroborate that information, we reviewed the data submitted and the assumptions petitioners made in calculating estimated dumping margins in the petition. As discussed in detail in ''Corroboration of FA Rates,'' Memorandum to Jeffrey P. Bialos, Principal Deputy Secretary for Import Administration, from the Ferrovanadium Team, dated July 31, 1997 (Corroboration Memo), we compared the petition's bases for U.S. price (now export price), factors of production, and surrogate values to independent data from the period of investigation. *See also Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Fresh Garlic from the People's Republic of China* (61 FR 68229, 68230, December 27, 1996), *Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils From the People's Republic of China* (62 FR 1734, 1735, January 13, 1997), and *Preliminary Results of Antidumping Duty Administrative Review Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand* (62 FR 16541, 16542, April 7, 1997).

Based on our analysis, we determined that the elements of the petition calculation are reliable and, with one adjustment, have probative value. During the LTFV investigation, we determined that the principal raw material used by respondents to produce the subject merchandise, vanadium slag, was of significantly lower quality than the material upon which the petitioner estimated its surrogate value (*see* also discussion below under ''Normal Value''). Therefore, we have adjusted the valuation of the vanadium slag factor in the petition to reflect this difference in quality. With this adjustment, the corroborated rate derived from the petition is 88.63% .

Accordingly, for Galt's sales of Chusovoy-produced merchandise, we have applied the recalculated petition rate of 88.63 percent.

Galt's Export Price and Constructed Export Price

As Galt is located in a market-economy country and is not affiliated with a Russian producer or exporter, we are calculating a separate rate for this reseller *(see Bicycles From the PRC; Final Determination of Sales at Less Than Fair Value*, 61 FR 19026, 19027 (April 30, 1996)). During the POR, Galt took possession of the Russia-produced merchandise outside of the United States and then sold the merchandise to unaffiliated customers in the United States.

For Galt's sales of subject merchandise produced by Tulachermet, when the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and when constructed export price (CEP) methodology was not otherwise indicated, we calculated the export price (EP) of the subject merchandise sold to the United States in accordance with section 772(a) of the Act. Where Galt's sales to the first unaffiliated purchaser took place after importation into the United States, we based the price in the United States on CEP, in accordance with section 772(b) of the Act.

We calculated EP based on the price to unrelated purchasers in the United States. We made deductions, where appropriate, for the following movement expenses incurred in market economy currencies and provided by market economy suppliers: foreign brokerage and handling, ocean freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, and U.S. duty charges. We valued inland freight expenses incurred in bringing the subject merchandise from the Russian plant to the reseller's warehouse using surrogate data based on South African freight costs. We selected South Africa as the surrogate country for the reasons explained in the ''Surrogate Country Selection'' section of this notice.

For CEP sales, we made additional deductions for Galt's direct and indirect selling expenses, including inventory carrying costs, incurred with regard to economic activities in the United States, as well as repacking, warehousing, and credit expenses, pursuant to section 772(d)(1) of the Act. Galt reported its indirect selling expenses on a fixed, per-unit basis. We have recalculated these expenses as a percentage of sales value, based on information in Galt's questionnaire response, consistent with the manner in which the Department normally calculates indirect selling expenses. We deducted an amount for CEP profit by applying Galt's profit rate to the sum of selling expenses incurred in the United States, in accordance with section 772(f) of the Act.

No other adjustments to EP or CEP sales were claimed or allowed.

Surrogate Country Selection

As noted above, NV is determined in Russia, the country of origin, in accordance with section 773(a)(3) of the Act. Because the Department considers Russia an NME country and the producers of the merchandise exported by Galt are located in Russia, we are not able to determine NV on the basis of these producers' costs and prices. Section 773(c)(1) of the Act provides that the Department shall determine the NV on the basis of the value of the factors of production if (1) the subject merchandise is exported from an NME country, and (2) the available information does not permit the calculation of NV under section 773(a) of the Act. Therefore, we have applied surrogate values to factors of production to determine NV.

We determined that South Africa is comparable to the Russian Federation in terms of per capita gross national product and the national distribution of labor (*See* ''Ferrovanadium and Nitrided Vanadium from Russia: Nonmarket Economy Status and Surrogate Country Selection,'' Memorandum to David Binder from David Mueller, October 29, 1996). In addition, South Africa is a significant producer of ferrovanadium. Therefore, we chose South Africa as an appropriate surrogate on the basis of the above criteria and have used publicly available information relating to South Africa wherever possible to value the various factors of production.

Normal Value

To determine the NV for Galt sales of merchandise produced by Tulachermet, we valued the factors of production as discussed in the Valuation Memorandum dated July 28, 1997, on file in the Central Records Unit. The values used are summarized below:

- We valued most raw materials and packing materials based on South African domestic prices in *South Africa's Mineral Industry 1995/96* (SAMI 95/96) and unit prices, reported net of taxes, based on South African import data from *Southern African Customs Union Trade Statistics* (SACU Trade Statistics).

For vanadium slag, we valued a portion of Tulachermet's consumption at the market economy price Tulachermet paid for South African slag consumed during the POR. The balance

of Tulachermet's POR slag consumption was Russian-sourced slag, which contained a substantially lower concentration of vanadium pentoxide. We were unable to find any surrogate value data for vanadium slag of this quality. As facts available, we used Tulachermet's purchase price for South African slag as the surrogate value and adjusted it downward to account for the difference in vanadium pentoxide content, using the same adjustment made in the LTFV investigation.

As discussed in the Valuation Memorandum, the Department received information in this proceeding that the 90% vanadium pentoxide prices used in the LTFV adjustment methodology were based on Russian material prices. According to information obtained from an industry publication, *Metal Bulletin*, it is not possible to determine prices of 90% vanadium pentoxide from market economy counties during that period. In the absence of any other means to adjust the slag value, we are applying the LTFV methodology for the preliminary results as facts available. In doing so, we recognize that the 90% vanadium pentoxide prices used to establish the adjustment ratio represent merchandise from a non-market economy. However, it is the only information on the record with which to make the adjustment. As such, the resulting relationship between 90% vanadium pentoxide, produced from low-grade slag equivalent to Nizhni-Tagil slag, and 98% vanadium pentoxide, produced from high-grade South African slag, is the best available means to account for the substantial disparity between the material to be valued and the material from which the surrogate value is derived.

We were also unable to obtain surrogate values for vanadium trioxide and pre-alloyed vanadium. As facts available, we valued these materials based on South African vanadium pentoxide and ferrovanadium prices, respectively, adjusted for differences in vanadium content.

For sulfuric acid, we used the average, tax-exclusive, price reported by a South African vanadium producer.

Finally, we were unable to identify any comparable surrogate value for the chemical input boron anhydride. The quantity of this material used to produce ferrovanadium is a very small amount. For the preliminary results, we have calculated NV without surrogate material costs for this factor.

- To value truck and rail freight, we used the South African rail rate used in the LTFV investigation. We adjusted this rate for inflation, using a wholesale price index published by the International Monetary Fund. We relied on this rate for both truck and rail transportation of input materials and for foreign inland freight because we were unable to find any other suitable surrogate freight value.

Tulachermet did not report the distance from its supplier of two packing materials. As facts available, we have used the farthest distance reported by Tulachermet for any supplier in calculating the surrogate freight costs for these materials.

- For electricity, we used the average POR rate for industrial users as published by the South African state utility company, ESKOM. For natural gas, we used the South African POR price provided to us by ESKOM.
- For labor, we used the skilled and unskilled wage rates for the South African metallurgical industry reported to us by a South African producer of vanadium.
- For factory overhead, selling, general, and administrative (SG&A) expenses and profit, we calculated ratios from the 1995 Annual Report of the South African ferrovanadium manufacturer Highveld Steel and Vanadium Co., Ltd.

Preliminary Results

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Exporter	Period	Margin (percent)
Galt Alloys, Inc.	1/4/95–7/31/96	34.73

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish a notice of the final results of the administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 120 days from the issuance of these preliminary results.

The final results of this review shall be the basis for the assessment of antidumping dumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between EP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs.

Further, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of ferrovanadium and nitrided vanadium from the Russian Federation entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Galt will be the producer-specific rates established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation and have a separate rate, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) for Russian manufacturers or exporters not covered in the LTFV investigation, the cash deposit rate will continue to be the Russia-wide rate of 108.00 percent; and (4) the cash deposit rate for non-Russian exporters of subject merchandise from Russia who were not covered in the LTFV investigation or in this administrative review, will also be the Russia-wide rate. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and published in accordance with section 777(i).

Dated: July 31, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–20734 Filed 8–6–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Certain Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On January 31, 1997, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain porcelain-on-steel cookware from Mexico (62 FR 4723) (*preliminary results*). The review covers two manufacturers/exporters of the subject merchandise to the United States and the period December 1, 1994, through November 30, 1995.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical and computer program errors, we have changed the preliminary results. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: August 7, 1997.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Dolores Peck, AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4929.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1997, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain porcelain-on-steel (POS) cookware from Mexico (62 FR 4723). On March 3, 1997, and March 10, 1997, General Housewares Corp. (petitioner) and, Cinsa and ENASA submitted case and rebuttal briefs. The Department held a hearing on March 27, 1997. During June 23–27, 1997, the Department verified respondent's submissions concerning the issues of Cinsa's and ENASA's cross manufacturing capability, alleged duty reimbursement and frit purchases from affiliated suppliers. On July 18, 1997, the Department issued the verification report and requested comments from interested parties. The Department has now completed its administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations, codified at 19 CFR part 353 (April 1996).

Scope of the Review

Imports covered by this review are shipments of porcelain-on-steel cookware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 7323.94.00. Kitchenware currently entering under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Changes Since the Preliminary Results

We have made the following changes in these final results:

1. We reclassified ENASA's U.S. sales pursuant to a requirements contract as constructed export price (CEP) sales. *See* Comment 5 below.

2. We calculated a return freight figure for merchandise returned to Yamaka by its unrelated customer using adverse facts available. We are assuming that all unsold merchandise was returned to the warehouse in Laredo, Texas. *See* Comment 7 below.

3. We reclassified Cinsa's and ENASA's home market warehouse expenses as movement expenses and have deducted the reported amount on sales made from remote warehouses in Mexico City and Guadalajara. *See* Comment 8 below.

4. We deducted the reported indirect selling expenses from USP for CEP sales made by Cinsa International Corp. (CIC) for both Cinsa and ENASA. *See* Comment 9 below.

5. We have not deducted Cinsa's and ENASA's reported Mexican indirect selling expenses (*i.e.*, indirect selling expenses incurred in Mexico on U.S. sales) from the CEP calculation. *See* Comment 10 below.

6. We used the Federal Reserve Bank's actual daily exchange rates for currency conversion purposes. *See* Comment 12 below.

7. We increased the frit portion of direct materials costs for Cinsa and ENASA to reflect only the undocumented portion of costs savings attributable to volume discounts on purchases from an affiliated frit supplier.

8. Computer Programming Errors

A. We corrected an error in both the Cinsa and ENASA concordance programs that incorrectly limited the number of home market sales included in the concordance.

B. We corrected an error in both the Cinsa and ENASA concordance and margin programs that incorrectly matched sales within a 90/60 day window, since during periods of high inflation, we only use home market sales in the same month as the U.S. sale for comparison purposes.

C. We corrected an error in both the Cinsa and ENASA concordance programs that incorrectly rounded the averaged, indexed COP and CV.

D. We corrected errors in the margin program for ENASA that incorrectly omitted weighted average commissions and indirect selling expenses, causing an incorrect calculation of the commission offset.

E. We calculated an adjustment for CEP profit for both Cinsa and ENASA in the margin program.

F. We made adjustments for differences in packing expenses for both Cinsa and ENASA when comparing non-identical merchandise.

Interested Party Comments

Comment 1: Should Cinsa and ENASA be collapsed?

Petitioner argues that the Department should collapse the affiliated parties Cinsa and ENASA and treat them as a single entity for purposes of assigning a dumping margin. Petitioner notes that, in this review, the two companies are controlled by the same board of directors, the same individuals manage the two companies, and the companies' plants are situated adjacent to each

other on the same premises. Therefore, petitioner claims, the Department should determine, based on the ''totality of the circumstances,'' that Cinsa and ENASA should be collapsed. In addition, petitioner contends, citing the July 18, 1997 verification report, that Cinsa and ENASA did not satisfy their burden of showing that substantial retooling would be necessary to shift production of medium gauge (MG) cookware from ENASA to Cinsa or light gauge (LG) cookware from Cinsa to ENASA.

Petitioner adds that in considering the companies' ability to shift production, the Department must not discount the companies' ability to cooperate with each other. Petitioner states that the Department need not focus its production-shifting analysis on purchase of new equipment. Instead, petitioner suggests, Cinsa and ENASA could shift production by simply moving the machinery they currently own from one adjacent plant to another or sell components produced in one plant to the other plant, given that they are managed by the same individuals.

Furthermore, petitioner argues that collapsing is necessary to prevent circumvention in this case. Accordingly, petitioner argues that the Department should adopt an adverse inference with respect to Cinsa and ENASA and conclude that production of LG and MG cookware could be shifted between the companies without substantial retooling.

Cinsa and ENASA maintain that the Department properly classified them as two separate companies on the grounds that their respective production facilities were separate and distinct, and that the machinery used by Cinsa to produce its LG cookware lines and that used by ENASA to produce its heavy gauge (HG) and MG cookware lines could not be used interchangeably without undergoing fundamental and expensive retooling. Cinsa and ENASA argue that petitioner's claim that they can shift production is not supported by the evidence on the record, including the July 18, 1997 verification report.

DOC Position: The Department has determined that Cinsa and ENASA should not be collapsed based on the facts on the record of this segment of the proceeding. The evidence on the record supporting this decision includes the July 18, 1997 verification report noting the differences and similarities between the Cinsa and ENASA production facilities and the different cookware lines produced by the two companies. Due to the proprietary nature of the facts obtained at verification, a more complete analysis of this issue appears in the July 30, 1997 Memorandum to Louis Apple from The Team.

The Department's current practice, recently codified at 19 CFR 351.401(f), 62 FR 27410 (May 19, 1997), is to treat affiliated producers as a single entity only when both of two criteria are met: (1) Those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and (2) the Secretary concludes that there is a significant potential for the manipulation of price or production.

The facts outlined in the verification report indicate that, although Cinsa and ENASA can both press cookware forms from medium gauge steel sheets, Cinsa does not have the capability to manufacture cookware of the quality and styles produced by ENASA and ENASA does not have the capability to produce cookware of the quality and styles produced by Cinsa.

Furthermore, in the preliminary results of review, the Department noted that, although we consider both ENASA's HG and Cinsa's LG cookware to be subject merchandise, they are not similar products and therefore cannot be reasonably compared for the purposes of determining dumping margins. (ENASA's MG cookware, which is essentially a lighter, less expensive version of the Euro-style cookware ENASA also produces in HG steel on the same production line, may be comparable to ENASA's HG Euro-style cookware with a difference in merchandise adjustment. Because there were no sales of ENASA's MG cookware to the United States during the POR, we did not need to reach that comparison question in this review.) *See* Comment 4.

Because we determined that the physical infrastructures of the two firms are insufficiently similar to meet the production facility requirement of the collapsing test, it is not appropriate to treat these firms as a single entity for the purpose of assigning an antidumping margin in this administrative review. Further, having made this determination, we do not need to examine the questions of significant common ownership and interlocking directors and managers, because we need not determine whether a significant potential for manipulation of price or production exists.

With respect to petitioner's argument that any collapsing decision must be based on the ''totality of the circumstances,'' such that the absence of overlapping production facilities must be weighed against the concerns associated with a substantial degree of common control, we disagree. It is the Department's recent practice (even under the pre-URAA law) to refrain from *collapsing* firms when there are differences in production facilities that would require substantial retooling. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 42511, 42512 (August 16, 1995) (stating that no one factor is ''determinative,'' but then determining that two ''related parties'' should not be collapsed ''because the two companies do not make comparable products such that a shift in production could be accomplished without fundamental and expensive retooling). In *Certain Cold Rolled Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 65284, 65285 (December 19, 1995), the Department clarified that having common production facilities prong is a necessary but not sufficient condition for collapsing related firms. ''With respect to the third factor (common production facilities), the Department has recently clarified that, although not necessarily determinative, this factor is essential.'' *Id*.

Finally, petitioner's arguments concerning the alleged ease with which respondents could physically shift machinery from one plant to the other are misplaced. The Department's current test examines, rather than assumes, the current ability of the affiliated firms to shift production. In order to evaluate the ability of two affiliated companies to cross-manufacture, the Department takes as a point of departure the existence of separate corporate entities with separately-owned physical plants. From that point of departure, it analyzes the expense and difficulty involved in physically shifting production between the plant owned by one company and the plant owned by another, affiliated, company. The verification report examines the cost of retooling Cinsa's plant to produce one model, conical frying pans, from ENASA's entire line of medium gauge, Euro-style cookware, despite the fact that, during the POR, ENASA sold only sets (which would require even more retooling in order to shift production) in the home market.

The verification report describes the different production processes at Cinsa and ENASA as processes developed to accommodate the ranch-style and Euro-style cookware, respectively. Because the technical requirements of these two cookware types are different, the

retooling-potential exercise at verification involved retooling each of Cinsa's production operations to the corresponding operation necessary to produce ENASA's Euro-style cookware, and vice versa. Based on the close examination of this issue at verification, the Department has concluded that it would require extensive and expensive infrastructure changes for Cinsa and ENASA to shift production between them.

Finally, Petitioner now suggests that, in view of the high degree to which Cinsa and ENASA are affiliated and cooperate with each other, the Department should also consider Cinsa's physical assets to be ENASA's physical assets, and vice versa, such that one firm could simply take, without compensation, the other firm's assets, thus permitting production of the cookware that required such machines without the cost of purchasing new machines. Adding an entire production line of large expensive multistage integrated production equipment would inherently constitute ''substantial retooling.'' Petitioner's suggestion that Cinsa and ENASA could simply move the machinery from one plant to another is, in effect, an admission that different machinery, not merely retooling, would be needed to produce ranch-style cookware at ENASA or Euro-style cookware at Cinsa. The suggestion that the affiliated firms could avoid the need for retooling by purchasing components from each other likewise fails to recognize the fundamental incompatibility of the two production lines.

With regard to petitioner's concerns about circumvention, the Department has determined that Cinsa and ENASA are affiliated firms. Thus, sales between them (unless shown to be at arm's length) would be disregarded and future antidumping margins for each company calculated based on the sale to the first unaffiliated parties in both the United States and Mexico. Dumping margins on any sales to the United States would therefore be based on the extent of price discrimination found to exist for those U.S. sales.

Comment 2: Reporting of production capabilities.

Petitioner asserts that the Department should use total, adverse facts available in calculating a margin for Cinsa and ENASA because, they claim, Cinsa and ENASA significantly impeded the review by misleading the Department with regard to each affiliate's cross production capability. Specifically, petitioner states that, for example, the Department has now confirmed that Cinsa and ENASA can each stamp and form medium-gauge cookware; furthermore, petitioner notes that the estimated cost to shift production from ENASA to Cinsa provided at verification was far less than that provided in Cinsa and ENASA's June 16, 1997 submission. Therefore, petitioner urges that the Department should find that Cinsa and ENASA did not act to the best of their ability in reporting production capability information, and that failure to do so justifies the use of an adverse inference with respect to the collapsing determination, *i.e.*, the Department should determine that Cinsa and ENASA should be collapsed.

Cinsa and ENASA state that petitioner's allegations are misleading in that they fail to reflect the fact that in their June 16, 1997, supplemental questionnaire response Cinsa and ENASA were responding to the Department's questionnaire regarding Cinsa's ability to stamp the steel forms for the entire range of ENASA ''Euro-style'' products. Citing to petitioner's June 10, 1997, Affidavit of Dean Samford, respondents note that petitioner's own expert admitted that Cinsa's presses did not have enough power to stamp the thickest gauges of steel used by ENASA to manufacture its HG ''Euro-style'' cookware. Moreover, respondents argue that Cinsa's ability to produce ''Euro-style'' cookware was not limited to the inability of stamping thicker gauges of metal, but was also based on the necessity of employing different tooling and machinery, which Cinsa does not currently possess. Finally, respondents maintain that the apparent discrepancy between respondents' June 16, 1997, cost estimate for shifting production and the amount of the production-shifting estimate in the verification report represents the differences between the Department's supplemental questionnaire request to provide costs to retool Cinsa to produce the entire ENASA line of medium and heavy gauge ''Euro-Style cookware'' and the Department's more conservative request at verification to estimate the cost to retool Cinsa to produce one item, an ENASA medium gauge conical frying pan, so as to arrive at the lowest possible estimate of conversion costs. Accordingly, Cinsa and ENASA argue that because they complied with all information requests with regard to production capabilities, there is no legal or factual basis to resort to total adverse facts available.

DOC Position: We agree with the respondents. The facts on the record of this segment of the proceeding show that the respondents answered to the best of their ability the Department's supplemental questions regarding production capabilities. In addition, the production-shifting estimate in the verification report responds to the Department's new request, at verification, that respondents calculate only the cost of retooling Cinsa to produce one article from the range of ENASA products. This further inquiry was pursued as a means of determining, in response to petitioner's concerns regarding this issue, whether production-shifting might be possible for less than an entire line of cookware. At verification, it became apparent that although parties had previously referred to the cookware types in terms of gauge, many other, interrelated, factors were intrinsic to the issue of whether production could be shifted. Thus, earlier references to Cinsa's inability to produce medium gauge cookware referred not to an inability to stamp and form the thinnest gauge of medium sheet but to Cinsa's inability to stamp and form the full range of gauges used by ENASA and its inability to continue the process so as to produce the type of medium gauge cookware produced by ENASA (*i.e.*, Euro-style cookware). *See* Memorandum to Louis Apple from Eric Warga, dated July 30, 1997.

Comment 3. Class or kind of merchandise.

Cinsa and ENASA argue that the Department should determine that LG and HG cookware are distinct classes or kinds of merchandise. Moreover, Cinsa and ENASA claim that, for purposes of the preliminary results, the Department did not consider all of the relevant criteria set forth in *Diversified Products* v. *United States*, 572 F. Supp 883 (CIT 1983) (*Diversified Products*), and failed to take into account all relevant information in the administrative record. Cinsa and ENASA contend that the Department should analyze the class or kind issue with the same amount of detail that was provided in other areas of the Department's preliminary results.

Petitioner supports the Department's preliminary determination that LG and HG cookware are the same class or kind of merchandise and should be assigned the same dumping margin. However petitioner disagrees that it is appropriate to conduct a *Diversified Products* analysis since the Department does not have the authority under the statute to change the scope of the antidumping duty order.

DOC Position: We agree with petitioner that LG and HG merchandise are within the class or kind of merchandise subject to the order. The order on POS cookware from Mexico (51 FR 43415, December 2, 1986) is not limited to cookware of a particular

gauge, and Cinsa has not requested a scope inquiry to determine whether HG cookware is outside the scope of this order. Indeed, by asking for a separate margin for HG cookware, Cinsa concedes that such merchandise is within the scope. There are a few cases in which the Department has assigned separate margins to subclasses of products under the same antidumping order (*e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom,* 54 FR 20900 (May 15, 1989))—but such exceptions occur only under very special circumstances. In the instant review, the record does not reflect any of the extraordinary circumstances that call for creation of a sub-class.

Furthermore, the *Diversified Products* criteria cited by Cinsa are usually used to clarify whether or not a product is in scope when this is unclear from the language of the ITA and ITC final determinations and the order. In this case, it is undisputed that HG is within the scope of the order. Based on our findings at verification and on the rationale provided in our December 16, 1996 Issues Memorandum, pursuant to 771(16)(C)(iii) we determine that although the LG cookware produced by Cinsa and the HG cookware produced by ENASA fall within the same class or kind of merchandise, these product types (*see* verification report for details as to these product lines, which are not limited to gauge differences) cannot reasonably be compared for purposes of determining antidumping margins. In sum, the scope of the order is not limited in terms of cookware gauge or limited to the cookware type produced in LG steel by Cinsa, and because the Cinsa and ENASA products at issue all belong to the same class/kind (POS cookware), sales of all cookware, of whatever gauge, will be assigned a single, company-specific margin. However, because HG Euro-style cookware and LG ranch-style do not constitute the same ''foreign like product,'' as defined in 19 U.S.C. 1677(16), the Department will not compare sales of LG ranch-style cookware to sales of HG Euro-style cookware for purposes of calculating the weighted average margin.

Comment 4: Reporting of Medium-gauge cookware production data.

Petitioner asserts that the Department should use total, adverse facts available in calculating a margin for Cinsa and ENASA because, it claims, Cinsa and ENASA significantly impeded the review by: (1) Not reporting the production of MG cookware until eight months after initiation of the review, and (2) not reporting the cost of production (COP) for MG cookware. According to petitioner, in other cases in which a respondent has attempted to manipulate an administrative review by misleading the Department, the Department found that the respondent impeded the review and used total adverse facts available or best information available. *See, e.g., Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico,* 60 FR 49569 (September 26, 1995).

Furthermore, petitioner argues that ENASA's reported costs of production for HG cookware are unreliable and unusable because ENASA failed to isolate and quantify the costs of producing MG cookware from the reported costs of producing HG cookware. Petitioner contends that if costs associated with MG cookware were not captured in a separate cost center, it is unclear how costs common to MG and HG cookware were allocated. Furthermore, according to petitioner, there is no evidence of how the differences in production efficiencies were allocated between the unreported MG cookware and the reported HG cookware. Lastly, petitioner asserts that because Cinsa and ENASA failed to include MG cookware in the calculation of variable overhead, ENASA's variable overhead costs are understated and unusable.

Cinsa and ENASA state that ENASA provided the COP of MG cookware in its April 22, 1996, response. Cinsa and ENASA state that neither company sold MG cookware to the United States during the POR, and further claim that the Department never required ENASA to provide complete sales and cost information for MG POS cookware. Moreover, Cinsa and ENASA contend that MG cookware is not relevant to this administrative review because the statute would not permit the Department to use home market sales of MG cookware to compare to either LG or HG cookware since they are not considered similar merchandise. Accordingly, Cinsa and ENASA argue that because they complied with all information requests with regard to MG cookware, there is no legal or factual basis to resort to total adverse facts available.

DOC Position: The facts on the record of this proceeding show that all sales by Cinsa and ENASA to the United States during the relevant period of review were of first quality HG or LG open stock cookware. Identical and similar first and second quality HG and LG cookware products were sold in the home market. All sales of open stock MG cookware in the home market were of second quality merchandise. The Department did not require ENASA to report sales and cost data for MG cookware because there were no corresponding sales of MG cookware in the U. S. during the POR and because the Department had an adequate pool of identical and similar home market sales and cost data for first and second quality LG and HG open stock cookware with which to compare first quality LG and HG open stock cookware products sold in the United States. Contrary to Cinsa's and ENASA's contention, the Department's decision not to require Cinsa and ENASA to report home market sales and costs for MG cookware was not because MG cookware *could not* be compared to LG and HG cookware. It did not request this information because it was not *necessary* for the margin calculation in this review. The Department did not need to request home market sales of open stock MG cookware because second quality merchandise would not be considered an appropriate basis for calculating normal value (NV) until the Department had exhausted its supply of comparable first quality open stock cookware. Therefore, the Department did not need to determine, for purposes of this review, whether it would be appropriate to match sales of MG open stock cookware to sales of LG or HG open stock cookware.

Furthermore, because we did not need MG sales reported, Cinsa's and ENASA's failure in their original questionnaire response to report MG sales did not significantly impede the review. Therefore, the use of total adverse facts available is not warranted.

Finally, with respect to petitioner's claim that ENASA's failure to identify and justify a cost breakdown between HG and MG products makes the cost portion of the response unusable, we note that Cinsa and ENASA indicated in their October 1, 1996, Section D supplemental response that their standard cost system distinguishes between different grades of steel in the normal course of business. Because ENASA relied on this cost system in preparing its submission, the cost values for HG and MG products should reflect the cost difference for different grades. The Department made a similar determination in the *Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 61 FR, 18547, 18560 (April 26, 1996) where we accepted a respondent's model specific costs and found that the cost data were allocated to a sufficient

level of product detail following the Department's model match instructions.

Comment 5: Cinsa's and ENASA's classification of certain U.S. sales as Export Price (EP) rather than Constructed Export Price (CEP).

Petitioner argues that the Department should reclassify all of Cinsa's and ENASA's EP sales as CEP. Petitioner contends that Cinsa's and ENASA's primary U.S. affiliate, CIC, incurred selling expenses in connection with U.S. sales of subject merchandise during the POR, and that CIC's level of activity is far beyond what would be undertaken by a mere ''processor of sales documentation.'' Furthermore, petitioner contends that the volume and value of sales out of inventory in the United States is too high for the ''indirect'' EP sales channel to be considered ''customary.''

In addition, petitioner argues that sales to the United States pursuant to the requirements contract between ENASA's affiliated reseller Yamaka China Co., Inc. (''Yamaka'') and Yamaka's U.S. customer should be classified as CEP sales. Petitioner claims that the record evidence indicates that Yamaka's role was central, and the sales could not have been made without Yamaka's involvement.

Cinsa and ENASA argue that petitioner's suggestion that all of Cinsa's and ENASA's sales should be classified as CEP sales is incorrect because it ignores prior determinations made by the Department on this issue in the original investigation and in all previous administrative reviews of this proceeding. Cinsa and ENASA make the following arguments: (1) Petitioner overestimates the amount of selling expenses CIC incurred during the POR; (2) petitioner's claim that CIC set the price for EP sales is incorrect; and (3) petitioner incorrectly assumes that certain repackaging was done in the United States and that sales reported as EP sales were made from CIC inventory; and (4) Cinsa provided information regarding the expenses of its export sales department which demonstrate that Cinsa contacted U.S. customers from Mexico in executing the reported EP sales. Cinsa and ENASA maintain that for the foregoing reasons, petitioner's attempt to show that, with respect to the sales they have designated as EP sales, CIC did more than process documentation and communicate with the unrelated buyer is misplaced.

For its part, ENASA argues that all of its U.S. sales were made prior to the date of importation, and the merchandise was shipped directly from ENASA to the U.S. customer without entering Yamaka's inventory. Accordingly, ENASA believes that the Department correctly classified ENASA's sales as EP sales.

DOC Position: We agree with the petitioner with regard to ENASA's sales and have reclassified these sales as CEP sales. We agree with the respondents with regard to the classification of Cinsa's sales.

Cinsa and ENASA both state that sales to the U.S. are made on both an EP and a CEP basis. With respect to Cinsa, the facts on the record of this review do not contradict the reported classifications. Pursuant to section 772(b) of the Act, an EP sale is a sale of merchandise for export to the United States made prior to importation. A CEP sale is a sale made in the United States prior to or after importation. Because Cinsa and ENASA sold the merchandise to related parties who resold it in the United States, these sales will be considered CEP sales unless the Department determines that the sole role of the related parties was sufficiently limited that they can be considered ''mere processors of sales documentation.''

In its March 11, 1996, Section A questionnaire response Cinsa states that affiliated parties Global Imports, Inc. (Global) and CIC purchase LG and HG cookware from Cinsa and ENASA and resell it in the United States. Although the date of sale reported by Cinsa and ENASA for all such sales is the date of the Global or CIC invoice, not the Cinsa or ENASA invoice, the record in this review indicates that both invoices are issued within a short time of each other. Cinsa notes in its response that the price for EP sales is agreed upon at the time the U.S. customer places a purchase order with the Cinsa export sales department in Mexico. Cinsa's response states that the precise quantity of product is not determined until the packing list is prepared for the shipment from Mexico, and CIC or Global issues the invoice to the U.S. customer. Thus, Cinsa and ENASA consider the date of sale to be the date of the Global or CIC invoice. Cinsa indicates that the sales categorized as EP sales are not warehoused by Global or CIC after they cross the border, and the sales data corresponding to these sales show that these sales are made on FOB Laredo terms. According to Cinsa, the duties performed by CIC and Global with respect to the FOB Laredo sales relate primarily to sales processing: issuing payment invoices, accepting payment and forwarding it to Mexico, posting antidumping duty deposits, and clearing products through customs for sales to unrelated customers in the United States. Therefore, for the purposes of this review we will continue to consider sales made through Global and Cinsa as EP sales when the products do not enter the inventory of Global or CIC.

However, the Department has reclassified as CEP sales the sales ENASA claims as EP sales. We have reviewed evidence on the record of this review with regard to Yamaka's sales in the United States, pursuant to a requirements contract, of merchandise produced by and purchased from ENASA. Contrary to the Department's position in the preliminary results of review, we have now determined that these sales to the United States through Yamaka are more appropriately categorized as CEP sales. The facts on the record in this review show that Yamaka had a high degree of involvement with regard to requirements contract sales to its U.S. customer. The record shows that Yamaka negotiated the contract, signed the contract, established an advertising allowance, arranged for re-packing and re-shipment of unsold merchandise, retained returned merchandise in its warehouse and authorized payment of a refund to the customer for unsold products. Because the sale to the first unaffiliated customer was made by Yamaka in the United States and because Yamaka's role in the transaction chain cannot be characterized as that of ''mere processor of sales related documentation'' we have reclassified the sales made pursuant to this requirements contract as CEP sales.

Comment 6: Movement expenses.

Petitioner contends that the Department should deny any claim for home market inland freight adjustments since Cinsa and ENASA did not adequately demonstrate the accuracy of their allocations of home market movement expenses to the subject merchandise. Petitioner claims that Cinsa and ENASA allocated the same amount of freight expense to in-scope and out-of-scope products of the same weight, regardless of the amount of freight expenses actually incurred to ship the merchandise. In addition, petitioner argues that Cinsa's and ENASA's freight calculation does not account for distance shipped, although Cinsa and ENASA reported that unaffiliated carriers charge different freight rates depending on the destination of the merchandise.

Furthermore, petitioner claims that Cinsa and ENASA failed to report U.S. inland freight for LG cookware sales made by CIC from its San Antonio warehouse and thus, as facts available, the Department should use the cost of freight reported for HG cookware from Laredo to the U.S. customer, which is the only U.S. inland freight expense

factor on the record in this review. In addition, petitioner claims that the denominator in Cinsa's factor calculation of post-sale freight expenses for LG CEP sales understates that expense. Petitioner requests that the Department recalculate the factor using the weight reported on the sales tape for Cinsa's CEP sales as the denominator.

Cinsa and ENASA argue that it was not feasible for them to report transaction-specific movement expenses because Cinsa was not billed for freight (for both Cinsa and ENASA) on a transaction-specific or invoice-specific basis, but rather on a monthly basis for amounts shipped the previous month. In addition, Cinsa argues that in the original investigation and in each subsequent review the Department has not required Cinsa to report transaction-specific freight expenses. Also, Cinsa and ENASA argue that: (1) They used a weight-based freight allocation methodology that accurately attributed total freight expenses to the subject merchandise; (2) the allocation was calculated using the most specific level permitted by company records; and (3) the calculated freight factors were only applied to those sales that were subject to freight charges.

Furthermore, Cinsa argues that there is nothing contradictory about the fact that it reported its freight expenses from two different warehouses during the POR, because it used two warehouses at different times during the POR. Moreover, contrary to petitioner's assertion, Cinsa and ENASA contend that pre-sale freight expenses on CIC's U.S. sales were reported, although in different fields from other movement expenses.

Finally, with regard to petitioner's argument that U.S. freight expenses are under reported, Cinsa asserts that both the expenses and the sales values used in the CIC freight factor include all LG POS products, some of which were not on the sales tape (*i.e.*, POS tableware and POS kitchenware).

DOC Position: We have accepted respondents' methodology for the calculation of freight expenses. The Department's preference is that, wherever possible, freight adjustments should be reported on a sale-by-sale basis rather than allocated over all sales. *See Final Results of Antidumping Duty Administrative Review: Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada*, 56 FR 47451 (September 19, 1991). If the respondent does not maintain freight records on a sale-by-sale basis, then our preference is to apply an allocation methodology at the most specific level permitted by the respondent's records kept in the normal course of business.

Cinsa states in its April 22, 1996, questionnaire response that it does not maintain freight records on a sale-by-sale basis, but rather was billed on a monthly basis by unaffiliated trucking companies according to the weight shipped per truckload. Although Cinsa's sales department handles the freight for ENASA's home market sales, it bills ENASA for this service on the basis of the weight of all ENASA merchandise shipped. Furthermore, Cinsa stated that only sales made to the Monterrey region incurred post-sale freight expenses.

Our analysis of the questionnaire responses confirms that freight charges are based on weight, and that the shipping company factors in distance in calculating the weight-based rate which varies by destination. Although Cinsa and ENASA allocated freight expenses based on shipments of subject and non-subject merchandise, we found the per-unit expense to be virtually the same when we re-allocated the expense based solely on subject merchandise. Accordingly, we accepted Cinsa's and ENASA's freight calculations as submitted in their sales database as reasonable and non-distortive.

In addition, we do not agree with petitioner's claims that Cinsa and ENASA failed to report U.S. inland freight costs for LG cookware incurred by CIC on products shipped from its San Antonio warehouse. This information is included in the April 22, 1996, questionnaire response.

Comment 7: Returned merchandise.

Petitioner argues that the Department should adjust all of ENASA's movement expenses (namely, pre-sale warehouse expenses, foreign inland freight, Mexican brokerage, U.S. brokerage, and U.S. duty), to reflect the freight expenses from the unaffiliated customer to the U.S. warehouse on returned merchandise, and that these adjusted movement expense should be deducted from gross unit price. In addition, petitioner contends that Cinsa and ENASA did not adequately explain what happened to the merchandise that one U.S. customer did not sell to retail buyers and that Yamaka agreed to repurchase. Accordingly, petitioner argues that the Department should adopt an inference adverse to ENASA and conclude, as the facts otherwise available, that the merchandise was returned to ENASA's warehouse in Mexico.

Alternatively, petitioner argues that the Department should determine that Yamaka's return movement expenses are direct selling expenses, because the amount of expense varied with the quantity sold and the expenses were directly related to sales under the same contract. *See Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19043–44 (April 30, 1996), and *Final Determination of Sales at Less Than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom*, 61 FR 51411, 51416–17 (October 2, 1996).

A third option, according to petitioner, would be to treat the outbound and return freight expenses at issue in this review as sales promotion expenses, which are treated as a direct selling expense when they are directed at the customer's customer.

ENASA argues that, for purposes of its EP calculation, the Department improperly deducted movement expenses attributable to returned merchandise not sold during the POR. ENASA argues that when the merchandise is resold in a future review, the Department will be required to account for all movement expenses in that future review. Moreover, ENASA contends that the Department's action is contrary to the statute because the return charges incurred by Yamaka are charges beyond the place of delivery attributable to merchandise not purchased by ''the customer'' and therefore outside the scope of review.

In addition, ENASA argues that in the cases cited by petitioner, the returned merchandise was actually purchased by the customer and the customer was returning previously purchased merchandise. In the instant case, according to ENASA, the merchandise re-shipped to Yamaka was never purchased by ''the customer'' and was not being returned pursuant to a warranty or guarantee provision.

Finally, ENASA disagrees that all movement expenses should be adjusted by an amount greater than that used in the preliminary results. It argues that change would overstate the movement expenses attributable to HG cookware.

ENASA argues that no deduction should be made to account for transportation expenses incurred by Yamaka attributable to merchandise which was returned in connection with the promotion program.

DOC Position: We agree with the petitioner. The merchandise at issue is sold to Yamaka's customer under a contract that calls for Yamaka to ''repurchase'' cookware that Yamaka's customer does not sell to its own retail customers during a promotion. Thus, it is clear that the merchandise is purchased by Yamaka's customer. The return freight expenses are direct selling expenses incurred by Yamaka because

the contract governing all sales in connection with the promotion explicitly states that Yamaka will incur freight expenses to return the merchandise that Yamaka's customer was unable to sell. Because Yamaka incurs the return freight expenses pursuant to the single contract made in connection with the promotion, we have associated an amount for total return freight to that contract and allocated the return freight expenses across the total sales made pursuant to that contract.

On September 10, 1996, the Department requested information on the return freight destination or destinations associated with these returns. In its October 1, 1996, supplemental response, ENASA simply stated that returned merchandise was often resold to the same customer for another store. Because ENASA failed to respond fully to our question, we do not know to what location or locations cookware not sold in the promotion was returned. Therefore, because ENASA did not adequately explain the disposition of the returned merchandise and because Yamaka is the party assuming the contractual responsibility for the returned merchandise, as adverse facts available, we are assuming that all unsold merchandise was returned to the Yamaka warehouse in Laredo, Texas. We calculated return freight as a percentage of the original freight from Laredo to Yamaka, based on the percentage of original items returned. There is nothing on the record of this case which supports petitioner's argument that we assume the merchandise was returned to ENASA's warehouse in Mexico. For example, the record contains no comparable contract calling for ENASA to repurchase returned merchandise from Yamaka.

ENASA's claims that these expenses are related to goods not purchased by ''the customer'' are misleading. While the merchandise in question was not purchased by the ultimate retail customers, it was all purchased by Yamaka's wholesale customer. Finally, with respect to ENASA's argument that the return freight should be associated with future sales of the returned merchandise, we note that, whereas the record reflects the amount of retail-unsold goods that were repurchased and returned to Yamaka in connection with the post-promotion reconciliation called for in the promotion-sale contract, it would be very difficult to trace the earlier history of various lots of merchandise resold in subsequent lots. Indeed, if the merchandise re-enters Yamaka's inventory, it would become indistinguishable from merchandise shipped directly from ENASA's factory. Further, pursuant to section 772(c)(2)(A) of the Act, freight charges for later sales would begin at the point of shipment associated with the later sale. Although the statute refers to inclusion of costs back to the original point of shipment in the exporting country, it also only includes costs actually incurred and included in the cost of the merchandise. If, pursuant to a later re-sale by Yamaka, merchandise returned pursuant to the promotion sale covered in this review is shipped from some point other than the factory, only freight from the actual shipping point will be included in cost; thus, only freight from the actual shipping point (*e.g.*, Yamaka's warehouse) will be removed.

Comment 8: Home market warehouse expenses.

Petitioner argues that Cinsa's and ENASA's home market warehouse expense allocation are distortive because total warehouse expenses are allocated to both subject and non-subject merchandise. Accordingly, petitioner believes that the Department should deny Cinsa's and ENASA's claims for this adjustment.

Furthermore, petitioner asserts that Cinsa and ENASA did not report pre-sale warehouse expenses incurred in the United States on CEP sales of both LG and HG cookware and did not report pre-sale warehouse expenses incurred in Mexico on CEP sales of both LG and HG cookware. Accordingly, as facts available for the U.S.-incurred expenses, petitioner argues that the Department should make a deduction from CEP in the amount of the highest per-sale warehouse expense reported by Cinsa and ENASA on any home market sale of LG cookware. With regard to the expenses incurred in Mexico, petitioner argues that the Department should apply the same factor reported for EP sales of LG cookware to CEP sales of both LG and HG cookware.

Cinsa and ENASA argue that, as with freight expenses, because in scope and out of scope merchandise received similar warehouse treatment, a weight based allocation was not distortive. In addition, Cinsa and ENASA assert that the Department's preliminary results improperly classified both companies' home market pre-sale warehousing expenses as indirect selling expenses rather than movement expenses. Cinsa and ENASA argue that movement expenses necessarily include warehousing expenses since warehousing is integrated within the process of moving merchandise from the place of production to the place of delivery.

Cinsa and ENASA also argue that, contrary to petitioner's assertion, U.S. pre-sale warehousing expenses were included in CIC's reported indirect selling expenses. Cinsa and ENASA argue that, because CIC established that it had reported all its indirect selling expenses, including its pre-sale warehousing expenses, the Department should continue to use the information provided by CIC in the final results.

Finally, Cinsa and ENASA state that with regard to LG cookware, the subject merchandise did not enter the finished goods warehouse in Saltillo prior to shipment to the United States, contrary to petitioner's claim. Moreover, with regard to HG cookware, ENASA claims that it is made to order, and is loaded directly onto trucks without entering the finished goods warehouse.

DOC Position: We agree with Cinsa and ENASA that the use of a weight based factor is a reasonable allocation methodology for the calculation of home market warehouse expenses. *See* Comment 5 above. With regard to Cinsa's and ENASA's argument that we improperly classified home market warehouse expenses as indirect selling expenses, we agree that warehouse expenses for sales made from the remote warehouses in Mexico City and Guadalajara should be considered movement expenses in accordance with section 773(a)(6) of the Act. However, with respect to the warehouse expenses for direct sales to customers from the Saltillo plant, we have continued to treat these expenses as indirect selling expenses because they are not incurred at the plant immediately after production and are associated with the movement process.

In addition, we have continued to use Cinsa's and ENASA's U.S. pre-sale warehousing expenses as reported. We are satisfied that these expenses were included under the category ''leases'', as Cinsa and ENASA claim, as the reported indirect selling expenses tie directly into CIC's internal income statement. Finally, with respect to Mexican export warehousing, we disagree with petitioner that the use of facts available is appropriate. With regard to LG cookware, Cinsa reported these expenses for both EP and CEP sales in the April 22, 1996, submission. With regard to HG cookware, ENASA's merchandise is made to order, upon completion it is sent immediately to the customer, without entering the finished goods warehouse. Accordingly, we have accepted Cinsa's and ENASA's home market warehouse expense calculations.

Comment 9: Calculation of indirect selling expenses.

Petitioner contends that the Department should recalculate Cinsa's indirect selling expenses for CEP sales

of LG cookware to include all selling, general and administrative (SG&A) expenses as reported in the U.S. affiliate CIC's financial statement. Petitioner argues that a comparison of Cinsa and ENASA's supplemental response and CIC's financial statement demonstrates that only a fraction of the SG&A overhead expenses incurred by CIC was reported and included in the Department's results. Furthermore, petitioner believes that if the Department reclassifies Yamaka's sales of HG cookware as CEP sales, it should reject ENASA's argument that U.S. affiliate Yamaka's selling expenses are irrelevant, and deduct indirect selling expenses from CEP sales of HG cookware made by Yamaka.

Cinsa disagrees with petitioner's claim that it understated CIC indirect selling expenses by not including ''variable selling expenses'' in CIC's reported indirect selling expenses. Cinsa argues that indirect selling expenses should only include fixed selling expenses as reported by Cinsa and that it properly reported all direct (or variable) selling expenses incurred by CIC in its CEP sales data set. Furthermore, Cinsa states that petitioner's figure for indirect selling expenses already includes CIC's direct selling expenses which have been deducted from CEP. Thus, use of the suggested figure would improperly include direct expense amounts in the expense pool. Accordingly, Cinsa argues that for CEP sales made by CIC, the Department should deduct the reported indirect selling expenses from USP.

DOC Position: We agree with Cinsa and ENASA that the Department should deduct the reported indirect selling expenses from USP for CEP sales made by CIC. We further agree with Cinsa and ENASA that petitioner misread the exhibit pertaining to indirect selling expenses. There was no revision of CIC's reported indirect selling expenses. Both pages of the exhibit are required to obtain the POR selling expenses.

With regard to Yamaka's selling expenses, we agree with petitioner that, because we are considering Yamaka's HG cookware sales as CEP sales, these expenses are appropriately deducted from CEP.

Comment 10: Deduction of reported U.S. indirect selling expenses incurred in Mexico from CEP.

Cinsa argues that the Department improperly deducted indirect selling expenses from CEP that were incurred by Cinsa's export department in Mexico. According to Cinsa and ENASA, these expenses are not expenses associated with selling activity occurring in the United States, but are limited to selling activities associated with the sale of merchandise in Mexico to the affiliated party, CIC. Respondents contend that the preamble to the Department's proposed and interim regulations establishes that only indirect selling expenses incurred in Mexico on behalf of the unaffiliated purchaser in the United States may be deducted from the CEP calculation and that indirect selling expenses incurred in Mexico on the sale to the affiliated purchaser would not be deducted from the CEP calculation. Accordingly, respondents argue that the final results should not include a deduction of these indirect selling expenses from CEP because they are not in any way associated with U.S. selling activity.

Petitioner argues that Cinsa's and ENASA's reported U.S. indirect selling expenses incurred in Mexico should be deducted from CEP because they are associated with economic activities occurring in the United States. Petitioner further argues that the statute does not restrict the covered expenses to those incurred in the United States.

DOC Position: We agree with Cinsa. The Department's current practice, as indicated by the preamble to the Department's regulations recently published at 62 FR 27296–27424 (May 19, 1997), is to deduct only indirect selling expenses incurred in Mexico in connection with the sales to the unaffiliated purchaser in the United States from the CEP calculation, and not to deduct indirect selling expenses incurred in Mexico on the sale to the affiliated purchaser from the CEP calculation. Accordingly, because Cinsa and ENASA reported that certain indirect selling expenses incurred in Mexico are not associated with selling activity occurring in the United States, but are limited to selling activities associated with the sale of merchandise in Mexico to the related affiliated party, CIC, we have not deducted Mexican indirect selling expenses (*i.e.*, indirect selling expenses incurred in Mexico on U.S. sales) from the CEP calculation.

Comment 11: CEP offset adjustment.

Although Cinsa does not contest the Department's determination in the preliminary results of review that, on the basis of selling functions performed in both markets, all sales in the home market and the U.S. were made at the same level of trade, it nonetheless claims it was improper for the Department to deny its claimed CEP offset on the basis that it was not entitled to a level of trade adjustment. Cinsa asserts that the statute authorizes the Department to deduct from NV a CEP offset equal to the amount of indirect selling expenses incurred in the home country but not to exceed the amount of indirect selling expenses deducted from USP.

Petitioner contends that Cinsa has not established entitlement to a CEP offset adjustment because it did not show that its home market and CEP sales are at different levels of trade. Accordingly, petitioner argues that the Department correctly denied Cinsa's claim for a CEP offset adjustment and should continue to do so in the final results.

DOC Position: We agree with petitioner. Section 773(a)(1)(B) of the Act requires that Commerce establish NV based on home market sales at the same level of trade as the CEP or the EP sale. The SAA notes that if the Department is able to compare sales at the same level of trade, it will not make any level of trade adjustment or CEP offset in lieu of a level of trade adjustment. Further, section 773(a)(7) expressly requires a difference in level of trade between the U.S. and home market sales as a prerequisite to a CEP offset. Specifically, sales in the home market must be at a more advanced stage of distribution.

As we stated in the preliminary results, in their questionnaire responses, Cinsa and ENASA stated that there are no differences in selling activities by customer categories within each market. We reviewed Cinsa and ENASA's questionnaire responses in order to confirm that the marketing stages and selling functions did not differ significantly in the United States and home market. Cinsa and ENASA sold to multiple customers both in the United States and home markets. In their April 22, 1996, questionnaire responses, both Cinsa and ENASA indicated that they do not differentiate pricing, sales terms or delivery terms by type of customer. They also stated in their request for a CEP offset adjustment that sales support activities for both markets were generally the same. Thus, our analysis of the questionnaire responses leads us to conclude that sales within each market and between markets are not made at different levels of trade. In their case brief, Cinsa and ENASA have agreed with our preliminary determination that home market and U.S. sales are made at the same level of trade. Accordingly, we can compare sales in the home market and the U.S. market at the same level of trade. Therefore, a CEP offset is not warranted.

Comment 12: Use of daily exchange rates.

Cinsa and ENASA claim that, for purposes of the preliminary results, the Department applied the 40-day rolling average benchmark rate in all instances, regardless of whether any daily

fluctuation in exchange rates existed. Cinsa and ENASA submit that, because the Department determined that the Mexican economy experienced high inflation during the POR, the Department's exchange rate model should not have been used. Accordingly, Cinsa and ENASA contend that the Federal Reserve certified daily exchange rates should be used in all instances.

DOC Position: We agree with the respondents. In this review, we have determined that Mexico experienced significant inflation during the POR, as measured by the consumer price index published in *International Financial Statistics* and the consumer price index from the Bank of Mexico. Therefore, we believe that it is more appropriate in this case to use the Federal Reserve Bank's actual daily exchange rates for currency conversion purposes. As noted in Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996), the Department is continuing to examine the appropriateness of the currency conversion policy in situations where the foreign currency depreciates substantially against the dollar over the POR. In those situations, it may be appropriate to rely on daily exchange rates. When the rate of domestic price inflation is significant, as it is in this case, it is important that we use as a basis for NV home market prices that are as contemporaneous as possible with the date of the U.S. sale. This methodology serves to minimize the extent to which calculated dumping margins are overstated or understated due solely to price inflation that incurred in the intervening time period between the U.S. and home market sales. *See Notice of Final Determination of Sales at less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309 (June 14, 1996). For this reason, as noted in the Fair Value Comparisons section of the preliminary results of this review, we calculated EPs and NVs on a monthly average basis. This need for a high degree of contemporaneity applies not only to home market sales, but to the exchange rate as well, since the dollar value of cookware that Cinsa and ENASA sell in their home market—upon which the calculated margins ultimately rest—depends on the peso price of the product, and the dollar price of the peso. Since the dollar value of the peso tends to fall over time—when the rate of domestic price inflation is significant—it is just as important to use contemporaneous exchange rates as it is to use contemporaneous (peso-denominated) home market prices. For this reason, we have used the daily exchange rates for currency conversion purposes. Accordingly, to avoid the distortions caused by the effects of this level of inflation on prices, for this review we have used price to price and price to CV comparisons that are as contemporaneous as possible, and we have also used contemporaneous exchange rates.

Comment 13: Possible reimbursement of U.S. affiliates for antidumping duties.

Petitioner claims that the fact that Cinsa's itemized list of selling expenses includes an amount for ''dumping expenses'' incurred in Mexico constitutes direct evidence that it reimbursed its U.S. affiliates for antidumping duties. Furthermore, petitioner claims that Cinsa and ENASA pay antidumping duty deposits for their U.S. affiliates and that the respondents have not supported their assertion that funds provided to U.S. affiliates for payment of antidumping duty deposits are ''loans'' which must be repaid with interest based on an arm's-length interest rate. Petitioner argues that there is no evidence that these payments are anything but grants to enable the U.S. affiliates to pay antidumping duties, and the U.S. affiliates themselves did not account for these intra-company transfers as loans. Finally, petitioner placed on the record of this review, the 9th POR, a copy of respondents' public supplemental comments from a subsequent review, the 10th POR, in which respondents state that GISSA, importer CIC's corporate parent, made a capital infusion to allow CIC to post antidumping duty deposits and pay antidumping duty liquidation assessments. Petitioner contends that based on this evidence, the Department should determine that Cinsa and ENASA are reimbursing the U.S. affiliates for antidumping duties and instruct Customs to assess double the calculated rate of duties upon liquidation of the entries.

Cinsa and ENASA assert that there is no evidence on the record to support petitioner's claim that they are reimbursing the affiliated U.S. parties for antidumping duties. Furthermore, Cinsa and ENASA claim that petitioner's arguments are speculative, since the Customs Service has not assessed dumping duties on any entries made by CIC, and to date CIC has made only deposits on entries for the 9th POR.

Moreover, Cinsa argues that, although it has an agreement with CIC whereby Cinsa loans CIC funds to pay the antidumping duty deposits, once the final amount of dumping duties is determined and assessed, CIC is required to repay Cinsa for such loans, with penalty interest accruing for late payment. Finally, Cinsa contends that the Department has consistently held that the existence of intra-company transfers of funds or loans between affiliated parties does not require the Department to initiate a reimbursement inquiry.

DOC Position: We agree with the respondent. Petitioner has two bases for its reimbursement claim: (1) That the loans made by Cinsa to its affiliated importer constitute reimbursement, and (2) that the GISSA capital contribution in the 10th POR provides sufficient cause for finding a ''pattern or practice of reimbursement.''

Pursuant to its regulations, the Department will deduct from export price ''the amount of any antidumping duty which the producer or reseller: (1) Paid directly on behalf of the importer; or (2) reimbursed to the importer.'' 19 CFR 353.26(a).

With respect to the loans, we observed at verification that Cinsa did make loans to CIC and its predecessor Global to cover antidumping duty deposits. However, we also noted that these loans were interest-bearing loans supported by promissory notes, with penalty provisions for late payment, that the financial records of both CIC and Cinsa properly accounted for these loans, and that there was a history of repayment of such loans. Thus, petitioner's claim that these transfers should be considered reimbursement, rather than bona fide loans, is contradicted by the findings on the record. *See* Memorandum dated July 30, 1997, regarding reimbursement (''Reimbursement Memo'') for additional analysis regarding the reimbursement issue.

With respect to capital contributions, we noted at verification that since its founding in March of 1995, affiliated importer CIC has received two cash transfers in the form of capital contributions. The first transfer constituted start-up funds and was not explicitly tied to antidumping duty deposits or assessments. In a public submission to the record of the 10th review, which petitioner has added to the record to this 9th review, respondents Cinsa and ENASA specifically stated that a second capital contribution made in April 1997, by CIC's affiliate GISSA Holding USA, was provided to ensure that CIC would have enough funds to cover anticipated dumping duties and assessment liability subsequent to the liquidation of 5th and 7th POR entries during the 10th POR. These facts are not tantamount to the ''producer or reseller'' reimbursing the affiliated importer for antidumping

duties. *See* 19 CFR 353.26(a). Although CIC, Cinsa, ENASA and GISSA share a common ultimate parent, GIS, there is no evidence that the source of this capital contribution was either a producer or reseller of POS cookware. All that is shown by these facts is that the importer's parent made a cash infusion to cover antidumping liabilities, which is not in itself inconsistent with the reimbursement regulation. Because the record in this review does not support a finding that either producer (*i.e.*, Cinsa or ENASA) was in fact the ultimate source of these funds, we do not find reimbursement within the meaning of 19 CFR 353.26(a) in this review. However, we will examine this possibility further in the context of future reviews of POS cookware from Mexico. Because many of the details associated with this issue are proprietary, refer to the Reimbursement Memo.

Comment 14: Revocation of order with respect to tea kettles.

Cinsa and ENASA argue that the order on POS cookware from Mexico should be revoked as to tea kettles either in the final results of this administrative review or in a separate changed circumstances review, if the order against POS cookware from Taiwan is revoked as to tea kettles. Cinsa and ENASA contend that it would be inappropriate for the Department to alter the scope of only one of these antidumping orders, since the orders against POS cookware from Taiwan and Mexico were initiated on the basis of a single petition, and were issued pursuant to a single injury determination made on a cumulated basis. Cinsa and ENASA further argue that because petitioner has no production of tea kettles, it is incongruous that it has no interest in an order covering tea kettles from Taiwan, yet allegedly continues to have an interest in having companion case orders cover tea kettles from Mexico and the People's Republic of China. In the alternative, Cinsa and ENASA submit that the Department should investigate whether tea kettles constitute a distinct class or kind of merchandise from the POS cookware covered by the order underlying this case.

Petitioner argues that the Department should deny Cinsa's and ENASA's request to revoke the order, in part, as to tea kettles, in the final results. Petitioner contends that if Cinsa and ENASA wish to have the order revoked as to tea kettles, they are entitled to request a changed circumstances review, in accordance with the Department's regulations.

DOC Position: We agree with petitioner. The orders on POS cookware from Mexico, Taiwan, and the People's Republic of China are separate and distinct even though the proceedings were initiated pursuant to a single petition. Petitioner has not indicated that it has no further interest in maintaining the Mexican order with regard to tea kettles. Further, there is no requirement that petitioner must produce every model of the subject merchandise covered by a given order. Thus, it would not be appropriate to grant Cinsa's and ENASA's request for partial revocation of the order in the context of this administrative review pursuant to section 751(a) of the Act. Similarly, there is no evidence on the record of this case supporting Cinsa's and ENASA's claim that tea kettles constitute a distinct class or kind of merchandise within POS cookware.

Comment 15: Reporting of cost data for Cinsa and ENASA.

Petitioner contends that the magnitude of Cinsa's and ENASA's production cost variances, which are based on system-wide costs as opposed to model-specific costs, means that these costs are in reality only average costs, the use of which would be contrary to the Department's standard practice. Without usable cost data, petitioner argues that the Department cannot use Cinsa's and ENASA's home market sales data because it cannot determine whether home market sales were at prices above the COP, and it cannot determine the appropriate amount of any difference-in-merchandise adjustment. Therefore, petitioner argues that the Department should determine that Cinsa and ENASA were uncooperative and should base Cinsa's and ENASA's margin on total adverse facts available, using the highest rate calculated for any respondent in the original investigation (58.73 percent), due to their refusal to report replacement costs. Alternatively, petitioner believes that the Department should, at a minimum, increase all material costs by the average increase in inflation between the time Cinsa and ENASA purchased raw materials and the time it consumed such materials in production.

In addition, petitioner argues that, because Cinsa and ENASA refused to comply with the Department's requests for certain cost information in this review, there are fundamental problems with the COP data. First, petitioner argues that despite an annualized inflation rate of greater than 50 percent during the POR (based on the producer price index or ''PPI''), the Department apparently concluded that the Mexican economy was not hyperinflationary during the POR, and thus preliminarily accepted Cinsa's and ENASA's reported costs, notwithstanding what they term respondents' refusal to report replacement costs.

Cinsa and ENASA argue that the November 19, 1996, supplemental response provided COP and CV data using monthly revaluation of costs to current price levels, which conforms precisely to the monthly valuation of inputs required under the Department's inflation methodology. Furthermore, Cinsa and ENASA argue that the Mexican producer price index that petitioner used to calculate inflation rates is not appropriate because the generally accepted benchmark for use in price adjustments by the Mexican accounting profession and for financial analysis in Mexico is the National Consumer Price Index, which has also been used by the Department for inflation index adjustments in previous Mexican cases.

In addition, Cinsa and ENASA state that the costs reported to the Department reflect product specific costs. Cinsa and ENASA claim that in the normal course of business, the amounts of all production variances are calculated each month, but are not applied to specific products. For the purposes of reporting monthly unit costs to the Department, these variances were converted into ratios and applied to the standard cost of inputs for individual products. Moreover, Cinsa and ENASA state that the size of variance ratios in this instance is a clear reflection of the fact that, although standard costs are fixed once per year, price levels for production inputs increase throughout the year. Cinsa and ENASA explain that, because monthly costs of production inputs are based on the replacement unit costs of the respective inputs consumed, and the prices of those inputs underwent a rapid increase during 1995 due to the presence of high inflation, it is natural for variance ratios to be larger than observed in previous POS cookware reviews for periods that were not subject to high inflation. Finally, according to Cinsa and ENASA, regardless of whether variances are large or small, the relative standard costs of individual products provide the means of distributing actual shared costs among the products manufactured. Accordingly, Cinsa and ENASA believe that they properly reported cost of manufacturing (''COM'').

DOC Position: We disagree with petitioner that Cinsa's and ENASA's submitted production costs do not reflect current costs (*i.e.*, replacement

costs). In the instant review, we determined that the Mexican economy was undergoing a high rate of inflation in 1995 and therefore we calculated monthly COP and CV for Cinsa and ENASA. For the Department to calculate COP and CV, Cinsa and ENASA computed a monthly COM for each product based on the merchandise's specific standard costs of manufacturing adjusted by its monthly variance. We reviewed Cinsa's and ENASA's method of calculating submitted COM along with other assertions made on the record by these companies. The information on the record we reviewed (*i.e.*, Section D narrative and worksheets) indicates that Cinsa's and ENASA's COP and CV data reflect the current costs as requested by the Department. We also note that Cinsa and ENASA submitted timely responses to all our Section D questionnaires. Therefore, we relied on Cinsa's and ENASA's submitted COMs as the basis of deriving COP and CV for the final results.

As for petitioner's concern that the Department should use facts available because of the magnitude of Cinsa's reported variances, we again disagree. Cinsa's and ENASA's standard cost accounting systems record traditional purchase price variances (*i.e.*, standard price adjusted to reflect current purchase price) and consumption variances (*i.e.*, standard usage adjusted to actual usage) monthly. We reviewed Cinsa's and ENASA's submitted worksheets that demonstrate the company's calculation of monthly variances. These worksheets indicate that Cinsa and ENASA had relatively stable consumption variances and escalating price variances. Given that Cinsa and ENASA establish a standard price at the beginning of a calendar year for materials, one would expect an escalating price variance in a high inflation economy because a standard value is always being compared with a value that is constantly increasing. Furthermore, we determined that Cinsa's and ENASA's reported variances related only to POS cookware production and, accordingly, were allocated to a sufficient level of product specific detail in accordance with the Department's questionnaire instructions.

With regard to calculating the inflation index, our normal practice is to generally adhere to the financial reporting requirements prescribed by the accounting and auditing regulatory bodies of the respondent's home market. *See, Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737, 9743 (March 4, 1997). In this instance, the Mexican Accounting Principle Commission (''CPC'') requires that the financial statements and accounting records of Mexican companies be restated to account for the effects of inflation using the Consumer Price Index (CPI) published by the Bank of Mexico. As noted in their audited financial statements, Cinsa and ENASA complied with this regulation and restated their financial statements using the CPI. Because the respondent and all other enterprises that report in the currency of Mexico adhere to the same index in the normal course of business and the reliance on this index does not distort the cost of producing POS merchandise, we have accepted the use of the CPI.

Comment 16: Enamel frit cost.

Petitioner maintains that, in the preliminary determination, the Department correctly adjusted Cinsa's and ENASA's reported cost of enamel frit upward to reflect market value because the reported transfer prices for frit paid by Cinsa and ENASA to its affiliated supplier, ESVIMEX, S.A. de C.V. (''ESVIMEX''), were lower than prices paid for the identical merchandise by the supplier's unaffiliated customers and thus not arm's length prices. Petitioner also contends that the verification report indicates that ESVIMEX's discount to Cinsa and ENASA is not justified by any alleged cost savings.

Cinsa and ENASA claim that the evidence in the record of this review establishes that Cinsa's and ENASA's purchases from ESVIMEX were made at a level above ESVIMEX's COP. In addition, Cinsa and ENASA claim that the transfer prices represent fair market value because (1) Cinsa, ENASA and ESVIMEX's unrelated customers purchased enamel frit from the same price list (although unrelated customers received smaller discounts from list price than Cinsa and ENASA, or no discounts at all), and because (2) the lower prices paid by Cinsa and ENASA were attributable to larger volume sales and savings in transportation, storage, packing, warehousing and selling expenses. Cinsa also claims that the record does not reflect changes in the circumstances surrounding Cinsa's purchases from ESVIMEX during the first three reviews of this order (ENASA was not then a respondent), in which the Department accepted the transfer prices as being at arm's length. Finally, Cinsa states that the verification report shows that the quantified cost savings relating to the sale of the frit have nothing to do with additional production cost savings attributable to volume purchases of enamel frit by affiliated parties. Accordingly, Cinsa and ENASA argue that the Department should rely on the reported enamel frit costs, which are the actual production costs of ESVIMEX.

DOC Position: We agree with the respondents and the petitioner in part. In its November 19, 1996, second supplemental responses Cinsa and ENASA provided a schedule of the monthly COPs, transfer prices, and ''fair value'' (*i.e.* prices to unrelated buyers) of all frit purchased from ESVIMEX during the POR. In the preliminary results of review, we did not accept respondent's unsupported claimed cost savings and increased the frit portion of the reported direct materials cost to reflect the fact that frit purchased from an affiliated supplier did not reflect fair market value. We have examined respondent's claimed costs savings at verification, and as a result, in the final determination we have accepted all cost savings claimed by respondents and supported by documentation in the verification report. We have, however, increased the frit portion of the direct materials cost in respondent's reported cost database to account for the undocumented portion of the reported cost savings as discussed in the verification report dated July 18, 1997. *See* also Memorandum dated July 30, 1997, regarding recalculation of the increase to materials cost (Frit Memo).

Although provisions of the Department's new regulations [1] do not, as petitioner implies, apply to this case, we agree with petitioners that they are relevant as statements of the Department's current practice in areas, such as evaluation of whether affiliated party transactions constitute arm's length transactions, in which there are no explicit provisions in the regulations applicable to this review. The ''99.5%'' arm's length test cited by petitioner is currently used in determining whether sales of *subject merchandise* to an affiliated party are an appropriate basis for use as prices for purposes of determining normal value. The portion of the preamble to the Department's new regulations cited by petitioner commenting on the use of this test refers to 19 CFR 351.403. However, the portion of the preamble that deals with transactions involving the sale of *inputs* between affiliated parties, § 351.407, explicitly states that ''instead of implementing a single arm's length test applicable to all situations involving affiliated party inputs, we think it is

[1] *Antidumping Duties; Countervailing Duties; Final Rule*, (''May 1997 Final Rule'') 62 FR 27292, 27 355 (May 19, 1997).

important that the Department consider the facts of each case in order to determine the appropriate level of scrutiny it will give to affiliated party transactions.'' May 1997 Final Rule, 62 FR at 27362. Although petitioner seeks to imply that the ''99.5%'' test is a ''standard arm's length test'' referred to at 62 FR 27362, this is not the case. While the preamble at 62 FR 27362 states that the Department intends to continue ''its normal practice of comparing actual affiliated party prices with prices to or from unaffiliated parties,'' the above citation clarifies that, when dealing with inputs, there is no set percentage within which these must agree, and that the Department's decisions must take into account the facts of each case.

In this case, respondents have placed on the record indications that there are a number of market factors that are responsible for at least some portion of the price differences between affiliated and unaffiliated purchasers of frit from ESVIMEX. The Court of International Trade, commenting on determination of the acceptability of frit transfer prices in the 4th review of this order, has recently stated that ''providing Commerce with third party sales information is not the only means by which to prove arm's length transfer prices.'' *Cinsa, S.A. de C.V.* v. *United States,* Slip Op. 97–41 (April 4, 1997). Because Cinsa and ENASA have provided adequate evidentiary support for their claims regarding the market factors specified on the cost analysis provided to the Department, the Department must consider those factors in evaluating the extent to which the reported transfer prices can be considered representative of market values.

Our evaluation of the facts in this case show that we should continue to adjust Cinsa's and ENASA's reported cost of enamel frit to reflect market value. We do not agree with Cinsa's and ENASA's argument that the Department must accept ESVIMEX's frit transfer prices as reported on the theory that the transfer price sales were made at a fair market value. Pursuant to section 773(f)(2)of the Act, a transaction between affiliated parties is considered an appropriate source of ascertaining the value of an input if it fairly represents the amount usually reflected in sales of subject merchandise in the relevant market. *Cf.* 19 CFR 353.45(a), which requires that sales of subject merchandise to certain related parties be disregarded for purposes of calculating foreign market value unless the Secretary is satisfied that the transfer price is comparable to the price at which the producer or reseller sold [the merchandise] to a person not related to the seller. In their April 22, 1996, questionnaire response, Cinsa and ENASA provided information to the Department showing that ESVIMEX sells frit to Cinsa and ENASA at substantially less than the purchase price offered to unaffiliated purchasers of enamel frit, which they claim reflects cost savings to ESVIMEX attributable to transportation, storage, packing and selling costs. *See* Frit memo. However, neither their submissions nor the exhibits provided at verification supports the extent of the cost savings associated with the alleged ''volume discount.'' In this case, we specifically requested that Cinsa and ENASA submit a schedule comparing the transfer price and fair market value for frit purchases from the affiliated supplier with the supplier's COP and the supplier's prices to unaffiliated customers. In addition, we asked Cinsa and ENASA to submit supporting documentation for the fair market value amounts reported for frit (see question 4 of the supplemental section D questionnaire dated October 25, 1996).

At verification, we again examined this issue. Specifically, we requested that Cinsa and ENASA support their claim that the differences between the discounts accorded affiliated parties and the discounts accorded unrelated parties were fully accounted for by the cost efficiencies listed in their submission. Respondents provided data supporting the cost differential underlying part of the difference, stating that the balance could be attributed to ''volume discounts.'' Based on the documents examined at verification, we have determined that respondents adequately supported their claim with respect to the all cost efficiencies listed on the schedule submitted at verification, except for a portion that respondents' claimed as savings due to volume discounts. We noted that no empirical support was provided for the differences attributable to volume discounts. *See* Verification Report dated July 18, 1997 page 4, and 23–26, and Verification Exhibit 6. Furthermore, the savings attributable to making sales in large volumes would appear to already be embodied in the cost savings in ''selling expenses,'' which we have already taken into account.

The Department, in accordance with its longstanding policy of considering that transactions between affiliated parties are not at arm's length in the absence of sufficient evidence to the contrary, the Department reasonably determined that this standard had not been met with respect to ESVIMEX's frit prices to Cinsa and ENASA. *Cf. Outokumpu Copper Rolled Products AB* v. *United States,* 850 F. Supp. 16 (CIT 1994) (Department operates under the assumption that commission payments to related parties are not made at arm's length). Because no support was provided for the portion of the difference attributed to ''volume discounts,'' we have increased the frit portion of the cost of direct materials (since respondents adjusted their actual enamel frit costs to reflect the affiliated supplier's COP) by that undocumented amount to approximate an actual market price under the circumstances associated with ESVIMEX's sales to its affiliates in this POR. *See* the July 18, 1997, Verification Report, pages 23–26, and the Memorandum dated July 30, 1997, regarding Collapsing of Affiliated Parties (Collapsing memo).

Furthermore, we do not agree with the respondents that it is sufficient to show that ESVIMEX's frit prices to affiliates are above COP. Because Cinsa and ESVIMEX are affiliated within the definition of section 771(33) of the Act, we have determined that the treatment of the enamel frit transactions is governed by sections 773(f)(2) and (3) of the Act. In accordance with sections 773(f)(2) and (3) of the Act, respectively, the Department compared ESVIMEX's transfer price first to comparison market prices for sales of frit between unaffiliated parties and then to ESVIMEX's COP. The Department made a similar determination in the *Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom,* 62 FR 2081, 2115 (January 15, 1997). In that review, the Department found that in the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, or the affiliated supplier's cost of producing the major input. Cinsa's and ENASA's argument that it is sufficient to show that ESVIMEX's transfer price is above cost ignores the provisions of section 773(f)(2) of the Act, which requires a comparison of transfer price and market price when the latter is available. Thus, we used ESVIMEX's actual cost to produce the frit and compared it to prices charged to unaffiliated customers in order to determine fair market value. We noted that the prices charged to unaffiliated customers were greater than both the affiliated transfer price and the actual costs incurred to produce the frit supplied to Cinsa and ENASA.

Finally, we note that, although the Department determined at verification

of the first review of this order that the transfer prices at issue were at arm's length, and continued to accept the transfer prices in the second and third reviews, we have scrutinized these prices more closely in more recent reviews. Thus, in the fourth review, we rejected the transfer prices because Cinsa had not documented its claims that these were arm's length prices. (Although the CIT has recently held, in *Cinsa S.A. de C.V.* v. *United States*, Slip. Op. 97–41 (April 4, 1997), that our determination in that respect was insufficiently supported, the results of remand in that review did indicate that even at the time of the 4th review, it was no longer the Department's policy to accept Cinsa's unsupported assertion that the full extent of the discounts it received beyond those given to unrelated customers was accounted for by any cost efficiencies involved in differences in the terms of sale.) Therefore, Cinsa cannot claim that precedent requires the Department to accept their unmodified transfer prices, in this ninth review, as being at arm's length. The Department must make its determination in each review based on the facts on the record of that segment of the proceeding. Therefore, in this review, we have accepted Cinsa and ENASA's submitted frit values only to the degree that they are supported as embodying market based elements.

Comment 17. Petitioner argues that certain pages of Verification Exhibit 6, (the nature of which is proprietary), are untimely and should be stricken from the record. Petitioner states that moreover, the documents are irrelevant, because they reflect transactions that occurred outside the period of review.

Respondents maintain that although the documents involve assertions that were made outside the 9th POR, these documents establish the validity of Clause 12 of the Agreement between the joint venture partners of ESVIMEX (governing the conditions for purchases by affiliated parties of non-ESVIMEX frit).

DOC Position: We agree with the respondent. At verification, we requested the documentation to which petitioners refer, in order to verify an issue relating to a frit-purchase agreement in effect during the POR. Because any supporting documentation which the Department requests at verification is properly part of the record, there is no reason to strike this document from the record. Because the same agreement was in effect at the time of the affected frit purchases from the unrelated party, the documentation in question is relevant to the interpretation of the terms of that agreement, as is clear from the proprietary version of the July 18, 1997, verification report.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period December 1, 1994 through November 30, 1995:

Manufacturer/exporter	Margin (percent)
Cinsa	6.90
ENASA	2.74

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for Cinsa and ENASA will be the rates established above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 29.52 percent, the all others rate established in the final results of the less than fair value investigation (51 FR 36435, October 10, 1986).

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: July 30, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–20735 Filed 8–6–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072897A]

Endangered and Threatened Species; Draft Recovery Plan for Winter-run Chinook Salmon

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

ACTION: Notice of Availability of a Draft Recovery Plan; request for comments.

SUMMARY: NMFS is announcing the availability of a draft recovery plan for the Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*). NMFS is seeking review and public comments on the recovery plan. Copies are available on request.

DATES: Comments on the draft recovery plan must be received by December 5, 1997, if they are to be considered during preparation of a final recovery plan.

ADDRESSES: Requests for a copy of the draft plan should be addressed to National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95405; telephone: 707–575–6050. Copies of the draft plan can also be obtained from the NMFS Southwest Region World Wide Web site at http://swr.ucsd.edu. Written comments and materials regarding the draft plan should be directed to the same address.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, National Marine Fisheries Service, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA, 90802–4213; telephone: 562–980–4021.

SUPPLEMENTARY INFORMATION:

Background

Sacramento River winter-run chinook salmon are a unique population of chinook salmon in the Sacramento River and are distinguished from other runs based on the timing of their upstream migration and spawning season. Adult winter-run chinook generally leave the ocean and migrate through the Sacramento-San Joaquin Delta to the upper Sacramento River during the winter and spawn during the summer.

The Endangered Species Act requires that a recovery plan be developed and implemented for the survival and conservation of listed species, unless it is determined that a plan will not promote the conservation of the species. Because it was determined that a recovery plan was necessary for the survival and conservation of the endangered Sacramento River winter-run chinook salmon, NMFS appointed a Recovery Team (Team) to assist in the development of the recovery plan for the species. In March 1996, the Team submitted its final recommendations to NMFS. NMFS used these recommendations to formulate the Draft Winter-run Chinook Salmon Recovery Plan.

The draft plan discusses the natural history and current status of winter-run chinook salmon and factors leading to its decline. The draft plan identifies delisting criteria and proposes specific recovery measures considered necessary to achieve recovery and delist the species. Recovery measures are identified for seven broad goals, including restoring spawning and rearing habitat, improving juvenile survival, improving adult passage in their upstream migration; artificial propagation, harvest management, improving other fish and wildlife management programs, and improving our understanding of life history and habitat requirements. In addition, an economic analysis evaluates the costs to recovering winter-run chinook.

Public Comments Solicited

NMFS intends that the final recovery plan will take advantage of information and recommendations from all interested parties. Therefore, comments and suggestions are solicited from the public, other concerned governmental agencies, the scientific community, industry, and any other person concerned with this draft recovery plan. Based on requests from the public, NMFS will schedule, announce, and conduct public hearings on the draft recovery plan as necessary.

Dated: July 31, 1997.

Ann D. Terbush,

Chief, Permits Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–20773 Filed 8-6-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072997A]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Calico Scallop Committee and Advisory Panel, Golden Crab Committee, Joint Executive and Finance Committee, Snapper Grouper Committee, Mackerel Committee, Habitat Committee, and Bluefish Committee. A Council Session will also be held.

DATES: The meetings will be held from August 18–22, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571–1000; (800) 334–6660.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571–4366; fax: (803) 769–4520; email: susan.buchanan@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

August 18, 1997, 1:30 p.m. to 5:00 p.m.—Joint Calico Scallop Committee and Advisory Panel

The Committee and Advisory Panel will meet to review the management options paper and develop the draft Calico Scallop Fishery Management Plan (FMP).

August 19, 1997, 8:30 a.m. to 12:00 noon—Golden Crab Committee

The Committee will meet to review the draft framework action and develop recommendations for the Council.

August 19, 1997, 1:30 p.m. to 3:30 p.m.—Joint Executive and Finance Committee

The Committees will meet to review and approve proposed changes to 1997 activities and budget and to review and approve the proposed 1998 activities schedule and budget.

August 19, 1997, 3:30 p.m. to 6:00 p.m.—Snapper Grouper Committee

The Committee will meet to receive presentations on *Oculina* research, gag grouper, the South Carolina tagging program, and the economic impact research on saltwater anglers.

August 20, 1997, 8:30 a.m. to 5:00 p.m.—Snapper Grouper Committee

The Committee will meet to review comments from public hearings, letters and NMFS informal review of Snapper Grouper Amendment 9 and the associated Draft Supplemental Environmental Impact Statement, and to develop recommendations for finalizing Amendment 9.

August 21, 1997, 8:30 a.m. to 12:00 noon—Mackerel Committee

The Committee will meet to hear the status of Amendment 8 to the Coastal Migratory Pelagics FMP and framework actions, review the dolphin options paper, and develop management measures for dolphin.

August 21, 1997, 1:30 p.m. to 3:30 p.m.—Habitat Committee

The Committee will meet to hear a status report on the essential fish habitat workshop process, and to review the essential fish habitat plan and comprehensive amendment.

August 21, 1997, 3:30 p.m. to 4:30 p.m.—Bluefish Committee

The Committee will meet to review the Bluefish public hearing draft document and develop recommendations to the Mid-Atlantic Fishery Management Council (MAFMC) and the Atlantic States Marine Fisheries Commission (ASMFC).

August 21, 1997, 5:00 p.m. to 6:30 p.m.—Council Session

The full Council will convene to elect a Council Chairman and Vice-Chairman and hear the Mackerel Committee report before developing management measures for dolphin.

August 22, 1997, 8:30 a.m. to 5:00 p.m.—Council Session

The full Council will convene at 8:30 a.m., to take public comment on Snapper Grouper Amendment 9 before hearing the Snapper Grouper Committee report and taking final action on Amendment 9 for submission to the Secretary of Commerce; At 11:00 a.m., the Council will take public comment on golden crab framework actions before making a decision on these actions as necessary; At 2:00 p.m., the Council will

hear the Calico Scallop Committee report before taking action on which measures to include in the Calico Scallop FMP. From 2:30 p.m. to 5:00 p.m., the Council will hear the Habitat Committee report, and the Bluefish Committee report before approving Council bluefish amendment recommendations to the MAFMC and the ASMFC. At 3:00 p.m., the Council will hear the Executive and Finance Committee report and approve the proposed changes to 1997 activities and budget, and approve the proposed 1998 activities schedule and budget, hear a report on the Atlantic Coastal Cooperative Statistics Program, agency and liaison reports, and discuss other business.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 11, 1997.

Dated: July 31, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–20849 Filed 8–6–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073097A]

Endangered Species; Permits

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

ACTION: Issuance of Scientific Research Permit 1053, Issuance of Modification 4 to Scientific Research Permit 962, and Notice of Receipt of Application for a Scientific Research Permit (P648).

SUMMARY: Notice is hereby given that on July 14, 1997, NMFS issued scientific research permit 1053 to Molly Lutcavage, of the New England Aquarium (P645), to take listed leatherback turtles, and on July 23, 1997, NMFS issued modification 4 to scientific research permit 962 issued to Carlos Diez and Robert van Dam, Puerto Rico Department of Natural and Environmental Resources (P509B), to take listed hawksbill and green turtles for the purpose of scientific research subject to certain conditions set forth therein. Notice is also given that Samuel S. Sadove of Coastal Research & Education Society of Long Island, Inc. (P648) has applied in due form for a scientific research permit to take listed sea turtles.

ADDRESSES: The application, permit, and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250).

or

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

SUPPLEMENTARY INFORMATION: Notice was published on May 8, 1997 (62 FR 25174) that an application had been filed by Dr. Molly Lutcavage, New England Aquarium (P645), to take listed leatherback turtles as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Dr. Lutcavage requested a one year permit to satellite tag eight (8) listed leatherback (*Dermochelys* coriacea) turtles to determine vulnerability of leatherbacks to incidental capture by pelagic longline fisheries; to relate specific travel routes of leatherback turtles equipped with satellite transmitters to fishing activities and oceanographic features; to assist pelagic fishermen in the development of fishing techniques that reduce interactions with leatherback turtles; and to develop safe handling procedures and satellite attachment techniques. On July 14, 1997, NMFS issued Permit 1053 authorizing the above activities.

Notice was published on June 17, 1997 (62 FR 32768) that a request had been filed by Carlos Diez (P509B), to modify permit 962, to take listed sea turtles as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Carlos Diez and Robert van Dam are authorized under permit 962 to examine, photograph, measure, and tag 200 listed hawksbill (*Eretmochelys imbricata*) and 20 listed green (*Chelonia mydas*) sea turtles annually, in the waters surrounding Mona and Monito Islands, Puerto Rico. Additionally, some of the turtles may be lavaged, have blood or scute samples taken, or have time-depth recorders or crittercams attached. Modification 4, issued by NMFS on July 23, 1997, authorizes the following modifications to permit 962: 1) an increase in the level of take of hawksbill turtles to a total of 300 annually; 2) an increase in the level of take of green turtles to a total of 100 annually; 3) authorization to net capture green turtles; 4) authorization to include the Puerto Rican Islands of Culebra, Vieques, Desecheo, and Caja de Muertos in the study area; 5) authorization to collect up to 10 cc's of blood from all turtles taken under the authority of this permit for genetic analysis and sex determination; and 6) authorization to include Teresa Tellevast, U.S. Fish and Wildlife Service, as an agent under this permit.

Samuel S. Sadove, Coastal Research & Education Society of Long Island, Inc. (P648), requests a Scientific Research Permit under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The applicant is requesting a three year permit to take listed Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and leatherback (*Dermochelys coriacea*) sea turtles to determine the distribution, habitat use, survivorship, and recruitment of turtles in New York State waters. The turtles would be weighed, measured, photographed, blood sampled, fecal sampled, and tagged. The proposed study would continue ten years of research initiated by the applicant while acting as an agent for the New York State Department of Environmental Conservation, pursuant to the State of New York ESA Section 6 cooperative agreement.

Issuance of these permits/modifications, as required by the ESA, was based on a finding that such permits/modifications: (1) were applied for in good faith, (2) will not operate to the disadvantage of the listed species that is/are the subject of the permits/modifications, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 31, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–20848 Filed 8–6–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080197C]

Marine Mammals; Scientific Research Permits (File Nos. 782–1399 and 878–1410)

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

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a permit to take marine mammals for purposes of scientific research.

National Marine Fisheries Service, National Marine Mammal Laboratory, 7600 Sand Point Way, NE. BIN C15700 - Building 1, Seattle, WA 98115–0070 (File No. 782–1399); and

University of Texas Medical Branch, Galveston, TX 77555–0555 (Principal Investigator: Dr. Daniel F. Cowan, Professor of Pathology) (File No. 878–1410).

DATES: Written or telefaxed comments must be received on or before September 8, 1997.

ADDRESSES: The application and related documents are available for review upon written request or by appointment. (SEE **SUPPLEMENTARY INFORMATION**).

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on a particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by E-mail or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The National Marine Mammal Laboratory (File No. 782–1399) requests a permit to collect, import or export specimen materials from pinnipeds (excluding walrus) or cetaceans that were legally taken in the country of origin, killed incidental to commercial fishing or other operations, found dead at sea or stranded, and/or found dead of natural causes, from anywhere in the world these samples become available. The research conducted under permit will provide valuable information regarding the biology and life history of each species.

The University of Texas Medical Branch (File No. 878–1410) requests authority to obtain, import and export specimen materials from cetaceans and pinnipeds (except walrus) from anywhere in the world samples were legally taken. The purposes of the study are to: determine anatomic baselines for normal structures and tissues; determine the patterns of naturally occurring diseases and whether they change over time; whether stranding or other mortality can be attributed to environmental degradation or other human activity.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Addresses: Applications and related documents are available in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930/2298 (508/281–9250);

Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150);

Southeast Region, NMFS, 9721 Executive Blvd. North, St. Petersburg, FL 33702–2432 (813/570–5301); and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (310/980–4001).

Dated: August 1, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–20850 Filed 8–6–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97–31]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–31, with attached transmittal, policy justification, and 620C(d).

Dated: July 31, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

24 JUL 1997

In reply refer to:
I-50632/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-31, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Turkey for defense articles and services estimated to cost $75 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97-31

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Turkey

(ii) Total Estimated Value:

Major Defense Equipment*	$ 2 million
Other	$73 million
TOTAL	$75 million

(iii) Description of Articles or Services Offered:
Three hundred rounds of 40mm high explosives and 24,000 rounds of 20mm ammunition, shipyard/port support services and post transfer activities relating to "hot ship" and "cold ship" turnover of three PERRY class frigates from the U.S. Navy, U.S. Government and contractor technical and logistics personnel support services, personnel training and training equipment, maintenance, repair and calibration services for shipboard equipment, publications and technical data/drawings, support equipment, spare and repair parts, and other elements of logistics support necessary to prepare the three PERRY class frigates for transfer to Turkey in a "Safe to Steam" condition with all combat systems in an operational status.

(iv) Military Department: Navy (AGX, AGY, AGZ, BHM, BHN, GFT (Amendment 3), GGU, GGW, GGY, and JBW)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
None

(vii) Date Report Delivered to Congress: 24 JUL 1997

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Turkey - Ammunition and Support Services

The Government of Turkey has requested the purchase of 300 rounds of 40mm high explosives and 24,000 rounds of 20mm ammunition, shipyard/port support services and post transfer activities relating to "hot ship" and "cold ship" turnover of three PERRY class frigates from the U.S. Navy, U.S. Government and contractor technical and logistics personnel support services, personnel training and training equipment, maintenance, repair and calibration services for shipboard equipment, publications and technical data/drawings, support equipment, spare and repair parts, and other elements of logistics support necessary to prepare the three PERRY class frigates for transfer to Turkey in a "Safe to Steam" condition with all combat systems in an operational status. The estimated cost is $75 million.

This sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey a major NATO ally while furthering weapon system standardization and interoperability.

Turkey needs the weapons and ammunition to load out three PERRY class frigates. These frigates will enable Turkey to continue its naval modernization program by supplementing eight operational KNOX class frigates previously transferred in CY 93 and CY 94. The PERRY class frigates are intended as replacements for other aging naval vessels which will be retired. The weapons and equipment in this program are currently operational in the Turkish navy and will be provided in accordance with, and subject to the limitations on use and transfer provided for under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question. Turkey will have no difficulty absorbing these weapons and equipment into its naval forces.

There are no offset agreements proposed in connection with this sale.

The U.S. Government and contractor technical and logistics in-country personnel requirements will be determined following consultations with representatives of the Turkish navy.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

July 24, 1997

Certification Under Section 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and State Department Delegation of Authority No. 145 (sec. 1(a)(1)), I hereby certify that the furnishing to Turkey of weapons, ammunition, and support services for three PERRY-class frigates at an estimated cost of $75 million, is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

Lynn E. Davis 7/24/97
Lynn E. Davis

[FR Doc. 97–20793 Filed 8–6–97; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97–26]

36(b)(1) Arms Sales Notification

AGENCY: The Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–26, with attached transmittal, policy justification, and sensitivity of technology.

Dated: August 1, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

24 JUL 1997

In reply refer to:
I-50410/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-26, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $479 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Attachments Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97-26

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States (TECRO)

(ii) Total Estimated Value:

Major Defense Equipment*	$341 million
Other	$138 million
TOTAL	$479 million

(iii) Description of Articles or Services Offered: Twenty-one AH-1W Super Cobra helicopters, spare and repair parts, engineering technical assistance, support and test equipment, training, publications, contractor engineering technical and logistics support services, and other related elements of logistics support.

(iv) Military Department: Navy (SCP, Amendment 6)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(vii) Date Report Delivered to Congress: 24 JUL 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office (TECRO) in the United States - AH-1W Super Cobra Helicopters

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested the purchase of 21 AH-1W Super Cobra helicopters, spare and repair parts, engineering technical assistance, support and test equipment, training, publications, contractor engineering technical and logistics support services, and other related elements of logistics support. The estimated cost is $479 million.

This sale is consistent with United States law and policy, as expressed in Public Law 96-8.

The recipient will use these helicopters primarily to conduct military exercises for purpose of self-defense and military preparedness. The recipient will have no difficulty absorbing these additional helicopters into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Bell Helicopter, Fort Worth, Texas. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives in-country.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97-26

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AH-1W Super Cobra Helicopter and associated systems, including operations manuals and maintenance publications, are unclassified. The following components are classified:

a. The AN/APR-44(V)1 radar warning system hardware is unclassified. After software (parametric threat data) is incorporated into the system, it is then classified Secret. Publications and personnel training related to this equipment are classified Confidential.

b. The AN/APR-39 Radar Signal Detecting Set is Confidential when it is loaded with classified threat warning parameters.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 97–20795 Filed 8–6–97; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: DoD, National Defense Panel.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on August 18 and 19, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public from 0830–1700, August 18 and 19, 1997 in order for the Panel to discuss classified material.

DATES: August 18 and 19, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy, Arlington VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from 0830–1700 on August 18 and from 0830–1700 on August 19, 1997. During the closed session on August 18 from 1400–1500 the Panel will meet with General Peay, CINC, U.S. Central Command, MacDill AFB, FL at the Crystal Mall 3 office. On August 19 from 1999–1100 the Panel will meet with General Shelton, CINC, U.S. Southern Command and from 1330–1430 the Panel will meet with General Estes, CINC, NORAD/SPACE Command, Peterson, AFB, CO at the Crystal Mall 3 office. During the remainder of the meeting times during the closed session the National Defense Panel will present status updates of various future strategies, discuss desired capabilities, and develop future force elements.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

FOR FURTHER INFORMATION CONTACT: Please contact the National Defense Panel at (703) 602–4175/6.

Dated: August 1, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–20789 Filed 8–6–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Security Policy Advisory Board Action Notice

SUMMARY: The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC–29, which was signed by President on September 16, 1994.

The Board will advise the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and practices as developed by the U.S. Security Policy Board, and will function as a Federal advisory committee in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act.''

The President has appointed from the private sector, three of five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) will chair the Board. Other members include: Admiral Thomas Brooks, USN (Ret.) and Ms. Nina Stewart.

The next meeting of the Board will be held on 10 September 1997, at 0930 hours at the Holiday Inn, 225 McClellan Highway, East Boston, MA 02128. The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Terence Thompson, telephone: 703–602–9969.

Dated: August 1, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–20791 Filed 8–6–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group

AGENCY: Department of Defense, USSTRATCOM.

ACTION: Notice.

SUMMARY: The Strategic Advisory Group (SAG) will meet in closed session on October 23 and 24, 1997. The mission of the SAG is to provide timely advice on scientific, technical,and policy-related issues to the Commander in Chief, U.S. Strategic Command, during the development of the nation's strategic warplans. At this meeting, the SAG will discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12958, April 17, 1995. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, (5 U.S.C. App 2), it has been determined that this SAG meeting concerns matters listed in 5 USC 552b(c) and that, accordingly, this meeting will be closed to the public.

Dated: August 1, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–20790 Filed 8–6–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patent Applications for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: U.S. Army Chemical and Biological Defense Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent applications for non-exclusive, exclusive, or partially exclusive licensing. All of the patent applications listed below have been assigned to the Untied States Government as represented by the Secretary of the Army, Washington, DC.

Title: Comprehensive Identification Scheme for Pathogens.

Description: This invention relates to classification of microorganisms, and more particularly to a comprehensive identification scheme for pathogens.

Patent Applications Number: 08/530,400.

Filing Date: September 15, 1995.

Title: Enzymatic Detoxification of Organophosphorus Compounds.

Description: This invention relates to the expression of a recombinant bacterial enzyme which is useful for detoxifying cholinesterase-inhibiting organophosphorus compounds such as pesticides and chemical nerve agents and the decontamination of substances contaminated with these compounds.

Patent Application Number: 08/796,488.

Filing Date: February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. John Biffoni, Patent Attorney, U.S. Army CBDCOM, AMSCB–GC, APG, MD 21010–5423, phone: (410) 671–1158.

SUPPLEMENTARY INFORMATION: Written objections must be filed on or before September 8, 1997.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–20765 Filed 8–6–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Chemical and Biological Defense Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, exclusive, or partially exclusive licensing. All of the patents listed below have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

Title: Neural Network Computing System for Pattern Recognition of Thermoluminescence Signature Spectra and Chemical Defense.

Description: The present invention is related to the use of neural network computing system recognizing the thermoluminescence signature spectra of chemical compounds and finds particular utility in the recognition of nerve and blister agent compounds.

Patent Number: 5,631,469.

Issue Date: May 20, 1997.

Title: Competitor Primer Asymmetric Polymerase Chain Reaction.

Description: The present invention relates generally to the detection of nucleic acid sequences by polymerase chain reaction (PCR). More particularly, this invention relates to a process for efficiently producing single-stranded PCR products in an amount proportional to the amount of a target nucleic acid sequence present in a sample being analyzed.

Patent Number: 5,627,054.

Issue Date: May 6, 1997.

Title: Apparatus and Method for Measurement of Offgassing Rate.

Description: This invention relates generally to testing apparatus and more particularly to test cells for measuring the offgasses emitted from a test sample.

Patent Number: 5,606,111.

Issue Date: February 25, 1997.

Title: Focal Plane filtered Multispectral Multidetector Imager.

Description: This invention relates to a focal plane filtered multispectral multidetector imager which can be used for target acquisition and recognition and for the ability to detect and classify chemical vapors or any target with a spectral signature.

Patent Number: 5,568.186.

Issue Date: October 22, 1996.

Title: Method for Testing the Toxicity of Chemicals Using Hyperactivated Spermatozoa.

Description: This invention relates to a method for the in vitro testing of chemicals to determine reproductive toxicity using hyperactivated spermatozoa. In addition, a method is provided for the in vitro production of rabbit spermatozoa of hyperactivated motility useful in said testing.

Patent Number: 5,569,580.

Issue Date: October 29, 1996.

Title: Method for Determining Elongational Viscosity and Dynamic Surface Tension in Liquid Solutions.

Description: This invention relates to methods and apparatus for measuring and testing the physical properties of materials and more particularly for measuring the elongational viscosity and dynamic surface tension of liquid solutions.

Patent Number: 5,559,284.

Issue Date: September 24, 1996.

Title: Hermetically Sealable Reusable Container.

Description: This invention relates to a container having a reusable hermetic seal. The container includes polished surfaces, multiple O-rings and removable fasteners for preventing leaks of toxic substances.

Patent Number: 5,560,511.

Issue Date: October 1, 1996.

Title: Remote Control Adaptor for a Detonator System.

Description: This invention relates to a device which converts the demolition firing device into a remote control actuator. The object of this invention is to permit modification of a demolition firing device previously used only to set off blasting caps to remotely control smoke generators or any other device or system.

Patent Number: 5,546,862.

Issue Date: August 20, 1996.

Title: Solid Fuel Ramjet Tubular Projectile.

Description: This invention relates generally to tubular projectiles and more particularly to a solid fuel ramjet tubular projectile comprising multiple longitudinal combustion chambers and an inlet turbulence generator.

Patent Number: 5,544,586.

Issue Date: August 13, 1996.

Title: Method and Apparatus for Suspending Microparticles.

Description: This invention relates to the detection and identification of micron-sized particles including liquids, biological microorganisms, chemical particles and unknown analytes. It also pertains to the construction of special particles for test or manufacturing purposes.

Patent Number: 5,532,140.

Issue Date: July 2, 1996.

Title: Apparatus for Growing Microorganism Cultures.

Description: This invention relates to using a culture that provides a continuous supply of nutrients and a continuous removal of waste products so as to result in greater growth. At the same time the cultures are formed on a surface such that they are isolated and easily identified optically or by phage technique. Most importantly, however, the different colonies can be easily removed by transferring them to absorbent material.

Patent Number: 5,523,235.

Issue Date: June 4, 1996.

Title: On-The-Move Surface Sampling Head For A Mass Spectrometer.

Description: This invention relates to an on-the-move surface sampling probe used in conjunction with a mass spectrometer for the purpose of detecting chemical contaminated areas.

Patent Number: 5,517,026.

Issue Date: May 14, 1996.

Title: Method for Detection of Microorganisms.

Description: This invention relates to microorganism detection and sorting systems.

Patent Number: 5,290,707.

Issue Date: March 1, 1994.

Title: Detection of Yersinia Using the Polymerase Chain Reaction.

Description: This invention relates to classification of microorganisms, and more particularly to a comprehensive identification scheme for pathogens.

Patent Number: 5,654,144.

Issue Date: August 5, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. John Biffoni, Patent Attorney, U.S. Army CBDCOM, AMSCB–GC, APG, MD 21010–5423, phone: (410) 671–1158.

SUPPLEMENTARY INFORMATION: Written objections must be filed on or before September 8, 1997.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–20764 Filed 8–6–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending systems of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed actions will be effective without further notice on September 8, 1997, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Army Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 31, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0025–6USASC

SYSTEM NAME:

Military Affiliate Radio System *(March 4, 1997, 62 FR 9757).*

CHANGES:

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RETENTION AND DISPOSAL:

Delete entry and replace with 'Destroy on each renewal or two years after termination of membership.'

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A0025–6USASC

SYSTEM NAME:

Military Affiliate Radio System.

SYSTEM LOCATION:

U.S. Army Signal Command, Fort Huachuca, AZ 85613–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having a valid amateur radio station license issued by the Federal Communications Commission who apply for membership in the Army Military Affiliate Radio System (MARS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's name, home address and telephone number, licensing data and call-sign provided by Federal Communications Commission, Army MARS call-sign, relevant inquiries/records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; DoD Directive 4650.2; and Field Manual 11–490–7.

PURPOSE(S):

To provide a potential reserve of trained radio communications personnel for military duty when needed and/or to provide auxiliary communications for military, civil, and/or disaster officials during periods of emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to Department of Army and Department of Defense communication agencies and their authorized contractors in connection with individual's participation in the Army Military Affiliate Radio System Program and to federal supply agencies in connection with individual's participation in the Army MARS Equipment Program.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards; paper in file folders, computer tapes, discs, listings.

RETRIEVABILITY:

By member's name, and amateur and/or MARS call signs.

SAFEGUARDS:

Information is maintained in buildings having security guards and is accessible only to individuals who have need therefor to perform their duties. Automated records are further protected by a password assigned to designated persons.

RETENTION AND DISPOSAL:

Destroy on each renewal or two years after termination of membership.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Signal Command, ATTN: AFSC-OPT-BC, Fort Huachuca, AZ 95613–5000.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Signal Command, ATTN: AFSC-OPT-BC, Fort Huachuca, AZ 95613–5000.

Individual should provide the name under which licensed is the Army MARS program, amateur and or MARS call sign, present address, call sign, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Signal Command, ATTN: AFSC-OPT-BC, Fort Huachuca, AZ 95613–5000.

Individual should provide the name under which licensed is the Army MARS program, amateur and or MARS call sign, present address, call sign, and signature.

CONTESTING RECORDS PROCEDURES:

The Army's rules for accessing records, and for contesting contents and

appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and the Federal Communications Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040 DASG

SYSTEM NAME:

Medical Facility Administration Records *(February 22, 1993, 58 FR 10056).*

CHANGES:

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SYSTEM MANAGER(S)AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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A0040 DASG

SYSTEM NAME:

Medical Facility Administration Records.

SYSTEM LOCATION:

Medical centers, hospitals, and health clinics. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are authorized to use services of an Army medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system generally relates to administration at a medical facility, as opposed to an individual's health/care. Typically, records comprise scheduling of appointments, medical history data used to locate medical records, individual's name, Social Security Number, birth, death, accountability of patients (e.g., bad charts; transfer, leave requests, etc.); receipts for patients' personal property, prescriptions for medications, eyeglasses, hearing aids, prosthetic devices, diet/special nourishment plans, blood donor records, charges, receipts and accounting, documents of payments for medical/dental services; register number assigned; Social Security Number, and similar records/reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

PURPOSE(S):

To locate medical records and personnel, schedule appointments; provide research and statistical data.

To enhance efficient management practices and effective patient administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Birth records are disclosed to states' Bureau of Vital Statistics and overseas birth records are disclosed to the Department of State to provide the official certificates of birth. Birth records may also be used for statistical purposes.

Death records are disclosed to federal, state and private sector authorities to provide the official certificates of death. Death records may also be used for statistical purposes.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards; paper records in file holders or other computerized or machine readable media.

RETRIEVABILITY:

By individual's surname or Social Security Number.

SAFEGUARDS:

Records are maintained within secured buildings in areas accessible only to persons having official need therefor who are properly trained and screened. Automated segments are protected by controlled system passwords governing access to data.

RETENTION AND DISPOSAL:

Nominal index files, including register numbers assigned, are destroyed after 20 years. Records of transient value (e.g., issuance of spectacles/prosthetics, diet/food plan, etc.) are destroyed within 3 months of patient's release. Other records have varying periods of retention: Record of birth/death 2 years; patient accountability (admission/discharge) 5 years; blood donor 5 years or when no longer needed for medical/legal reasons whichever is longer; record of patient's personal property 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Patient Administrator at the medical facility where service/care was provided. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, individual should provide the full name, Social Security Number, details which will assist in locating record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Patient Administrator at the medical facility where service/care was provided. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, individual should provide the full name, Social Security Number, details which will assist in locating record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; medical facility records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–1 DASG

SYSTEM NAME:

Professional Consultant Control Files *(February 22, 1993, 58 FR 10056).*

CHANGES:

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SYSTEM MANAGER(S)AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Office of the

Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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A0040–1 DASG

SYSTEM NAME:

Professional Consultant Control Files.

SYSTEM LOCATION:

Office of the Surgeon General, Headquarters, Department of the Army; U.S. Army Health Services Command; U.S. Army Medical Command, Europe; U.S. Army Medical Command, Korea. Official mailing addresses are published as an appendix to the Army's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who has been used or appointed as a professional consultant in the professional medical services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents containing name, curriculum vitae of professional qualifications and experience, appointment, utilization, duties, responsibilities, and compensation of appointed consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C., Chapter 55.

PURPOSE(S):

To appoint and monitor utilization of designated consultants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information on individuals may be provided to civilian and military medical facilities, Federation of State Medical boards of the United States, State Licensure Authorities and other appropriate professional regulating bodies for use in considering and selecting individuals for panels or boards or for speaking engagements.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By last name of consultant.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized individuals having official need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records are destroyed 1 year after termination of consultant's appointment.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–3a DASG

SYSTEM NAME:

Medical Review Files *(February 22, 1993, 58 FR 10058).*

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with 'The Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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A0040–3a DASG

SYSTEM NAME:

Medical Review Files.

SYSTEM LOCATION:

The Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and registrants who are being considered for Army service and whose medical fitness is questionable; Army members being considered for continuance in service, promotion, special assignment, or separation whose medical fitness is questioned either by the medical evaluating authority or by the individual.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain documents relating to medical fitness of individuals for appointment, enlistment, retention in service, promotion, special assignment, or separation. Included are reports of medical examination and evaluation, psychological evaluation reports, and similar or related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C., Chapter 55.

PURPOSE(S):

To evaluate medical fitness of marginally qualified personnel for Army program with strict regard to established medical standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are maintained in secured areas accessible only to designated personnel having official need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Destroyed after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, place and date of medical examination, additional details that will facilitate locating the record, and signature.

RECORD ACCESS PROCEDURES

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, place and date of medical examination, additional details that will facilitate locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From clinical records, health records, medical boards, civilian physicians, consultation reports, other Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM.

None.

A0040–3b DASG

SYSTEM NAME:

Medical Evaluation Files *(February 22, 1993, 58 FR 10058).*

CHANGES:

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SYSTEM MANAGER(S)AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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A0040–3b DASG

SYSTEM NAME:

Medical Evaluation Files.

SYSTEM LOCATION:

Primary location: Army Medical Department medical facilities convening a medical board.

A segment exists at the U.S. Army Physical Evaluation Board and the U.S. Army Physical Disability Agency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army members whose medical fitness for continued service has been questioned either by the member or his/her commander.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information concerning the member; certain codes of specific types of injuries for research study purposes; Department of Veterans Affairs Schedule for Rating Disability Diagnostic Codes; documents reflecting determination by an Army board of medical fitness for continued Army active service; board proceedings and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapters 55 and 61; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used by Medical Boards to determine medical fitness for continued Army active service. They are used by the Physical Evaluation Board to review board findings when required and to determine if the individual should be discharged, temporarily or permanently retired for disability, or retained for active service. The U.S. Physical Disability Agency reviews determinations and dispositions, and responds to inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic diskettes.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened and trained. Operation of data processing equipment and magnetic tapes are limited strictly to authorized personnel. Computer has key lock and key is controlled. Magnetic diskettes are stored and controlled to ensure they do not result in unauthorized disclosure of personal information.

RETENTION AND DISPOSAL:

Records of Medical Boards are retained for 5 years and then destroyed. Records of the U.S. Army Physical Evaluation Boards are retained for 2 years or until discontinued, whichever occurs first. Records at the U.S. Army Physical Disability Agency are retained for 5 years and then destroyed. Destruction of all records is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, Social Security Number, details which will assist in locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, Social Security Number, details which will assist in locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; medical records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–3c DASG

SYSTEM NAME:

Medical Regulating Files *(February 22, 1993, 58 FR 10059).*

CHANGES:

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SYSTEM MANAGER(S)AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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A0040–3c DASG

SYSTEM NAME:

Medical Regulating Files.

SYSTEM LOCATION:

Primary location: The Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

Segments exist at Army medical treatment facilities, evacuation units and medical regulating offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any patient requiring transfer to another medical treatment facility who is reported to the Armed Services Medical Regulating Office by U.S. Government medical treatment facilities for designation of the receiving medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains information reported by the transferring medical treatment facility and includes, but is not limited to, patient identity, service affiliation and grade or status, sex, medical diagnosis, medical condition, special procedures or requirements needed, medical specialties required, administrative considerations, personal considerations, the patient's home town and/or duty station and other information having an impact on the transfer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To properly determine the appropriate medical treatment facility to which the reported patient will be transferred; to notify the reporting U.S. Government medical treatment facility of the transfer destination; to notify the receiving medical treatment facility of the transfer; to notify evacuation units, medical regulating offices and other government offices for official reasons; to evaluate the effectiveness of reported information; to establish further the specific needs of the reported patient; for statistical purposes; and when required by law and official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

NOTE: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The Army's 'Blanket Routine Uses' do not apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; index cards.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized personnel who are properly screened and trained.

RETENTION AND DISPOSAL:

Destroyed 1 year following the end of the calendar year in which the patient was reported to the Armed Services Medical Regulating Office.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013 or to the Patient Administrator at the medical treatment facility where service was provided.

Individual should provide full name, rank or status and parent service, approximate date of transfer, medical

treatment facility from which transferred, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013 or to the Patient Administrator at the medical treatment facility where service was provided.

Individual should provide full name, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred, and current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From transferring and receiving treatment facilities, medical regulating offices, evacuation offices, and other U.S. Government offices, agencies and commands relevant to the patient transfer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–5 DASG

SYSTEM NAME:

Occupational Health Records *(February 22, 1993, 58 FR 10060).*

CHANGES:

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SYSTEM LOCATION:

Delete address and replace with 'The Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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SYSTEM MANAGER(S)AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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A0040–5 DASG

SYSTEM NAME:

Occupational Health Records.

SYSTEM LOCATION:

Army medical treatment facilities. Addresses may be obtained from the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Army employees; active duty military personnel and their dependents who are treated on an out-patient basis by medical treatment facilities for whom specific occupational health examinations have been requested.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, date and place of birth, marital status, dates of medical surveillance tests and their results; documents reflecting the training, experience and certification to work within hazardous environments; external exposures to chemicals, radiation, physical stress, non-human primates, including personnel monitoring results, work area monitoring readings, and similar and related documents; personnel protective equipment and medical programs required to limit exposure to environmental safety and health hazards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902; 29 U.S.C. 668; 29 CFR Chapter XVII, Occupational Safety and Health Standards; E.O.s 12223 and 12608; and E.O. 9397 (SSN).

PURPOSE(S):

To determine persons listed in the 'Individual-Category' above, pursuant to appropriate preventive medicine programs; to ensure that employees are qualified to perform duties under environmental stress and that such stress is limited to lowest level practical.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to appropriate Government agencies whose responsibility falls within the above occupational health statutes.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; magnetic tapes, discs, and printouts.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals whose official duties dictate need therefor. Information in automated media are further protected by storage in locked rooms. All individuals afforded access are given periodic orientations concerning sensitivity of personal information and requirement to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Personnel exposure files/monitoring data are retained 5 years after evaluation and recorded on permanent medical records. Records relating to individual's health are incorporated in the individual's medical record.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013, or to the Patient Administrator at the appropriate medical treatment facility.

Individual must provide full name, Social Security Number, current address and telephone number, sufficient details to permit locating records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013, or to the Patient Administrator at the appropriate medical treatment facility.

Individual must provide full name, Social Security Number, current address and telephone number, sufficient details

to permit locating records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial determination are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From Army Medical records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–14 DASG

SYSTEM NAME:

Radiation Exposure Records *(February 22, 1993, 58 FR 10060).*

CHANGES:

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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A0040–14 DASG

SYSTEM NAME:

Radiation Exposure Records.

SYSTEM LOCATION:

Army installations, activities, laboratories, etc., which use or store radiation producing devices or radioactive materials or equipment. An automated segment exists at Lexington Blue Grass Depot, KY 40511-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons employed by the Army, including employees of contractors, who are occupationally exposed to radiation or radioactive materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting individual's training, experience, and certification to work within hazardous environments such as require the handling of or exposure to radioactive materials or equipment, exposure to radiation. Records may include DD Form 1852 (Dosimeter Application and Record of Occupational Radiation Exposure), DD Form 1141 (Dosimetry Record), DA Form 3484 (Photodosimetry Report), SF 11–206, exposed dosimetry film; investigative reports of harmful chemical, biological, and radiological exposures; relevant management reports.

Automated records contain data elements such as individual's name, Social Security Number, date of birth, film badge number, coded cross-reference to place of assignment at time of exposure, dates of exposure and radiation dose, cumulative exposure, type of measuring device, and coded cross-reference to qualifying data regarding exposure readings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 668; U.S. Nuclear Regulatory Commission Regulation (10 CFR part 19); Department of Labor Regulation (29 CFR part 1910); and E.O. 9397 (SSN).

PURPOSE(S):

To ensure individual qualifications to handle radioactive materials and/or to work under management identified stressful conditions; to monitor, evaluate, and control the risks of individual exposure to ionizing radiation or radioactive materials by comparison of short and long term exposures; to conduct investigations of occupational health hazards and relevant management studies; to determine safety standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system of records may be disclosed to Federal agencies, academic institutions, and non-governmental agencies such as the National Council on Radiation Protection and Measurement, and the National Research Council which are authorized to conduct research, evaluation, and monitorship.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers in file folders, film packets, magnetic/tapes/discs.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals having official need therefor in the performance of assigned duties. In addition, access to automated records is controlled by Card Key System, which requires positive identification and authorization.

RETENTION AND DISPOSAL:

Personnel dosimetry and bioassay records are permanent. Investigative reports of harmful chemical, biological, and radiological exposures are retained for 30 years. Processed film showing individual exposure is retained 5 years after evaluation and recorded on permanent records. Medical test results are transferred to military members medical records or, in the case of civilians, to their civilian personnel records on reassignments, transfer, or separation.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

Individual must furnish full name, Social Security Number, dates and locations at which exposed to radiation or radioactive materials, etc., and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

Individual must furnish full name, Social Security Number, dates and locations at which exposed to radiation or radioactive materials, etc., and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, dosimetry film, Army and/or DoD records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–31a DASG

SYSTEM NAME:

Pathology Consultation Record Files *(February 22, 1993, 58 FR 10061).*

CHANGES:

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SYSTEM MANAGER(S)AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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A0040–31a DASG

SYSTEM NAME:

Pathology Consultation Record Files.

SYSTEM LOCATION:

Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Washington, DC 20307–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals treated in military or civilian medical facilities whose cases were reviewed on a consultative basis by members of the staff of the Armed Forces Institute of Pathology.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents, tissue blocks, microscopic slides, X-rays and photographs reflecting outpatient or inpatient treatment or observation of all individuals on whose cases consultation has been requested.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapter 55; and E.O. 9397 (SSN).

PURPOSE(S):

To ensure complete medical data are available to pathologist providing consultative diagnosis to requesting physician in order to improve quality of care provided to individuals; to provide a data base for education of medical personnel; to provide a data base for medical research and statistical purposes and when required by law or for official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Individual records may be released to referring physician, to physicians treating the individual, to qualified medical researchers and students, and to other Federal agencies and law enforcement personnel when requested for official purposes involving criminal prosecution, civil court action or regulatory orders.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, X-rays, photographs in paper file folders, microfiche, magnetic tape, printout; tissue blocks in appropriate storage containers; and microscopic slides in cardboard file folders.

RETRIEVABILITY:

By last name or terminal digit number (Social Security Number) or accession number assigned when case is received for consultation.

SAFEGUARDS:

Access to the Armed Forces Institute of Pathology is controlled. Records are maintained in areas accessible only to authorized personnel who are properly screened and trained.

RETENTION AND DISPOSAL:

Retained as long as case material has value for medical research or education. Individual cases are reviewed periodically and materials no longer of value to the Institute are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Patient Records and Tissue Repository Division, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Washington, DC 20307–5001.

Requesting individual must submit full name, name, Social Security Number or service number of military sponsor and branch of military service, if applicable, or accession number assigned by the Armed Forces Institute of Pathology, if known. For requests made in person, identification such as military ID card or valid driver's license is required.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Patient Records and Tissue Repository Division, Armed Forces Institute of Pathology, Walter Reed Army medical Center, Washington, DC 20307–5001.

Requesting individual must submit full name, name, Social Security Number or service number of military sponsor and branch of military service, if applicable, or accession number assigned by the Armed Forces Institute of Pathology, if known. For requests made in person, identification such as military ID card or valid driver's license is required.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Interview, diagnostic test, other available administrative or medical records obtained from civilian or military sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–31b DASG

SYSTEM NAME:

Research and Experimental Case Files *(February 22, 1993, 58 FR 10062).*

CHANGES:

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SYSTEM LOCATION:

After '1 copy will be located at' replace address with 'The Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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SYSTEM MANAGER(S)AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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A0040–31b DASG

SYSTEM NAME:

Research and Experimental Case Files.

SYSTEM LOCATION:

U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5425.

Individual research/test/medical documents (paper records) are contained in individual's health record which, for reserve and retired military members, is at the U.S. Army Reserve Components Personnel and Administration Center, St. Louis, MO; for other separated military members, is at the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–5200; for military members on active duty, is at the servicing medical facility/center; for civilians (both Federal employees and prisoners) is in a special file at the National Personnel Records Center.

As paper records are converted to microfiche, the original (silver halide) and 1 copy of the microfiche will be located at the Washington National Records Center; 1 copy will be located at Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013; 1 copy will reside with the Army contractor-the National Academy of Sciences; and 1 copy retained at the U.S. Army Medical Research Institute of Chemical Defense.

Historical 16mm film and audio visual tapes are at Norton Air Force Base, CA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers (military members, Federal civilian employees, state prisoners) who participated in Army tests of potential chemical agents and/or antidotes from the early 1950's until the program ended in 1975.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual pre-test physical examination records and test records of performance and biomedical parameters measured during and after test exposure.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; Pub.L. 103-160; and E.O. 9397 (SSN).

PURPOSE(S):

To follow up on individuals who voluntarily participated in Army chemical/biological agent research projects for the purpose of assessing risks/hazards to them, and for retrospective medical/scientific evaluation and future scientific and legal significance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Veterans Affairs in connection with benefits determinations.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in individual's medical file folders; see 'system location' above for storage of microfiche, computer magnetic tapes and paper printouts, video tapes and 16mm film.

RETRIEVABILITY:

Paper records in individual's health record are retrieved by surname and/or service number/Social Security Number. Microfiche are retrieved by individual's surname. Film/video tape is accessed by case number and/or volunteer's number. Automated records are accessed by volunteer's number or case number.

SAFEGUARDS:

Paper records and microfiche are kept in locked rooms/compartments with access limited to authorized personnel. Access to computerized data is by use of a valid site ID number assigned to the individual terminal and by a valid user ID and password code assigned to authorized user, changed periodically to avoid compromise. Data entry is on-line using a dial-up terminal. Computer files are controlled by keys known only to U.S. Army Medical Research Institute of chemical Defense personnel assigned to work on the data base. Data base output is available only to designated computer operators at the Institute. Computer facility has double barrier physical protection. The remote terminal is in a room which is locked when vacated and the building is secured when unoccupied. The contractor (National Academy of Sciences) employs equal safeguards which meet Army standards for Privacy Act data.

RETENTION AND DISPOSAL:

Records stored in the computer and on microfiche are retained indefinitely at the sites identified under 'system location'. Paper medical records in an individual's health record are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5425.

Individual should provide full name, Social Security Number, current address and telephone number of the requester.

For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer or other individually identifying number, building pass, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5425.

Individual should provide full name, Social Security Number, current address and telephone number of the requester.

For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer or other individually identifying number, building pass, etc.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual through test/questionnaire forms completed at test location; from medical authorities/sources by evaluation of data collected previous to, during, and following tests while individual was in this research program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–66a DASG

SYSTEM NAME:

Medical Staff Credentials File *(April 28, 1993, 58 FR 25813).*

CHANGES:

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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A0040–66a DASG

SYSTEM NAME:

Medical Staff Credentials File.

SYSTEM LOCATION:

Medical treatment facilities at Army commands, installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals performing clinical practice in medical treatment facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting delineation of clinical privileges and clinical performance and medical malpractice case files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapter 55; and E.O. 9397 (SSN).

PURPOSE(S):

To determine and assess capability of practitioner's clinical practice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In specific instances, clinical privileged information from this system of records may be provided to civilian and military medical facilities, Federation of State Medical Boards of the United States, State Licensure Authorities and other appropriate professional regulating bodies for use in assuring high quality health care.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to the medical treatment facility commander and credentials committee members.

RETENTION AND DISPOSAL:

Records are retained in medical treatment facility of individual's last assignment. Records of military members are transferred to individual's Military Personnel Records Jacket upon separation or retirement. Records on civilian personnel are destroyed 5 years after employment terminates.

Medical malpractice case files are destroyed after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander of the medical treatment where practitioner provided clinical service. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the medical treatment where practitioner provided clinical service. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Interviewer, individual's application, medical audit results, other administrative or investigative records obtained from civilian or military sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–400 DASG

SYSTEM NAME:

Entrance Medical Examination Files *(February 22, 1993, 58 FR 10065).*

CHANGES:

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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A0040–400 DASG

SYSTEM NAME:

Entrance Medical Examination Files.

SYSTEM LOCATION:

Army medical examining facilities; Military Enlistment Processing Stations (for enlistees); Department of Defense Medical Review Board, U.S. Academy, CO 80840–2200 (except for reservists). Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who enroll in the Reserve Officers Training Corps program, enlist or are appointed in the U.S. Army or U.S. Army Reserves, or are appointed as a cadet to the U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Entrance medical examination and resulting documentation such as SF 88, Report of Medical Examination, and SF 93, Report of Medical History, together with relevant and supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapter 55; and E.O. 9397 (SSN).

PURPOSE(S):

To determine medical acceptance of applicant for military service and

thereafter to properly assign and use individual. Management data are derived and used by Health Services Command to evaluate effectiveness of procurement medical standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; selected management data are stored on word processing or magnetic discs and tapes.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in buildings using security guards, accessible only to authorized personnel having official need for the information who are properly screened and trained.

RETENTION AND DISPOSAL:

Original SF 88 and 93 become permanent documents in individual's Health Record; 1 copy of these forms and supporting documentation is retained by the Army or Military Enlistment Processing Station examining Facility for 1 year; 1 copy is forwarded to the Department of Defense Medical Review Board where it is retained for 5 years. Records of individuals rejected for military service are retained for statistical analyses, but for no longer than 2 years, after which they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander of the medical examining facility where physical examination was given. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should provide the full name, Social Security Number, home address, approximate date of the examination, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commander of the medical examining facility where physical examination was given. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should provide the full name, Social Security Number, home address, approximate date of the examination, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; from the physician and other medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–407 DASG

SYSTEM NAME:

Army Community Health Nursing Records - Family Records *(February 22, 1993, 58 FR 10065).*

CHANGES:

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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A0040–407 DASG

SYSTEM NAME:

Army Community Health Nursing Records - Family Records.

SYSTEM LOCATION:

Army Medical Centers and hospitals. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals eligible for Army military medical care.

CATEGORIES OF RECORDS IN THE SYSTEM:

Family Record Form (DA Form 3762) Case Referral Form (DA Form 3763); Medical diagnosis, observations, socioeconomic plans and goals for nursing care, summarization of consultations, and similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapter 55; and E.O. 9397 (SSN).

PURPOSE(S):

To identify family members who receive Army community health nursing care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders retained in the Army Community Health Nursing Office; copy of DA Forms 3762 and 3763 is filed in individual's outpatient medical record.

RETRIEVABILITY:

By surname of eligible military member or sponsor.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having official need therefor. Facilities are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are destroyed 3 years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Patient Administrator of the Army medical treatment facility which provided the health nursing care. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should furnish the full name, Social Security Number, name and Social Security Number of sponsor, if applicable, relationship to military member, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Patient Administrator of the Army medical treatment facility which provided the health nursing care. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should furnish the full name, Social Security Number, name and Social Security Number of sponsor, if applicable, relationship to military member, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, family members, other persons having information relevant to health of family members; educational institutions; civilian health, welfare, and recreational agencies; civilian law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–905 DASG

SYSTEM NAME:

Privately Owned Animal Record Files *(April 28, 1993, 58 FR 25814).*

CHANGES:

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.'

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A0040–905 DASG

SYSTEM NAME:

Privately Owned Animal Record Files.

SYSTEM LOCATION:

Veterinary service at medical facilities on Army installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons whose privately owned animals receive veterinary care.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, home address and telephone number of animal's owner; record of treatment of animal; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; and E.O. 9397 (SSN).

PURPOSE(S):

To record registration, vaccination, and/or treatment of animals; to compile statistical data; and to identify animals registered with the Veterinary Treatment Facility.

Used by veterinarians and health care authorities to identify the animal, verify ownership, record history, and to insure veterinary care, treatment and immunizations provided to animals of authorized owners is recorded; to compile statistical data; conduct research; teach; assist in law enforcement, to include investigation and litigation; and evaluate the care provided.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The information may be used to aid in preventive health and communicable disease control programs, report medical conditions required by law to Federal, state, and local agencies.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and other computerized or machine readable media.

RETRIEVABILITY:

By name and Social Security Number of the animal's owner.

SAFEGUARDS:

Records are maintained in buildings which are locked when unattended and are accessed only by authorized personnel having an official need-to-know.

RETENTION AND DISPOSAL:

Destroy upon death of the animal, transfer of owner, or 2 years after last entry in the record.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the veterinary facility at the installation where the animal was treated or euthanized. Official mailing addresses are published in the Army's compilation of record systems notices.

Animal owner should provide the full name, Social Security Number, home address and telephone number and the animal's rabies vaccination number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the veterinary facility at the installation where the animal was treated or euthanized. Official mailing addresses are published in the Army's compilation of record systems notices.

Animal owner should provide the full name, Social Security Number, home address and telephone number and the animal's rabies vaccination number.

Personal visits may be made to the veterinary facility where animal was treated. Owner must provide personal identification such as a valid military identification card or driver's license.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–

21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the animal owner, veterinarian reports, and similar or related documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–20796 Filed 8–6–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Office of Environment, Safety and Health; Notice of Addendum to Memorandum of Understanding: Savannah River Site, Three Rivers Solid Waste Authority

SUMMARY: This notice is to advise the public of an addendum to the interagency memorandum of understanding which delineates regulatory coverage of occupational safety and health at government-owned, contractor-operated sites administered by the Department of Energy. The addendum provides for coverage by the Occupational Safety and Health Administration of certain facilities and operations at the Savannah River Site in South Carolina.

EFFECTIVE DATE: August 7, 1997.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Public Information and Consumer Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Avenue, N.W., Washington, DC 20210. Telephone: (202) 219–8615.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) and the Occupational Safety and Health Administration of the U.S. Department of Labor (OSHA), entered into a Memorandum of Understanding on August 10, 1992, delineating regulatory authority over the occupational safety and health of contractor employees at DOE government-owned or leased, contractor-operated (GOCO) facilities. In general, DOE exercises statutory authority relating to the occupational safety and health of private sector employees at these facilities.

Section 4(b)(1) of the Occupational Safety and Health Act of 1970, 29 U.S. § 653(b)(1), exempts from OSHA coverage working conditions over which other federal agencies have exercised statutory authority to prescribe or enforce standards for occupational safety or health. The 1992 interagency Memorandum of Understanding acknowledges DOE's extensive regulation of contractor health and safety through safety orders which require contractor compliance with all OSHA standards as well as additional requirements prescribed by DOE, and concludes with an agreement by the agencies that the provisions of the Occupational Safety and Health Act shall not apply to GOCO sites for which DOE has exercised its authority to regulate occupational safety and health.

Among the GOCO sites addressed by the Memorandum of Understanding is the Savannah River Site (''SRS'') in South Carolina. Recently, DOE concluded a permit agreement with Three Rivers Solid Waste Authority (''Three Rivers'' or TRA), a nine-county consortium which intends to construct and operate a solid waste disposal facility on currently unimproved land located within the Savannah River Site. In recognition of this action, DOE and OSHA are giving public notice that facilities located on the land leased to the TRA, although located within the SRS, are not subject to the regulation of occupational safety and health by DOE. This addendum to the DOE/OSHA Memorandum of Understanding clarifies that all standards, rules and requirements under the Occupational Safety and Health Act are applicable to private sector employees at workplaces within the 1378 acres of land leased to the TRA on the Savannah River Site.

Because the site is located in South Carolina, a state which enforces its own occupational safety and health standards under a federally-approved state OSHA plan, the addendum also must address the issue of state plan coverage. The South Carolina Department of Labor, which operates the OSHA-approved State plan, has determined that under State law, any facilities located on the SRS are not covered under the State plan, including worksites of State and local government employees which would otherwise be covered under the plan. Therefore, the addendum to the OSHA/DOE Memorandum of Understanding specifies that private sector operations on land leased by DOE to the Three Rivers Solid Waste Authority will be covered by federal OSHA rather than under the state plan. Federal OSHA coverage will extend to all working conditions of private sector employees at worksites on land leased by DOE to the Three Rivers Authority. OSHA intends to amend Subpart C of 29 CFR Part 1952 to reflect this coverage.

DOE and OSHA have discussed the issue of resources likely to be needed to carry out the additional responsibilities to be assumed by OSHA, and OSHA has concluded that sufficient inspection resources are currently available to assure adequate worker protection upon this transfer of regulatory responsibility from DOE.

Accordingly, the Memorandum of Understanding between the U.S Department of Energy and the Occupational Safety and Health Administration is amended by adding the following addendum specifying federal OSHA worker safety and health coverage over private-sector employees working in the area leased to the Three Rivers Solid Waste Authority at the Savannah River Site.

Dated: July 25, 1997.

Gregory R. Watchman,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

Dated: July 29, 1997.

Tara O'Toole,

Assistant Secretary of Energy for Environment, Safety and Health.

[FR Doc. 97–20774 Filed 8–6–97; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–43–000]

ANR Pipeline Company; Notice of Informal Settlement Conference

August 1, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, August 13, 1997, at 10:30 a.m., and continue through Thursday, August 14, 1997, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact William J. Collins at (202) 208–0248.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20805 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–14–003]

Central Hudson Gas & Electric Corporation; Notice of Filing

August 1, 1997.

Take notice that on July 2, 1997, Central Hudson Gas & Electric Corporation tendered for filing its compliance filing in the above-referenced docket.

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 August 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20807 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–642–000]

Duke Energy Field Services, Inc.; Notice of Petition for Declaratory Order

August 1, 1997.

Take notice that on July 16, 1997, Duke Energy Field Services, Inc. (Field Services), 370, Seventeenth Street, Suite 900, Denver, CO 80202, filed in Docket No. CP97–642–000 a petition for a declaratory order under Rule 207 of the FERC's Rules of Practice and Procedure, wherein Field Services sought a declaratory order from the FERC finding that Field Services' proposed acquisition, ownership and operation of certain natural gas facilities currently owned by Texas Eastern Transmission Corporation (Texas Eastern), nor any of Field Services' facilities or services related thereto will subject Field Services or any portion of its facilities, services or rates to the jurisdiction of the FERC under the Natural Gas Act.

It is stated that the facilities to be sold by Texas Eastern and purchased by Field Services consist of the Bethany-Longstreet Lateral (Line 11–B) located in DeSoto and Caddo Parishes, Louisiana, and the Salem Field Lateral (Line 21–F, 21–F–1, 21–F–3, 21–F–4, 21–F–5, 21F–5–A and 21–F–6), Provident City Line (Line 23), Bonorden Lateral (Line 21–A) and North Morales Lateral (Line 21–E) located in Victoria, Lavaca and Jackson Counties, Texas, (collectively the ''Facilities'') as more fully set forth in the petition which is on file with the FERC and open to public inspection.

Field Services submits that the Facilities, as currently owned and operated by Texas Eastern, are underutilized. Field Services anticipates tying-in additional production to the Facilities, thereby increasing the utilization of these assets and promoting competition for gathering services in these producing areas. This in turn will increase the volume of natural gas available for delivery into the interstate pipeline grid. Field Services proposes to either arrange for the purchase of production of natural gas from those wells currently attached to the Facilities, or in the alternative, to enter into gas gathering agreements that will have no adverse rate impact on the existing production of those producers and shippers currently utilizing these assets.

Any person desiring to be heard or to make any protest with reference to said Application should on or before August 22, 1997, 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 or 18 CFR 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 the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition 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 abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its 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 Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20813 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–59–000]

East Tennessee Natural Gas Company; Notice of Refund Report

August 1, 1997.

Take notice that on July 29, 1997, East Tennessee Natural Gas Company (East Tennessee), filed its report of refunds reflecting refunds to jurisdictional customers. East Tennessee states that the purpose of these refunds was to flow through to its jurisdictional customers refunds received from its former upstream supplier, Tennessee Gas Pipeline Company (Tennessee). On May 16, 1997, East Tennessee states that it received from Tennessee a refund of amounts paid under its former Rate Schedules CD–1 and SS contracts with Tennessee. Tennessee effectuated the refund pursuant to Article VII of the Stipulation and Agreement filed on June 2, 1993, as approved by the Federal Energy Regulatory Commission's order issued on October 29, 1993 in Docket No. RP91–203 et al.

On July 29, 1997, East Tennessee states that it disbursed refunds, with interest, to its jurisdictional customers entitled to a refund totaling $143,175 with detailed calculations supporting the refunded amount.

East Tennessee states that a copy of this filing including Appendix A has been mailed to each affected state

regulatory commission and to East Tennessee's customers.

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 385.214). All such motions or protests should be filed on or before August 8, 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. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20808 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–310–003]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1997.

Take notice that on July 30, 1997, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sheet No. 136, to become effective November 1, 1997.

GBGP states the purpose of the filing is to comply with letter order issued on July 18, 1997 in Docket No. RP97–310–002, whereby GBGP was directed to refile Tariff Sheet No. 136 within 15 days of the date of the letter order.

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 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20801 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–675–000]

U.S. General Services Administration; Notice of Application for Presidential Permit and Section 3 Authorization

August 1, 1997.

Take notice that on July 30, 1997, U.S. General Services Administration (GSA), Northwest Arctic Region, 400 15th Street SW, Auburn, Washington 98001–6599, filed in Docket No. CP97–675–000, an application for a Presidential Permit for the importation of natural gas and authority under Section 3 to construct, operate, maintain, and connect a natural gas pipeline extending from the Port of Entry facility at Point Roberts, Washington to a Canadian pipeline facility at the International border, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

GSA states that the Point Roberts pipeline system will consist of a 40 mm (two-inch) inside diameter pipe extending approximately 144 m (472 feet) from the gas meter set by BC Gas, Inc. on the Canadian side of the United States/Canada border. The Point Roberts pipeline system will transport gas only to the Port of Entry facility, no service will be provided or offered to the public. The Point Roberts Port of Entry facility is used by the U.S. Customs Service and the Immigration and Naturalization Service. GSA states that it will finance the construction and operation of the pipeline system. GSA further states that it will contract with IGC Resources, Inc., who has blanket authority from the U.S. Department of Energy to import natural gas from Canada, to provide the natural gas service to the Port of Entry facility. GSA also states that BC Gas, Inc. will construct and operate pipe and meter facilities in Canada, and that GSA will construct and operate the pipeline system from the meter to the facility in the United States.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 22, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to 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 the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for GSA to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20810 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–116–005]

Koch Gateway Pipeline Company; Notice of Compliance Filing

August 1, 1997.

Take notice that on July 30, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective January 1, 1997:

Third Revised Sheet No. 1410
Fourth Revised Sheet No. 1411

Koch states that these revised tariff sheets are filed to comply with the Federal Energy Regulatory

Commission's ''Order on Rehearing'' issued on July 21, 1997 in Docket No. RP97–116–004. As directed, Koch revised the tariff sheets to allow Customers requesting new firm transportation thirty (30) days to execute a service agreement after its tender by Koch if the term of the contract is greater than one year and the agreement to be executed is not identical to the original request for service submitted by the Customer. If the original request by the Customer is identical to the contract to be executed then the tariff language approved in a letter order dated June 6, 1997, shall remain in effect.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20804 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR95–7–000]

Longhorn Partners Pipeline; Notice of Petition for Further Review of Asset Valuation

August 1, 1997.

Take notice that on July 31, 1997, Longhorn Partners Pipeline, L.P. (Longhorn), pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 387.207, and the Commission's Order on Petition for Declaratory Order issued December 20, 1995, 73 FERC ¶ 61,355 (1995), filed a petition for further review of the asset valuation that was the subject of the 1995 order.

The 1995 order allowed Longhorn to include in its cost of service the full purchase price of a crude oil pipeline to be acquired from Exxon Pipeline Company (Exxon). The 1995 order provided, however, that ''if Exxon or any of its affiliates should become an equity owner of the [Longhorn] system, the proper valuation of the Baytown to Crane segment, as to Exxon's ownership, shall be subject to further review.'' 73 FERC ¶ 61,355 at 62,113.

Longhorn indicates that Exxon will acquire an equity interest in the Longhorn partnership. Accordingly, Longhorn requests a further valuation review and a determination that it may use in its cost of service the purchase price of the pipeline segment it is acquiring from Exxon, notwithstanding Exxon's anticipated equity participation in the Longhorn Partnership.

Any person desiring to be heard or to protest said filing must 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 18 CFR 385.214 and 18 CFR 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 15, 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20806 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–140–006]

Louisiana-Nevada Transit Company; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1997.

Take notice that on July 29, 1997, Louisiana-Nevada Transit Company (LNT), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 1997:

Fourth Revised Sheet No. 11
Third Revised Sheet No. 27
First Revised Sheet No. 27A
Second Revised Sheet No. 28
Second Revised Sheet No. 54
Second Revised Sheet No. 60
Original Sheet No. 62
Original Sheet Nos. 63–64

LNT states that the revised tariff sheets are filed to comply with the Commission's directives in Order No. 587–C issued in Docket No. RM96–1–004 and its June 25, 1997, Order issued in the captioned proceedings.

LNT states that copies of the filing were served on all affected entities.

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 Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should 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 and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20803 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–673–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

August 1, 1997.

Take notice that on July 29, 1997, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP97–673–000 a request pursuant to Sections 157.205, 157.216, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, and 157.211) for authorization to partially abandon certain existing facilities at its Idaho State Penitentiary Meter Station in Ada County, Idaho, and to construct and operate upgraded replacement facilities, to accommodate a request by Intermountain Gas Company (Intermountain) for increased delivery capabilities at this point for service under authorized firm transportation agreements. Northwest makes such request under its blanket certificate issued in Docket No. CP82–433, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes that the Idaho State Penitentiary Meter Station be upgraded by removing the existing 2-inch and 3-inch regulators, one 6-inch orifice meter, the 4-inch × 6-inch relief

valve, miscellaneous station piping and appurtenances and installing as replacement facilities two 6-inch regulators, one 8-inch orifice meter, an 8-inch × dual 8-inch relief valve, larger miscellaneous station piping and appurtenances. It is stated that the proposed upgrade is designed to increase the maximum delivery capacity of the meter station from its existing approximately 21,951 Dt per day to approximately 41,213 Dt per day at 400 psig, as limited by the meters.

Northwest states that pursuant to a Facilities Agreement between Northwest and Intermountain dated July 15, 1997, that Intermountain will perform the proposed upgrade activities and will become a joint-owner of the Idaho State Penitentiary Meter Station. It is indicated that based on the ratio of the estimated upgrade cost for which Intermountain will be responsible to the original costs of the existing facilities, Intermountain will own 49 percent of the meter station. It is averred that Northwest will continue to own and operate the mainline interconnect facilities to the meter station, and that Northwest will continue to maintain and operate the upgraded Idaho State Penitentiary Meter Station as part of it's open-access transportation system.

Northwest further states that Intermountain will pay all costs associated with the proposed upgrade, currently estimated to be approximately $115,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no request is filed within the time allowed therefor, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20812 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–138–005]

Shell Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1997.

Take notice that on July 30, 1997, Shell Gas Pipeline Company (SGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Second Revised Sheet No. 137 in compliance with the Commission's Order No. 587–C to become effective November 1, 1997.

SGPC states the purpose of the filing is to comply with the letter order issued on July 18, 1997, in Docket No. RP97–138–004, whereby SGPC was directed to file actual tariff Sheet No. 137 within 15 days from the date of the letter order.

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 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20802 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–644–000]

Texas Eastern Transmission Corporation; Notice of Application

August 1, 1997.

Take notice that on July 16, 1997, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP97–644–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to PanEnergy Field Services, Inc. (''Field Services'' the Bethany-Longstreet Lateral, Salem Field Lateral, Provident City Line, Bonorden Lateral, and North Morales Lateral along with the meter stations and appurtenances associated with such facilities (Facilities). The Facilities are located in Lavaca, Jackson, and Victoria, Counties, Texas, and Caddo and DeSoto Parishes, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that the natural gas reserves attached to the Facilities are depleting, the Facilities are substantially underutilized, and Texas Eastern does not propose to make any extensions or additions to the Facilities in the foreseeable future.

Texas Eastern states that it is advised by Field Services that the acquisition of the Facilities by Field Services will provide Field Services access to additional supplies of natural gas for gathering through the Facilities, resulting in the access of additional supplies of natural gas for Texas Eastern's shippers and the interstate pipeline grid. Texas Eastern is also advised that Field Services will either arrange for the purchase of production from those wells currently attached to the Facilities or enter into gas gathering arrangements that will have no adverse rate impact on the existing production of those producers and shippers currently utilizing the Facilities.

Any person desiring to be heard or to make any protest with reference to said Application should on or before August 22, 1997, 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 or 18 CFR 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 the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition 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 abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its 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 Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20814 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–430–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1997.

Take notice that on July 29, 1997, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No.1:

Second Revised Twenty-first Revised Sheet No. 10
Second Revised Fourth Revised Sheet No. 10A
Second Revised Eighteenth Revised Sheet No. 11

The revised tariff sheets are being filed to suspend collection of the GSR surcharges collected from its NNS, FT, and SGT customers pursuant to Section 33.3 of Texas Gas' General Terms and Conditions. The current GSR surcharges resulted from Texas Gas' settlement in Docket No. RP94–119–000, *et al.,* which was accepted by Commission Letter Order dated September 18, 1995. Upon the payments of June invoices by transportation customers, Texas Gas will have fully recovered the portion of its GSR costs which are allocated to firm services in accordance with the provisions of the settlement, which are detailed in Section 33.3 of the General Terms and Conditions.

Texas Gas requests an effective date of July 1, 1997, for the proposed tariff sheets.

Copies of the revised tariff sheets are being mailed to Texas Gas' affected jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20800 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–656–000]

Texas Gas Transmission Corporation; Notice of Application

August 1, 1997.

Take notice that on July 21, 1997, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP97–656–000 an application pursuant to Section 7(c) of the Natural Gas Act authorization to construct and operate a 4,600 horsepower compressor engine and associated facilities at the Haughton, Louisiana Compressor Station in Bossier Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to install and operate the compressor in order to expand the capacity of its North Louisiana supply lateral to accommodate firm transportation service for Union Pacific Fuels, Inc.

It is said that the estimated cost of construction is $5,980,000. It is further said that Texas Gas seeks to roll the costs and revenues of the project into its systemwide rates.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before August 22, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to 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 the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20811 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–676–000]

Viking Gas Transmission Company; Notice of Request Under Blanket Authorization

August 1, 1997.

Take notice that on July 30, 1997, Viking Gas Transmission Company (Viking), 825 Rice Street, St. Paul, Minnesota 55117, filed a request with the Commission in Docket No. CP97–676–000, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add a new delivery point for transportation services that Viking currently provides for Northern States Power Company

(NSPM) authorized in blanket certificate issued in Docket No. CP82–414–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Viking proposes to establish an additional delivery point at Viking's existing M.P. 2219 + 10.58 in Chisago County, Minnesota. The facilities Viking proposes to install and own at the proposed delivery point include a 12″ hot tap, a 2″ side valve, meter station piping, measurement, valving, data acquisition and control equipment, an appurtenant facilities including a small metering building. The estimated cost of these facilities would be $207,900. NSPM has agreed to reimburse Viking for the actual cost of these facilities.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–20809 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL97–49–000, et al.]

L'Energia, Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

July 30, 1997.

Take notice that the following filings have been made with the Commission:

1. L'Energia, Limited Partnership

[Docket No. EL97–49–000; QF87–249–006]

Take notice that on July 17, 1997, L'Energia, Limited Partnership (L'Energia) filed a petition with FERC requesting a temporary waiver of the operating and efficiency standards set forth in 18 CFR 292.205(a) (1) and (2) for the calendar year 1997, as those standards apply to L'Energia's cogeneration facility in Lowell, Massachusetts. Due to the emergency nature of this petition, L'Energia requests the Commission shorten the notice period to fifteen days. L'Energia states that it has served copies of its filing on all parties listed on the official service list in QF87–249–000.

Comment date: August 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp Power Marketing, Inc.; Market Responsive Energy, Inc.; Amoco Energy Trading Corporation; Industrial Energy Applications, Inc.; Boyd Rosene and Associates, Inc.; Questar Energy Trading Company; Westar Electric Marketing, Inc.

[Docket No. ER95–1096–010; Docket No. ER95–1295–004; Docket No. ER95–1359–009; Docket No. ER95–1465–007; Docket No. ER95–1572–006; Docket No. ER96–404–006; Docket No. ER96–458–008; (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 15, 1997, PacifiCorp Power Marketing, Inc., filed certain information as required by the Commission's February 2, 1996, order in Docket No. ER95–1096–000.

On April 30, 1997, Market Responsive Energy, Inc., filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER95–1295–000.

On July 21, 1997, Amoco Energy Trading Corporation filed certain information as required by the Commission's November 29, 1995, order in Docket No. ER95–1359–000.

On July 24, 1997, Industrial Energy Applications, Inc., filed certain information as required by the Commission's September 28, 1995, order in Docket No. ER95–1465–000.

On July 14, 1997, Boyd Rosene and Associates, Inc., filed certain information as required by the Commission's October 23, 1995, order in Docket No. ER95–1572–000.

On July 14, 1997, Questar Energy Trading Company, filed certain information as required by the Commission's January 29, 1996, order in Docket No. ER96–404–000.

On July 14, 1997, Westar Electric Marketing, Inc., filed certain information as required by the Commission's February 20, 1996, order in Docket No. ER96–458–000.

3. H.Q. Energy Services (U.S.) Inc.

[Docket No. ER97–851–001]

Take notice that on July 22, 1997, H.Q. Energy Services (U.S.) Inc., (HQUS) filed a supplement to its March 11, 1997 request for market-based rate authority, in response to the Commission's order in H.Q. Energy Services (U.S.) Inc., 79 FERC ¶ 61,152 (1997).

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER97–3560–000]

Take notice that on July 25, 1997, Southern Company Services, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Co.

[Docket No. ER97–3677–000]

Take Notice that on July 10, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated July 1, 1997 with Constellation Power Source (CPS) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds CPS as an eligible customer under the Tariff.

PP&L requests an effective date of July 10, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to CPS and to the Pennsylvania Public Utility Commission.

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Illinois Power Company

[Docket No. ER97–3678–000]

Take notice that on July 10, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Mitsubishi Motor Manufacturing of America, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 1, 1997.

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. MidAmerican Energy Company

[Docket No. ER97–3679–000]

Take notice that on July 10, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des

Moines, Iowa 50303 tendered for filing a proposed initial rate schedule consisting of a Contribution in Aid of Construction Agreement (Agreement) between the City of Pella, Iowa (Pella) and MidAmerican. Under the Agreement, MidAmerican, at Pella's expense, will construct, operate, maintain and replace certain facilities and equipment for the Beacon Terminal.

MidAmerican proposes an effective date of September 8, 1997, for the rate schedule.

Copies of the filing were served on Pella, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Public Service Company

[Docket No. ER97–3680–000]

Take notice that on July 10, 1997, Central Illinois Public Service Company (CIPS), submitted two non-firm point-to-point service agreements, dated June 25, 1997 and June 30, 1997, establishing the following as customers under the terms of CIPS' Open Access Transmission Tariff: Market Responsive Energy, Inc. and Constellation Power Source, Inc.

CIPS requests an effective date of June 30, 1997, for the service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on the two customers and the Illinois Commerce Commission.

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Co.

[Docket No. ER97–3681–000]

Take notice that on July 10, 1997, Southern California Edison Company (Edison), tendered for filing executed umbrella Service Agreements (Service Agreements) with the California Department of Water Resources, and Williams Energy Services Company, for Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff).

Edison filed the executed Service Agreements with the Commission in compliance with applicable Commission Regulations. Edison also submitted revised Sheet Nos. 165 and 166 (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 July 11, 1997 for Attachment E, and to allow the Service Agreements to become effective according to its terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Delmarva Power & Light Company

[Docket No. ER97–3682–000]

Take notice that on July 10, 1997, Delmarva Power & Light Company, tendered for filing executed umbrella service agreements with GPU Energy, AYP Energy, Inc., Vastar Power Marketing, Inc., PacifiCorp Power Marketing, Inc., and Edison Source under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000. Delmarva requests that the Commission make the agreements with GPU Energy, Vastar Power Marketing, Inc., PacifiCorp Power Marketing, Inc., and Edison Source effective as of their respective execution dates and requests waiver of notice to make the agreement with AYP Energy, Inc., effective as of July 10, 1997.

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Golden Spread Electric Coop., Inc.

[Docket No. ER97–3683–000]

Take notice that on July 10, 1997, Golden Spread Electric Cooperative, Inc., tendered for filing proposed changes in its FERC Electric Service Tariff, Volume Nos. 12–22 with the Federal Energy Regulatory Commission pursuant to 35.13 of the Commission's Regulations. This filing seeks acceptance of the eleven Member Wholesale Power Contracts, which will not result in a rate increase or rate decrease to the Members and will supersede the existing Wholesale Power Contracts between Golden Spread and its Members.

The rate schedule change is intended to accommodate Golden Spread's changing power supply portfolio by allowing Golden Spread to purchase power from entities other than Golden Spread's current wholesale suppliers.

Copies of this filing were served upon Golden Spread's jurisdictional customers and the Public Utility Commission of Texas.

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corporation

[Docket No. ER97–3684–000]

Take notice that on July 10, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, service agreements under which NYSEG will provide capacity and/or energy to American Electric Power Service Corporation (AEP), Jersey Central Power and Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (collectively GPU Energy), Green Mountain Power Corporation (Green Mountain), Long Island Lighting Company (LILCO), and ProMark Energy, Inc., (ProMark) in accordance with NYSEG's market-based power sales tariff.

NYSEG has requested waiver of the notice requirements so that the service agreements with AEP, GPU Energy, Green Mountain, LILCO, and ProMark become effective as of July 11, 1997.

NYSEG served copies of the filing upon the New York State Public Service Commission, AEP, GPU Energy, Green Mountain, LILCO, and ProMark.

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. St. Joseph Light & Power Company

[Docket No. ER97–3685–000]

Take notice that on July 9, 1997, St. Joseph Light & Power Co. (St. Joseph), tendered for filing six executed Service Agreements under its Open Access Transmission Tariff. The six Form of Service Agreements are with: American Energy Solutions, Inc., Cinergy Services, Inc., CMS Marketing, Services and Trading Company, ConAgra Energy Systems, Inc., Equitable Power Services Company, PanEnergy Trading and Market Services, L.L.C. and Williams Energy Services Company. The Service Agreements are being filed to implement St. Joseph's Open Access Transmission Tariff.

Copies of the filing were served on American Energy Solutions, Inc., Cinergy Services, Inc., CMS Marketing, Services and Trading Company, ConAgra Energy Systems, Inc., Equitable Power Services Company, PanEnergy Trading and Market Services, L.L.C. and Williams Energy Services Company.

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER97–3686–000]

Take notice that on July 10, 1997, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by NP Energy Inc.,(NP Energy). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit NP Energy to join the over 120 Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make NP Energy a Participant in the Pool. NEPOOL requests an effective date on or before August 1, 1997, or as soon as possible thereafter for commencement of participation in the Pool by NP Energy.

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company (Minnesota Company)

[Docket No. ER97–3687–000]

Take notice that on July 10, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing Amendment #1 to the 60 Kilovolt Substation Coordination Agreement (Agreement) dated July 31, 1969, between Minnkota Power Cooperative, Inc. (MPC) and NSP. The Agreement was amended to update the Agreement for NSP's purchase of Feeder Bay #22, to delete reference to the connection at NSP's North Substation and at First Avenue North which has been removed, to correct a typographical error and to update various contract language.

NSP request the Agreement be accepted for filing effective July 11, 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: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Nevada Power Company

[Docket No. ER97–3688–000]

Take notice that on July 11, 1997, Nevada Power Company (NPC), tendered for filing Service Agreement to provide Non-Firm Point-To-Point Transmission Service under NPC's (Transmission Provider) Open Access Transmission Tariff with PacifiCorp (Transmission Customer).

A copy of this filing has been served on PacifiCorp (Transmission Customer) and the Nevada Public Service Commission.

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Nevada Power Company

[Docket No. ER97–3690–000]

Take notice that on July 11, 1997, Nevada Power Company (NPC), tendered for filing Service Agreement to provide Non-Firm Point-To-Point Transmission Service under NPC's (Transmission Provider) Open Access Transmission Tariff with Nevada Power Company (''NPC'') (Transmission Customer).

A copy of this filing has been served on NPC (Transmission Customer) and the Nevada Public Service Commission.

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. MidCon Power Services Corp.

[Docket No. ER97–3691–000]

Take notice that on July 11, 1997, MidCon Power Services Corp., tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that MidCon Power Services Corp., had completed all the steps for pool membership. MidCon Power Services Corp., requests that the Commission amend the WSPP Agreement to include it as a member.

MidCon Power Services Corp., requests an effective date of July 1, 1997 for the proposed amendment. Accordingly, MidCon Power Services Corp., requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Midwest Energy, Inc.

[Docket No. OA97–666–000]

Take notice that on June 14, 1997, Midwest Energy, Inc., tendered for filing its compliance filing pursuant to Order No. 888–A in the above-referenced docket.

Comment date: August 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. American Electric Power Service Corporation

[Docket No. OA97–665–000]

Take notice that on July 14, 1997, the American Electric Power Service Corporation submitted a Compliance Filing in the above-referenced docket. Submitted was an amended AEP Open Access Transmission Tariff filed in compliance with FERC Order No. 888-A.

A copy of the filing was served upon all customers and affected State Utility Regulatory Commissions.

Comment date: August 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Nevada Power Company

[Docket No. ER97–3689–000]

Take notice that on July 11, 1997, Nevada Power Company (NPC), tendered for filing Service Agreement to provide Non-Firm Point-To-Point Transmission Service under NPC's (Transmission Provider) Open Access Transmission Tariff with Idaho Power (Transmission Customer).

A copy of this filing has been served on Idaho Power (Transmission Customer) and the Nevada Public Service Commission.

Comment date: August 13, 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. 97–20798 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3692–000, et al.]

Virginia Electric and Power Company, et al.; Electric Rate and Corporate Regulation Filings

July 31, 1997.

Take notice that the following filings have been made with the Commission:

1. Virginia Electric and Power Co.

[Docket No. ER97–3692–000]

Take notice that on July 11, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing four Service Agreements for Firm Point-to-Point Transmission Service with The Wholesale Power Group under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide firm point-to-point service to The Wholesale Power Group as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Tractebel Energy Marketing, Inc.; Tenaska Power Services Co.; Cenerprise, Inc.; Equitable Power Services Company; J. Anthony & Associates Ltd.; Energy Services, Inc.; Gateway Energy Inc.

[Docket No. ER94–142–015; Docket No. ER94–389–012; Docket No. R94–1402–013; Docket No. ER94–1539–013; Docket No. ER95–784–009; Docket No. ER95–1021–008; Docket No. ER95–1049–008; (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 15, 1997, Tractebel Energy Marketing, Inc., filed certain information as required by the Commission's December 30, 1993, order in Docket No. ER94–142–000.

On July 21, 1997, Tenaska Power Services Co., filed certain information as required by the Commission's May 26, 1994, order in Docket No. ER94–389–000.

On July 17, 1997, Cenerprise, Inc., filed certain information as required by the Commission's December 7, 1994, order in Docket No. ER94–1402–000.

On July 11, 1997, Equitable Power Services Company, filed certain information as required by the Commission's September 8, 1994, order in Docket No. ER94–1539–000.

On July 15, 1997, J. Anthony & Associates Ltd., filed certain information as required by the Commission's May 31, 1995 order in Docket No. ER95–784–000.

On July 8, 1997, Energy Services Inc., filed certain information as required by the Commission's June 13, 1995 order in Docket No. ER95–1021–000.

On July 14, 1997, Gateway Energy Inc., filed certain information as required by the Commission's August 4, 1995, order in Docket No. ER95–1049–000.

3. Interstate Power Company

[Docket No. ER97–3693–000]

Take notice that on July 10, 1997, Interstate Power Company (IPW), tendered for filing a Network Transmission Service and Operating Agreement between IPW and CornBelt Power Cooperative. Under the Service Agreement, IPW will provide Network Integration Transmission Service to the City of Fredericksburg and the Oran and Lakota Substations.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Electric and Gas Company

[Docket No. ER97–3694–000]

Take notice that on July 11, 1997, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Illinois Power Company (Illinois Power) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of June 1, 1997.

Copies of the filing have been served upon Illinois Power and the New Jersey Board of Public Utilities.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER97–3695–000]

Take notice that on July 11, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company's FERC Electric Tariff, Second Revised, Volume No. 1 between CMS Marketing, Services and Trading and Idaho Power Company.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Company

[Docket No. ER97–3696–000]

Take notice that on July 11, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff, between Idaho Power Company and Federal Energy Sales, Inc.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Central Power and Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; Southwestern Electric Power Company

[Docket No. ER97–3697–000]

Take notice that on July 11, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) submitted for filing service agreements under which the CSW Operating Companies will provide firm point-to-point transmission service to Electric Clearinghouse, Inc. (ECI), Entergy Power Marketing Corp. (Entergy), NorAm Energy Service (NorAm), SWEPCO and Vitol Gas & Electric, L.L.C. (Vitol) in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that a copy of this filing has been served on ECI, Entergy, NorAm, SWEPCO and Vitol.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Light Company

[Docket No. ER97–3698–000]

Take notice that on July 14, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for four new customers.

CILCO requested an effective date of July 2, 1997.

Copies of the filing were served on all affected customers and the Illinois Commerce Commission.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. UtiliCorp United Inc.

[Docket No. ER97–3699–000]

Take notice that on July 14, 1997, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Energy Production & Marketing for service under its non-firm point-to-point open access service tariff for its operating

divisions, Missouri Public Service and WestPlains Energy-Kansas.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. UtiliCorp United Inc.

[Docket No. ER97–3700–000]

Take notice that on July 14, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with NP Energy Inc. for service under its non-firm point-to-point open access service tariff for its operating divisions Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. UtiliCorp United Inc.

[Docket No. ER97–3701–000]

Take notice that on July 14, 1997, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Tenaska Power Services Company for service under its non-firm point-to-point open access service tariff for its operating divisions Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER97–3702–000]

Take notice that on July 14, 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 Market Responsive Energy, Inc. (MREI).

Cinergy and MREI are requesting an effective date of July 11, 1997.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER97–3703–000]

Take notice that on July 14, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Illinois State University will take transmission service pursuant to its open access transmission tariff. The agreements are based on the form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 1, 1997.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER97–3704–000]

Take notice that on July 14, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which LTV Steel Company, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 1, 1997.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ER97–3705–000]

Take notice that on July 14, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a corrected firm transmission agreement under which General Tire, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 15, 1997.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Ohio Edison Company Pennsylvania Power Company

[Docket No. ER97–3706–000]

Take notice that on July 14, 1997, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Non-Firm Point-to-Point Transmission Service with Vitol Gas & Electric, L.L.C. and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. This Service Agreement will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Central Illinois Public Service Company

[Docket No. ER97–3707–000]

Take notice that on July 14, 1997, Central Illinois Public Service Company (CIPS) submitted a Service Agreement, dated July 3, 1997, establishing Constellation Power Source, Inc., as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of July 3, 1997, for the service agreement and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon Constellation Power Source, Inc., and the Illinois Commerce Commission.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Central Hudson Gas & Electric Corporation

[Docket No. ER97–3708–000]

Take notice that on July 14, 1997, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to 35.12 of the Federal Energy Regulatory Commission's (''Commission'') Regulations in 18 CFR a Service Agreement between CHG&E and Enerz Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER97–3709–000]

Take notice that on July 14, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and itself. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Corporation

[Docket No. ER97–3710–000]

Take notice that on July 14, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and itself. The Agreement provides for transmission service under the Open Access

Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Black Hills Corporation

[Docket No. ER97–3711–000]

Take notice that on July 14, 1997, Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills), tendered for filing an executed Form Service Agreement with Rainbow Energy Marketing Corporation.

Copies of the filing were provided to the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Black Hills has requested that further notice requirement be waived and the tariff and executed service agreements be allowed to become effective June 23, 1997.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Central Hudson Gas and Electric Corporation

[Docket No. ER97–3712–000]

Take notice that on July 14, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Entergy Power Marketing Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Central Hudson Gas & Electric Corporation

[Docket No. ER97–3713–000]

Take notice that on July 14, 1997, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Delmarva Power & Light Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Bruce Demars

[Docket No. ID–3057–000]

Take notice that on July 15, 1997, Bruce Demars (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Commonwealth Edison Company

Director—McDermott International, Inc.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Deseret Generation & Transmission Cooperative

[Docket No. OA97–675–000]

Take notice that Deseret Generation and Transmission Cooperative (Deseret) on July 14, 1997, tendered for filing a transmission tariff in compliance with the Commission's Order No. 888–A. Deseret asks the Commission to set an effective date for the tariff of October 16, 1996.

Copies of the filing were served upon Deseret's member cooperatives and customers.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Upper Peninsula Power Company

[Docket No. OA97–676–000]

Take notice that on July 14, 1997, Upper Peninsula Power Company (UPPCO) tendered for filing a revised open access transmission tariff in accordance with FERC Order No. 888–A. UPPCO states that the revised tariff supersedes in its entirety an open access transmission tariff in the form prescribed by FERC Order No. 888 that was previously filed in Docket No. OA97–523–000. UPPCO has proposed to make its revised tariff effective as of July 14, 1997 or such later date as may be prescribed by the Commission for the effectiveness of tariffs conforming to FERC Order No. 888–A.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. PJM Interconnection, L.L.C.

[Docket No. OA97–678–000]

Take notice that on July 14, 1997, PJM Interconnection, L.L.C. (PJM), on behalf of Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, PECO Energy Company, Pennsylvania Power & Light Company, Potomac Electric Power Company and Public Service Electric and Gas Company, tendered for filing revisions to the PJM Open Access Tariff to comply with the requirements of Order No. 888–A.

Copies of this filing were served upon the regulatory commissions of Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania, and Virginia, members of the PJM Interconnection, LLC, and entities with transmission service agreements under the PJM Tariff.

Comment date: August 15, 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. 97–20799 Filed 8–6–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–750; FRL–5727–3]

Pesticide Tolerance Petition; Notice of Filing

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing regulations amending the established tolerances for residues of the insecticidal fluorine compounds cryolite and/or synthetic cryolite (sodium aluminum fluoride or sodium aluminofluoride) in or on cabbage, citrus fruits, collards, eggplant, lettuce, peaches, and tomatoes; and establishing tolerances for the processed foods, raisins and tomato paste. This notice includes a summary of the petition that was prepared by the petitioner, The Cryolite Task Force.

DATES: Comments, identified by the docket control number [PF–750]. must be received on or before September 8, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jackie Mosby (7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 203, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6792, e-mail: mosby-romney.jackie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition from The Cryolite Task Force c/o Gowan, P.O. Box 5568, Yuma, AZ 85366. The petition proposes, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR 180.145 by: (1) Increasing the established tolerances for residues of the insecticidal fluorine compounds cryolite and /or synthetic cryolite in or on the agricultural commodities as listed below; (2) establishing separate tolerances for the residues in or on head and leaf lettuce; and (3) establishing tolerances for the residues in the processed foods, raisins at 55 ppm, and tomato paste at 45 ppm.

Commodity	Current	Proposed
cabbage	7 ppm	45 ppm
citrus fruits	7 ppm	95 ppm
collards	7 ppm	35 ppm
eggplant	7 ppm	30 ppm
lettuce	7 ppm	
lettuce, head		180 ppm
lettuce, leaf		40 ppm
peaches	7 ppm	10 ppm
raisins	none	55 ppm
tomatoes	7 ppm	30 ppm
tomato paste	none	45 ppm

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, The Cryolite Task Force included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of The Cryolite Task Force; EPA is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for purposes of clarity.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number PF–750 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number PF–745 and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

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

Dated: July 31, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

This informative summary is submitted by the Cryolite Task Force (Consortium No. 62569), under section 408 of FFDCA, as most recently amended by FQPA. The Cryolite Task Force is comprised of Elf Atochem North America and Gowan Company. The Cryolite Task Force previously has petitioned the Agency to amend tolerances for residues of cryolite and/or synthetic cryolite (sodium aluminofluoride) in or on the raw agricultural commodities: lettuce (head), lettuce (leaf), cabbage, collards, eggplant, tomatoes, citrus (crop group) and peaches and to establish tolerances for residues of cryolite in processed foods: raisins and tomato paste. EPA approved these new and revised tolerances in the Cryolite Reregistration Eligibility Decision (RED) and noted its intent to propose these in the **Federal Register**. However, prior to publication of the new regulations, FQPA specified additional requirements for tolerance petitions. The purpose of this submission is to provide the additional information specified in the FQPA.

Cryolite Task Force

PP 5F4599

A. Residue Data

1. *Name, identity, and composition of the residue.* Cryolite (sodium aluminofluoride, sodium hexafluoroaluminate, or sodium aluminum fluoride) is a fluorine containing insecticide which is found in naturally occuring mineral deposits and also is produced synthetically.

Empirical Formula: Na3AlF6
Molecular Weight: 209.97
CAS Registry No.: 15096-52-3
OPP Chemical Code: 075101

A Reregistration Eligibility Decision (RED) was issued for cryolite in August 1996. As documented in the RED, the Agency has determined that plant residues are inorganic surface residues of cryolite, measured as total fluoride; and that the residue of concern in animals also is total fluoride.

Provisions in the FQPA which are relevant to degradates or metabolites of pesticide chemical residues are not applicable to elemental fluorine.

Magnitude of the residue in plants. Residue data covering all of the uses associated with the RAC tolerances requested by this petition have been reviewed and approved by the Agency (see the Cryolite RED, pages 19 - 26). The proposed tolerance amendments are summarized, below:

Lettuce (head) - 180 ppm
Lettuce (leaf) - 40 ppm
Cabbage - 45 ppm
Collards - 35 ppm
Eggplant - 30 ppm
Tomato - 30 ppm
Citrus fruit group - 95 ppm
Peaches - 10 ppm

2. *Magnitude of the residue in processed food/feed.* As documented in the RED, EPA has concluded that acceptable processing studies support the proposed tolerances of 45 ppm for tomato paste and 55 ppm for raisins.

3. *Directions for use.* Use directions consistent with the proposed revised RAC and new processed food tolerances have been approved by the Agency. Labeling was approved by EPA for the Gowan registration (10163-41) on May 10, 1995. Labeling was approved for the Atochem registration (4581-116) on October 26, 1995.

4. *Analytical method.* EPA concluded in the cryolite RED that adequate methodology is available for data collection and tolerance enforcement. Methods for both plant residues and animal tissues have undergone successful Agency validation and will be published in the *Pesticide Analytical Manual, Vol. II.* Using these methods, total fluoride is determined using a pH/ion meter with a fluoride-specific electrode. The limit of quantitation is 0.05 ppm. The residue analytical method does not distinguish between naturally occuring fluoride and fluoride resulting from agricultural use of cryolite. Current FDA multi-residue screening protocols are not appropriate for inorganic fluoride residues.

5. *Practical methods for removing residues.* Plant residues are inorganic surface residues of cryolite. Data reviewed by EPA for the RED show that washing, peeling, and trimming are effective methods of removing these residues.

6. *Plant metabolism.* EPA concluded in the cryolite RED that the qualitative nature of the residue in plants is understood and that plant residues are inorganic surface residues of cryolite which are measured as fluoride.

7. *Animal metabolism.* EPA concluded in the cryolite RED that cryolite metabolism in animals manifests itself as free fluoride, that the qualitative nature of the residue is understood and that total fluoride is the residue of concern.

8. *Magnitude of the residue in meat, milk, poultry and eggs.* EPA concluded in the cryolite RED that there is no reasonable expectation of finite fluoride residues in ruminant or poultry tissues as a result of livestock ingestion of cryolite.

B. Toxicological Data

The cryolite RED concluded that the toxicological data base supports a reregistration eligibility decision for numerous crops, including head lettuce, leaf lettuce, cabbage, collards, eggplant, tomatoes, citrus (crop group), grapes, and peaches. No additional toxicology requirements were specified in the RED. The cryolite residue of toxicological concern is fluoride; and health effects identified for fluoride in humans and animals are skeletal and dental fluorosis. Dental fluorosis (mottling of tooth enamel) is not considered to be an adverse effect. Further, the Agency has determined that although fluoride accumulation is demonstrated in a number of studies, the accumulation itself is not considered an adverse effect.

1. *Acute toxicity.* A rat acute oral toxicity study (MRID 00138096) showed an LD_{50} greater than 5,000 milligrams/kilograms (mg/kg). A rabbit acute dermal toxicity study (MRID 00128107) demonstrated an LD_{50} of 2,100 mg/kg. An LC_{50} > 2.06 mg/L and < 5.03 mg/L was seen in an acute inhalation study with rats (MRID 00128107). Technical cryolite is a moderate eye irritant in rabbits (MRID 00128106). Cryolite is not a skin irritant to rabbits (MRID 00128106) and is not a dermal sensitizer to guinea pigs (MRID 00138097).

2. *Subchronic toxicity.* Cryolite was tested in a 28–day range-finding feeding study in rats (MRID 00128109) at dose levels of 0, 250, 500, 1,000, 2,000, 4,000, 10,000, 25,000 and 50,000 ppm in the diet (representing approximately 0, 25, 50, 100, 200, 400, 1,000, 2,500 and 5,000 mg/kg/day). The only compound related effect seen in this study was a change in coloration and physical property of the teeth. A no observed effect level (NOEL) was not determined in this study. The lowest observed effect level (LOEL) is 250 ppm (25 mg/kg/day) based on dental fluorosis.

In a 90-day rat feeding study (MRID 00158000), cryolite was tested at dose levels of 0, 50, 5,000 and 50,000 ppm (corresponding to 0, 3.8, 399.2, and 4,172.3 mg/kg/day in males and 0, 4.5, 455.9 and 4,758.1 mg/kg/day in females). The NOEL was 50 ppm (3.8 mg/kg/day) for effects other than fluoride accumulation. The LOEL was 5,000 ppm (399.2 mg/kg/day) based on lesions observed in the stomach. Fluoride accumulated at all dose levels in this study.

Cryolite was tested in a 90–day dog feeding study (MRID 00157999) at dose levels of 0, 500, 10,000, and 50,000 ppm (corresponding to 0, 17, 368, and 1,692 mg/kg/day). The NOEL was 10,000 ppm (368 mg/kg/day). The LOEL was 50,000 ppm (1,692 mg/kg/day) for effects other than fluoride accumulation. Fluoride accumulation occurred at all dose levels.

A 21–day subchronic dermal toxicity study in rabbits (MRID 41224801) is considered invalid because it is likely that cryolite was ingested by the test animals during the study. For this reason, the systemic dermal NOEL and LOEL could not be determined from this study. EPA noted in the RED that an additional subchronic dermal study is not necessary, because based on its chemical/physical properties, cryolite would not be absorbed through the skin to any appreciable extent.

3. *Genotoxicity.* Cryolite was negative in an Ames reverse mutation test (MRID 41838401) using *Salmonella typhimurium* with and without activation at dose levels of 167, 500, 1,670, 5,000, 7,500 and 10,000 µg/plate. Cryolite was tested in an *in vitro* chromosome aberration assay (MRID 41838402) using human lymphocytes at 100, 500, and 1,000 µg/ml, with and without activation. The results were negative. Cryolite also was negative in an unscheduled DNA synthesis study (MRID 41838403) with rat hepatocytes

at dose levels up to and including 50 µg/ml.

4. *Chronic toxicity*. The Agency concluded in the cryolite RED that the available information does not support the regulation of cryolite insecticides as carcinogens. EPA has classified cryolite as a Group ''D'' chemical (not classifiable as to human carcinogenicity.'' Further, EPA has noted that fluoride has been the subject of a comprehensive review by the National Research Council (National Academy of Sciences Subcommittee of Health Effects of Ingested Fluoride) who concluded that ''. . . the available laboratory data are insufficient to demonstrate a carcinogenic effect of fluoride in animals'' and that ''. . .the weight of evidence from more that 50 epidemiological studies does not support the hypothesis of an association between fluoride exposure and increased cancer risk in humans.'' As stated in the **Federal Register** of May 8, 1996, and reiterated in the cryolite RED, the Agency is in agreement with the conclusions reached by the National Academy of Science (NAS).

The following specific chronic/oncogenicity studies are included in the cryolite toxicology data base:

A 2-year bioassay in B6C3F1 mice (HED DOC No. 009682) was conducted by the National Toxicology Program (NTP) using sodium fluoride as the test material at dose levels of 0, 25, 100, and 175 ppm, in water, representing 0, 2.4, 9.6, and 16.7 mg/kg/day in males and 0, 2.8, 11.3, and 18.8 mg/kg/day in females. The NOEL was less than 25 ppm (2.4 mg/kg/day). The LOEL was 25 ppm (2.4 mg/kg/day) based on attrition of the teeth in males, discoloration and mottling of the teeth in males and females and increased bone fluoride in both sexes. NTP considered that there was ''no evidence'' of carcinogenic activity in male and female mice. A 2-year bioassay in F344/N rats (HED DOC No. 009682) also was conducted by the National Toxicology Program (NTP) using sodium fluoride as the test material at dose levels of 0, 25, 100, and 175 ppm, in water, representing 0, 1.3, 5.2 and 8.6 mg/kg/day in males and 0, 1.3, 5.5 and 9.5 mg/kg/day in females. Osteosarcoma of the bone was observed only in one male of fifty (1/50) in the 100 ppm group and in three of eighty (3/80) males in the 175 ppm group. The NOEL was less than 25 ppm (1.3 mg/kg/day). The LOEL was 25 ppm (1.3 mg/kg/day) based on mottling of teeth, dentine incisor dysplasia, increased serum, urine and bone fluoride levels in males and females and incisor odontoblast and incisor ameloblast degeneration in males. NTP considered that there was ''equivocal evidence'' of carcinogenic activity in male rats in this study and ''no evidence'' of carcinogenic activity in female rats.

EPA concluded in the cryolite RED that the NTP studies utilizing sodium fluoride in lieu of cryolite satisfy the guideline study requirements for both the rodent chronic feeding study and the rat carcinogenicity study. Fluoride has been identified as the residue of toxicological concern in cryolite and synthetic cryolite and these compounds act as free fluoride. It may be noted that the NTP studies, which utilized freely soluble NaF represent a ''worst-case'' toxicological scenario on a ppm basis compared to what would be expected with cryolite *per se*, from which fluoride ion dissociation is much more limited.

A 1-year chronic dog feeding study (MRID 42575101) was conducted with cryolite at dose levels of 0, 3,000, 10,000, and 30,000 ppm, representing 0, 95, 366, and 1,137 mg/kg/day in males and 0, 105, 387, and 1,139 mg/kg/day in females (in terms of fluoride the doses are 0, 51, 198, and 614 mg F/kg/day for males and 0, 57, 209, and 615 mg F/kg/day for females). The NOEL was less than 3,000 ppm (95 mg/kg/day in males and 105 mg/kg/day in females). The LOEL was 3,000 ppm based on increases in emesis, nucleated cells in males, renal lesions and a decrease in urine specific gravity in females.

5. *Reproductive toxicity*. A two-generation rat reproduction study (MRID 43387501) was conducted with cryolite at dietary dose levels of 0, 200, 600, and 1,800 ppm (representing 0, 14, 42, and 128 mg/kg/day for males and 0, 16, 49, and 149 mg/kg/day for females, respectively, during premating). The systemic toxicity NOEL was not determined. The LOEL for systemic toxicity was 200 ppm (15 mg/kg/day) based on dental fluorosis. The NOEL and LOEL for reproductive toxicity were 600 and 1,800 ppm, respectively (46 and 138 mg/kg/day) based on decreased pup body weights.

The National Research Council (NRC) has reviewed the potential for reproductive effects from fluoride *per se*. In the report Health Effects of Ingested Fluoride, the NRC concluded that:

> There have been reports of adverse effects on reproductive outcomes associated with high levels of fluoride in many animal species. In most of the studies, however, the fluoride concentrations associated with adverse effects were far higher than those encountered in drinking water. The apparent threshhold concentration for inducing reproductive effects was 100 mg/L in mice, rats, foxes and cattle; 100-200 mg/L in minks, owls and kestrels; and over 500 mg/L in hens. Based on these findings, the subcommittee concludes that the fluoride concentrations associated with adverse reproductive effects in animals are far higher than those to which human populations are exposed. Consequently, ingestion of fluoride at current concentrations should have no adverse effects on human reproduction.

6. *Developmental toxicity*. A developmental toxicity study was performed with cryolite in rats (MRID 00128112) at dose levels of 0, 750, 1,500 and 3,000 mg/kg/day (gavage). The NOEL for both developmental and maternal toxicity was 3,000 mg/kg/day. At this dose level, the only observation was whitening of the teeth of dams.

A developmental toxicity study was conducted in female mice (MRID 42297902) with cryolite at dose levels of 0, 30, 100, and 300 mg/kg/day (gavage). The NOEL for maternal toxicity was 30 mg/kg/day and the LOEL was 100 mg/kg/day based on a single mortality in this group. Fetuses at 300 mg/kg/day exhibited bent ribs and bent limb bones. The NOEL for developmental toxicity was 100 mg/kg/day. The LOEL was 300 mg/kg/day based on an increase in bent ribs and bent limbs.

A range-finding developmental toxicity study in female rabbits (MRID 42297901) tested cryolite at dose levels of 0, 10, 30, 100, 300, and 1,000 mg/kg/day (gavage). The NOEL for maternal toxicity was determined to be 10 mg/kg/day and the LOEL was 30 mg/kg/day based on an increased incidence of soft stool and dark colored feces and decreased defecation and urination. The NOEL for developmental toxicity was 30 mg/kg/day. The developmental LOEL could not be assessed due to excessive maternal toxicity at dose levels of ≤ 30 mg/kg/day.

7. *Metabolism/metabolite toxicity*. As noted in the RED, cryolite behaves toxicologically as free fluoride. That is, dissociation produces free fluoride ions which are assimilated into bone. There are numerous references in the open literature concerning the metabolism of cryolite and other fluoride salts. The National Research Council concluded in their 1993 comprehensive report entitled Health Effects of Ingested Fluoride that fluoride is readily absorbed by the gut and rapidly becomes associated with teeth and bones. The remaining fluoride is eliminated almost exclusively by the kidneys with the rate of renal clearance related directly to urinary pH.

8. *Endocrine effects*. The two-generation rat reproduction study, the developmental toxicity studies in rats, rabbits and mice and the dog chronic study summarized above did not

demonstrate any effects with cryolite that are similar to those produced by naturally occuring estrogens, or other endocrine effects. No endocrine effects were determined in the rat and mouse NTP studies. In addition, it should be noted that National and International regulatory organizations (U.S. EPA Office of Water, U.S. DHHS, the Canadian Government and the World Health Organization) have assessed potential health risks from exposure to fluoride. EPA has concluded that the endpoints and estimated effect levels documented by these organizations are similar and that the health effects of fluoride in animals and humans include dental and skeletal fluorosis. Endocrine effects have not been recognized as toxicological endpoints for fluoride by any worldwide regulatory authority.

C. Aggregate Exposure

1. *Dietary exposure-food*. As noted in the RED, the Agency has estimated dietary exposure to cryolite using reassessed tolerances for all crops (including the proposed tolerances discussed in this petition) and percent of crop treated assumptions. In the RED EPA estimated dietary exposure to cryolite from all crops to be approximately 0.020 mg/kg/day for the U.S. population, 0.024 mg/kg/day for children ages 1 to 6, 0.015 mg/kg/day for children ages 7 to 12 and 0.028 mg/kg/day for the highest exposed subgroup (nursing females 13+ years). The Task Force believes that these exposure estimates in fact greatly overstate actual dietary exposure since cryolite tolerance levels, rather than residues actually present at the consumer level were used by EPA in the exposure assessments.

2. *Dietary exposure-drinking water*. In the Environmental Fate Assessment conducted for the RED, the Agency concluded that the use of cryolite should have negligible impacts on fluoride levels in ground and surface water. For this reason, the contribution of cryolite to potential exposure to fluoride from drinking water need not be considered in the aggregate risk assessment.

However, fluoride is intentionally supplemented to drinking water for prevention of dental caries and may also be present at natural background levels. The U.S. Public Health Service recommends an optimal fluoride concentration of 0.7 - 1.2 mg/L to prevent dental caries and minimize dental fluorosis.

Fluoride levels in public drinking water are regulated under the Safe Drinking Water Act. A Maximum Concentration Limit (MCL) of 4.0 mg/L (0.114 mg/kg/day) has been established. EPA has estimated previously that levels of fluoride in/on food from the agricultural use of cryolite plus fluoride levels in U.S. drinking water supplies results in a daily dietary intake of fluoride of approximately 0.095 mg/kg/day. This is substantially less than the Maximum Concentration Limit (MCL) of 4.0 mg/L (0.144 mg/kg/day), a level which provides no known or anticipated adverse health effect as determined by the Surgeon General. As noted in the RED, the Agency has concurred with the findings of the Surgeon General that adverse health effects have not been found in the U. S. population below 8 mg F/L (0.23 mg/kg/day).

3. *Non-dietary exposure*. Cryolite is used almost exclusively as an agricultural crop protection insecticide. Conceivably, cryolite also could be used in outdoor homeowner/residential sites for insect control in ornamentals and shade trees. Cryolite is not registered for either lawn or crack and crevice treatments. EPA concluded in the RED that a post-application exposure assessment for cryolite (including both occupational and residential exposure) was not appropriate since no toxicological endpoints relevant to non-dietary exposure have been identified for cryolite.

The Task Force concludes that non-dietary exposure represents a negligible component of potential aggregate exposure to cryolite and need not be considered in the aggregate risk assessment.

D. Cumulative Effects

The residue of toxicological concern in cryolite is fluoride. Although fluoride supplements in drinking water are not considered to be pesticidal substances, the dietary contribution of drinking water to overall fluoride exposure has been discussed elsewhere in this summary. Current tolerances for insecticidal fluorine-containing compounds are limited to cryolite and synthetic cryolite. For this reason, consideration of potential cumulative effects of residues from pesticidal substances other than sodium aluminofluoride with a common mechanism of toxicity are not applicable.

E. Safety Determination

1. *U.S. population*. As discussed above, non-dietary exposure to cryolite is negligible. As stated in the RED, the OPP's Health Effects Division's RfD Peer Review Committee concluded that ''For acute dietary exposure, no endpoint of concern could be found from which an acute dietary risk assessment. . .should be conducted.'' There was no endpoint for acute dietary exposure since acute toxicity in animal studies is absent until very high doses of cryolite were used. For chronic dietary exposure to cryolite, EPA has concluded that rather than establishing a traditional Reference Dose (RfD), a weight-of-the-evidence risk assessment is a more appropriate approach. The endpoint for chronic dietary exposure is skeletal fluorosis. As part of the RED decision for cryolite, EPA conducted a chronic exposure analysis using the Dietary Risk Evaluation System (DRES). This analysis was performed using the proposed tolerances that are the subject of this petition. The Agency has approximated that total dietary fluoride levels in food plus drinking water is 0.095 mg/kg/day. Of this total exposure, the dietary (food) contribution is about 0.020 mg/kg/day for the U.S. population and 0.028 mg/kg/day for the highest exposed subgroup. These exposure estimates likely overstate actual dietary exposure, since marketbasket residue levels for cryolite have not been considered. As noted above, the Agency has concurred with the findings of the Surgeon General that adverse health effects (skeletal fluorosis) have not been found in the U. S. population below 8 mg F/L (0.23 mg/kg/day).

2. *Infants and children*. EPA has concluded previously that in rats, the developmental NOEL for cryolite is 3,000 mg/kg/day (1,584 mg/kg/day F), that in mice, the developmental NOEL is 100 mg/kg/day (52.8 mg/kg/day F) and that in rabbits, the developmental NOEL is 30 mg/kg/day (15.8 mg/kg/day F). The NOEL for reproductive toxicity of cryolite determined in a 2-generation rat reproduction study was determined by the Agency to be 46 mg/kg/day (24.3 mg/kg/day F). These data show clearly that no additional margin of safety is required for exposure of infants and children to cryolite. The developmental NOEL ranges from more than 166x (rabbit) to more than 16,000x (rat) for the maximum combined exposure of infants and children to residues of fluoride from all agricultural uses of cryolite plus drinking water. The reproductive NOEL is about 256x greater than maximum combined exposure of infants and children to residues of fluoride.

F. International Tolerances

No Codex, EC or other international tolerances are in effect for cryolite; thus potential dietary exposure to fluoride from the agricultural use of cryolite on

crops would not include imported foodstuffs.

[FR Doc. 97–20845 Filed 8–6–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5872–1]

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. 0916.07; Renewal—Annual Updates of Emission Data to the Aerometic Information Retrieval System (AIRS); was approved 06/11/97; OMB No. 2060–0088; expires 10/31/97.

EPA ICR No. 1726.02; Marine Engine Manufacturer In-Use Emission Testing Program; was approved 07/16/97; OMB No. 2060–0322; expires 07/31/2000.

EPA ICR No. 1725.02; Marine Engine Manufacturers Production Line Testing Reporting and Recordkeeping Requirements; was approved 07/16/97; OMB No. 2060–0323; expires 07/31/2000.

EPA ICR No. 1724.02 Marine Selective Enforcement Auditing Reporting and Recordkeeping Requirements; was approved 07/16/97; OMB No. 2060–0319; expires 07/31/2000.

EPA ICR No. 1799.01; NESHAP for Recordkeeping and Reporting Requirements for the Mineral Wool Production; was approved 07/16/97; OMB No. 2060–0362; expires 07/31/2000.

EPA ICR No. 0282.09; Motor Vehicle Emission Defect Information; was approved 07/16/97; OMB No. 2060–0048; expires 07/31/2000.

EPA ICR No. 1792.01; Environmental Protection Agency/Chemical Manufacturers Association Root-Cause Analysis Pilot Project; was approved 07/18/97; OMB No. 2020–0008; expires 07/31/2000.

EPA ICR No. 1781.01 NESHAP for Pollutants for Pharmaceuticals Production; was approved 07/17/97; OMB No. 2060–0358; expires 07/31/2000.

EPA ICR No. 0095.09; Precertification and Testing Exempting Reporting and Recordkeeping Requirements; was approved 07/17/97; OMB No. 2060–0007; expires 07/31/2000.

EPA ICR No. 1591.07; Standard for Reformulated Gasoline; was approved 07/16/97; OMB No. 2060–0227; expires 07/31/2000.

Extensions of Expiration Dates

EPA ICR No. 0234.05; Performance Evaluation Studies on Water and Wastewater Laboratories; OMB No. 2080–0021; expiration date was extended from 07/31/97 to 10/31/97.

EPA ICR No. 1703.01; Radon Measurement Protocol Evalution Study; OMB No. 2060–0303; expiration date was extended from 11/30/97 to 01/31/98.

Dated: July 31, 1997.

Joseph Retzer,

Division Director, Regulatory Information Division.

[FR Doc. 97–20826 Filed 8–6–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5871–6]

Proposed Prospective Purchaser Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of a Prospective Purchaser Agreement and Covenant Not to Sue Rosey's Pit Cleaning, Camden, New Jersey for a Property Within the Welsbach/General Gas Mantle Contamination Site.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into a Prospective Purchaser Agreement to provide Rosey's Pit Cleaning, Camden, New Jersey, a covenant not to sue under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended, in connection with its proposed purchase and development of a property related to general contamination from the former Gas Mantle facility. This agreement is intended to resolve a potentially responsible party's liability for certain response costs incurred and to be incurred by EPA at the Welsbach/General Gas Mantle Contamination Superfund Site in Camden, New Jersey. Notice is being published to inform the public of the Proposed Prospective Purchaser Agreement and of the opportunity to comment.

DATE: Comments must be provided on or before September 8, 1997.

ADDRESS: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007 and should refer to: In the Matter of the Welsbach/General Gas Mantle Contamination Superfund Site: Rosey's Pit Cleaning, Camden, New Jersey, U.S. EPA Index No. II–CERCLA–97–0113.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007, Attention: Virginia Curry, Esq. (212) 637–3134.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a Proposed Prospective Purchaser Agreement with Rosey's Pit Cleaning, Camden, New Jersey, resolving the company's potential liability for a property within the Welsbach/General Gas Mantle Contamination Superfund Site. CERCLA authorizes EPA to enter into this agreement. The Department of Justice approved this agreement pursuant to the inherent settlement authority of the Attorney General to settle claims of the United States.

A copy of the Proposed Prospective Purchaser Agreement may be obtained by mail from EPA's Region II Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007.

Proposed Prospective Purchaser Agreement under CERCLA—Welsbach/General Gas Mantle Contamination Superfund Site.

Dated: June 30, 1997.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 97–20823 Filed 8–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5870–6]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Request for Public Comment.

SUMMARY: On July 9, 1997 the U.S. Environmental Protection Agency (''EPA'') entered into a Prospective Purchaser Agreement (''Agreement'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607 *et seq.*, in connection with the Raymark (Jacksonville Road) Superfund Site (the ''Site'') located in Hatboro, Pennsylvania. The Prospective Purchaser Agreement was approved by the Assistant Attorney General of the United States Department of Justice on November 26, 1996. On December 6, 1996, the Pennsylvania Department of Environmental Protection (''PADEP'' or ''Commonwealth of Pennsylvania'') signed the Agreement. The Agreement is subject to a public comment period, after which the United States and PADEP may withdraw their consent to the Agreement if comments received disclose facts or considerations which indicate that the Agreement is inappropriate, improper or inadequate.

DATES: Comments must be submitted on or before October 6, 1997.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, and should refer to: *In Re Raymark (Jacksonville Road) Superfund Site,* Hatboro Borough, Montgomery County, Pennsylvania, U.S. EPA Docket No. III–96–14–DC.

FOR FURTHER INFORMATION CONTACT: Yvette Hamilton-Taylor (3RC32), 215/566–2636, U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107.

AVAILABILITY: The proposed Agreement and additional background information relating to the Agreement are available for public inspection at the offices of the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the Agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107. Comments should reference the ''Raymark (Jacksonville Road) Superfund Site'' EPA Docket No. III–96–14–DC.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the execution of a Prospective Purchaser Agreement between the United States, the Commonwealth of Pennsylvania and the Philadelphia Suburban Water Company (''PSWC'') concerning the Raymark (Jacksonville Road) Superfund Site in Hatboro, Pennsylvania. The Agreement would resolve, among other things, certain potential claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against PSWC.

In late 1994, PSWC proposed to purchase from the Hatboro Borough Authority (''Hatboro''), located in Hatboro, Pennsylvania, certain assets which comprised Hatboro's municipal water distribution system (the ''Distribution System'' or ''System''). At that time, the System was being used by Hatboro to treat and distribute groundwater to the public in its service territory in and around Hatboro, Pennsylvania. A portion of the System also was being used to implement the remedy described in EPA's September 28, 1990, Record of Decision (''ROD'') (Operable Units 2 and 3) for the Site. Because the property in issue was impacted by groundwater contamination, PSWC was concerned that, under certain circumstances, buying the property could subject PSWC to liability under CERCLA or under the Resource Conservation and Recovery Act (''RCRA''). Concurrent with PSWC's proposal to Hatboro to acquire the System, it requested that EPA and PADEP enter into a prospective purchaser agreement. In March 1995, EPA, PADEP and PSWC began negotiations which resulted in an agreement in principle being reached in the early part of October 1996.

Under the proposed Agreement, PSWC agreed to pay $60,000 to the United States to cover the costs associated with the monitoring and sampling of three Hatboro wells which are currently being used to implement the ground water remedy described in EPA's ROD for Operable Units 2 and 3. PSWC also agreed to operate, maintain, monitor, and convert to monitoring wells certain drinking water wells it proposed to purchase from Hatboro. The estimated cost of this activity is $40,000. Additionally, PSWC agreed to provide to EPA unrestricted access to these wells, to exercise due care to protect the public health and safety at the Site and not to interfere with remedial activities currently being implemented in connection with the System and at the Site. In exchange for these commitments from PSWC, the United States agreed to grant a limited Covenant Not to Sue to PSWC and to its successors in interest and assigns for CERCLA or RCRA liability arising from existing contamination contained within the System or for the recovery of natural resource damages pursuant to Sections 106, 107(a), 107(f), 113(f) or 113(g)(2) of CERCLA, 42 U.S.C. 9606, 9607(a), 9607(f), 9613(f) or 9613(g)(2).[1]

Under the proposed Agreement, PSWC also agreed to pay PADEP $12,000, a portion of which will be used to defray its costs of performing certain future obligations with respect to the remedy currently being implemented at the Site. In exchange for this payment, PADEP agreed to grant a limited Covenant Not to Sue to PSWC and to its successors in interest and assigns for liability arising from existing contamination contained within the System and a natural resources damage waiver pursuant to Section 507 of the Hazardous Substances Cleanup Act, 35 P.S.§ 6020.507.

PSWC signed the Agreement on October 22, 1996. However, on October 31, 1996, prior to execution of the Agreement by EPA and PADEP, a Bill of Sale and Assignment was executed by and between Hatboro and PSWC in which Hatboro transferred to PSWC title to the System. As a consequence, PSWC became the owner of the System prior to execution of the Agreement by EPA and PADEP. The Regional Administrator of EPA Region III has determined that PSWC's acquisition of the System prior to execution of the Agreement by EPA and PADEP should not alter the rights, obligations and covenants previously agreed to in principle by the parties to the Agreement. The Regional Administrator has determined further that it continues to be in the public interest to proceed with the execution of the Agreement.

[1] On January 9, 1996, the United States Department of the Interior (''DOI'') granted a natural resources damage waiver to PSWC provided that DOI's right to institute a claim against PSWC regarding the injury to, destruction of, or loss of natural resources resulting from any hazardous substance, pollutant or contaminant not present at the Site as of the effective date of the agreement or resulting from the exacerbation of Existing Contamination was preserved. Under Section 122(j) of CERCLA, 42 U.S.C. 9622(j), DOI may grant a covenant not to sue for natural resource damages provided that the party agrees to take appropriate action to protect and restore natural resources damaged or destroyed by a release or threatened release of a hazardous substance.

EPA will accept written comments relating to this Agreement for sixty (60) days from the date of publication of this Notice. As noted above, the United States and PADEP may withdraw their consent to the Agreement if comments received during this period disclose facts or considerations which indicate that the Agreement is inappropriate, improper or inadequate. In addition, pursuant to Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. 6973(d), any person may request a public meeting in the area affected by the Agreement. EPA's response to any comments received will be available for public inspection at the offices of the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Yvette Hamilton-Taylor (3RC32), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2636.

Dated: July 18, 1997.

Thomas Voltaggio,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 97–20825 Filed 8–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5871–5]

Extension of Comment Period for Waste Minimization Software and Documents

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period for a draft software package and other draft documents pertaining to priorities for waste minimization.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for a draft software package and other draft documents pertaining to priorities for waste minimization. The notice of availability for these materials appeared in the **Federal Register** on June 23, 1997 (62 FR 33868). This extension is necessary to allow commenters time to review additional materials placed in the docket after the comment period began and to provide adequate opportunity for commenters to fully evaluate and prepare comments on the draft software package and other draft documents.

DATES: EPA will continue to accept written comments on the draft software package and other draft documents pertaining to priorities for waste minimization until October 7, 1997.

ADDRESSES: To obtain copies: Copies of the software package and the documents cited in this notice can be obtained by calling the RCRA/Superfund/CERCLA Hotline at (800) 424–9346, TDD (800) 553–7672 (hearing impaired), or (703) 412–9810 in the Washington, DC metropolitan area, from 9 a.m. until 6 p.m. Eastern time.

The software package and documents are also available in electronic format on the Internet, and can be obtained by accessing:

WWW: http://www.epa.gov/epaoswer/hazwaste/minimize.
FTP: ftp.epa/gov
Login: anonymous
Password: your Internet address
Files are located in /pub/gopher/OSWRCRA.

TO SUBMIT COMMENTS: Please send an original and two copies of comments, referencing docket number F–97-MPCA-FFFFF, to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–97–MPCA–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, S.W., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general questions pertaining to waste minimization, or questions pertaining to specific aspects of this notice, contact the RCRA/Superfund/EPCRA Hotline at the telephone numbers cited above, or U.S. Environmental Protection Agency, Office of Solid Waste, Waste Minimization Branch, 401 M Street, S.W.(5302W), Washington, DC 20460; telephone: (703) 308–8402, fax: (703) 308–8433.

SUPPLEMENTARY INFORMATION:

I. Background

On June 23, 1997, EPA announced the availability of a beta-test version of a software package which will prioritize chemicals according to their persistence, bioaccumulation, toxicity, and quantity; a draft list of chemicals derived from the software and ranked according to persistence, bioaccumulation, and toxicity; and a crosswalk identifying which RCRA waste codes are likely to contain these chemicals. These materials have been prepared in order to assist hazardous waste generators, government agencies, technical assistance centers, and others involved in waste minimization in making progress towards the goals of EPA's 1994 Waste Minimization National Plan, which calls for a fifty percent reduction in the presence of the most persistent, bioaccumulative, and toxic chemicals in hazardous wastes by the year 2005. See 62 FR 33868 (June 23, 1997) for a more detailed explanation of the materials which were made available.

II. Extension of the Comment Period

EPA has received at least six written requests to extend the comment period by 60 days or more to allow adequate time for commenters to fully evaluate and prepare comments on the software and accompanying written materials. In requesting an extension, the requestors generally cite the complexity of the technical issues associated with EPA's screening methodology, the difficulty of determining the sources of information used to evaluate specific chemicals, and the quantity of information and materials to be reviewed. Requestors also pointed out that certain materials provided in the docket were incomplete and therefore could not be reviewed at the beginning of the comment period.

EPA has examined the materials in the docket and has determined that two documents, the *Waste Minimization National Plan* and the *Chemical Use Clusters Scoring Methodology,* were incomplete or partially illegible. As of July 29, 1997, EPA replaced both documents with complete, fully legible versions. EPA points out that Appendix D of the *Chemical Use Clusters Scoring*

Methodology ends at page D–6, which is a placeholder for a table which was never developed in final form for inclusion in Appendix D. EPA is assembling some of the information that was intended for inclusion in that table and will make it available in the docket by August 7, 1997.

Additionally, EPA is developing materials to assist reviewers in identifying the underlying sources of data used as the basis for scoring chemicals, beyond the explanations already provided in Appendices B and C of the draft *Waste Minimization Prioritization Tool (Beta Test Version 1.0): User's Guide and System Documentation* (EPA530–R–97–019). EPA intends to place these additional materials in the docket by August 7, 1997. EPA determined that it needed to extend the comment period by a total of 60 days to allow commenters to review these additional materials and to provide an adequate opportunity for public participation in the review of this waste minimization prioritization software and accompanying documents.

Dated: July 31, 1997.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 97–20822 Filed 8–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–5872–5]

Water Quality Criteria; Ambient Water Quality Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Ambient Water Quality Criteria Document for Tributyltin (TBT) and Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability for public comment of an ambient water quality criteria document for tributyltin (TBT). This document contains ambient water quality criteria for the protection of aquatic organisms and their uses. These criteria are guidance to States and others, and in themselves have no binding legal effect. When published in final form, these criteria may form the basis for enforceable State water quality standards. These TBT criteria are published pursuant to Section 304(a)(1) of the Clean Water Act.

DATES: Written comments should be submitted to the person listed directly below by October 6, 1997.

ADDRESSES: This notice contains a summary of the criteria document for tributyltin (TBT). Copies of the complete document may be obtained from: U.S. Environmental Protection Agency , National Center for Environmental Publications and Information, 11029 Kenwood Road, Cincinnati, Ohio 45242, phone (513) 489–8190 fax (513) 489–8695.

FOR FUTHER INFORMATION CONTACT: Comments should be sent to: Dr. Frank Gostomski, Health and Ecological Criteria Division (4304), Office of Science and Technology, Office of Water, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Background

Section 304 (a) (1) of the Clean Water Act [33 U.S.C. 1314 (a) (1)] requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life and recreation. When published in final form, EPA water quality criteria may form the basis for enforceable State water quality standards.

Criteria Document

EPA previously issued an ambient water quality criteria document for TBT for public comment on June 1, 1989 [54 FR 23529]. EPA also issued a notice of availability of additional toxicity data for TBT on October 25, 1989 [54 FR 43482]. Today's ambient water quality criteria document for TBT was developed by EPA after consideration of public comment on the 1989 draft criteria and an updated literature search that EPA conducted in January, 1997. EPA intends to issue a final TBT ambient water quality criteria document after consideration of public comment.

Dated: August 1, 1997.

Robert Perciasepe,

Assistant Administrator for Water.

Appendix A—Summary of Ambient Water Quality Criteria for TBT

Freshwater Aquatic Life

The procedures described in the ''Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses'' indicate that, except possibly where a locally important species is very sensitive, freshwater aquatic life and their uses should not be affected unacceptably if the four-day average concentration of tributyltin does not exceed 0.063 μg/L more than once every three years on the average and if the one-hour average concentration does not exceed 0.46 μg/L more than once every three years on the average.

Saltwater Aquatic Life

The procedures described in the ''Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses'' indicate that, except where a locally important species is very sensitive, saltwater organisms and their uses should not be affected unacceptably if the four-day average concentration of tributyltin does not exceed 0.010 μg/L more than once every three years on the average and if the one-hour average concentration does not exceed 0.37 μg/L more than once every three years on the average.

Implementation

As discussed in the Water Quality Standards Regulation (40 CFR Part 131; 48 FR 51400), a water quality criterion for aquatic life has regulatory effect only after it has been adopted in State water quality standards. Such a criterion for a pollutant is to be set at a level protective of a particular designated use. With the approval of EPA, States designate one or more uses for each body of water or segment thereof and adopt criteria that are protective of the use[s]. In each standard, a State may adopt the national recommended criterion, if one exists, or if adequately justified, a site-specific criterion. Site-specific criteria may include not only site-specific criterion concentrations, but also site-specific, and possibly pollutant-specific, durations of averaging periods and frequencies of allowed excursions. The averaging periods of ''one hour'' and ''four days'' were selected by EPA on the basis of data concerning how rapidly some aquatic species react to increases in the concentrations of some pollutants.

It is EPA's best scientific judgment that aquatic ecosystems should not be exposed to contaminants in excess of the criterion more often than once every three years. However, various species and ecosystems react and recover at greatly differing rates. Therefore, if adequate justification is provided, site-specific and/or pollutant-specific concentrations, durations, and frequencies may be higher or lower than those given in national water quality criteria for aquatic life. Use of criteria, which have been adopted in state water quality standards, for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Although dynamic models are preferred for the application of these criteria, limited data or other considerations might require the use of a steady-state model. Guidance on mixing zones and the design of monitoring programs is also available through EPA.

[FR Doc. 97–20975 Filed 8–6–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 97–1640]

FCC Announces the Next Two Meetings of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On July 31, 1997, the Commission released a public notice announcing the next two meetings of the North American Numbering Council (NANC) and the proposed Agenda for those meetings. The intended effect of this action is to make the public aware of the NANC's next two meetings and its Agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes, Paralegal Specialist, assisting the NANC at (202) 418–2313, or via the internet at jgrimes@fcc.gov. The mailing address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20054. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: The next two meetings of the North American Numbering Council (NANC) will be held on Monday, August 18, 1997,from 1:00 PM until 5:00 PM, and Tuesday, August 19, 1997, from 8:30 AM, until 4:30 PM, EST. Both meetings will be held at the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, DC.

Proposed Agenda

The planned agenda for the August 18, 1997, meeting is as follows:

1. Discussion of Pennsylvania Public Utilities Commission (PPUC) Order dated July 10, 1997, concerning the implementation of ''Transparent Area Codes'' in the 215, 610 and 717 NPAs. Participation by representatives from NANP Administration (Bellcore), Bell Atlantic, and the PPUC.

The planned agenda for the August 19, 1997, meeting is as follows:

1. NANC Charter Renewal.
2. Discussion of Short Term Solutions to NXX Exhaust. Industry Presentations by Wireline CLECs and ILECs.
3. Industry Numbering Committee (INC) Monthly Report to the NANC.
4. Guidelines Issues from July 22, 1997, NANC Meeting. Status of Issues Referred to the Common Carrier Bureau.
5. LNPA Working Group: Status Report.
6. Review of Decisions Reached and Action Items.

Federal Communications Commission.

Kent Nilsson,

Deputy Chief, Network Services Division Common Carrier Bureau.

[FR Doc. 97–20770 Filed 8–6–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

Date & Time: Tuesday, August 12, 1997 at 10:00 a.m.

Place: 999 E Street, N.W., Washington, D.C.

Status: This meeting will be closed to the public.

Items to be Discussed:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Date & Time: Thursday, August 14, 1997 at 10:00 a.m.

Place: 999 E Street, N.W., Washington, D.C. (ninth floor)

Status: This meeting will be open to the public.

Items to be Discussed:

Correction and Approval of Minutes.

Advisory Opinion 1997–12: Representative Jerry Costello by counsel, Jeffrey D. Colman.

Advisory Opinion 1997–13: United Space Alliance Political Action Committee by counsel, Timothy W. Jenkins.

Advisory Opinion 1997–14: Mississippi Republican Party by counsel, Robert F. Wood.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–20960 Filed 8–5–97; 10:44 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1182–DR]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–1182–DR), dated July 21, 1997, and related determinations.

EFFECTIVE DATE: July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 21, 1997, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Washington, resulting from snowmelt and flooding on April 10, 1997, and continuing through June 30, 1997, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas. If warranted, Public Assistance may be added at a later date. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Nellie Ann Mills of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Washington to have been affected adversely by this declared major disaster: Pend Oreille County for Individual Assistance.

All counties within the State of Washington are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 97–20916 Filed 8–6–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Dates of Meeting: September 11 and 12, 1997.

Places: The meeting will be held in the Civil Engineering Research Foundation Room at the American Society of Civil Engineers building, 1015 15th Street, NW, Washington, D.C.

Times: 9:00 a.m. to 5:30 p.m. on Thursday and 9:00 a.m. to 4:00 p.m. Friday.

Proposed Agenda: Council members will hear presentations from the National Association of Flood and Stormwater Management Agencies and the FEMA's Hazard Identification & Risk Assessment Branch. The Council will also discuss the contents of its second annual report to the Director of FEMA, update their Plan of Action, and hear a report on the workgroup for Elevation Certificates.

Status: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, PE, Federal Emergency Management Agency, 500 C Street SW., Room 421, Washington, DC 20472; telephone (202) 646–2756 or by fax at (202) 646–4596.

Dated: July 31, 1997.

Craig Wingo,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 97–20847 Filed 8–6–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License

Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 3678.
Name: Total Transport, Inc.
Address: 7749 East 11th Street, Tulsa, OK 74112.
Date Revoked: May 12, 1997.
Reason: Surrendered license voluntarily.

License Number: 1957.
Name: Universal Freight Forwarders, Ltd. d/b/a Universal Freight Forwarders and Customs Brokers, Ltd.
Address: 83 South King Street, Suite 205, Seattle, WA 98104.
Date Revoked: May 2, 1997.
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 97–20820 Filed 8–6–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission.

ACTION: Grant of Partial Exemption from the Commission's Alternative Fuels and Alternative Fueled Vehicles Rule.

SUMMARY: The Commission has granted the petition of the Ford Motor Company (''Ford'') requesting permission to use an alternative fueled vehicle (''AFV'') label in California that differs from the AFV label specified in the Commission's rule concerning Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles (''Rule''). Pursuant to Rule 1.26 of the Commission's Rules of Practice, and Commission grants, for good cause, the requested relief without a notice and comment period because the Commission finds that such a procedure is unnecessary to protect the public interest in this case.

EFFECTIVE DATE: August 7, 1997.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Sixth Street and Pennsylvania Ave., N.W., Washington, DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

On May 19, 1995, the Commission published the Alternative Fuels and Alternative Fueled Vehicles Rule in the **Federal Register** (60 FR 26926). The Rule, in pertinent part, established labeling requirements for new covered AFVs. The labels disclose specific cost and benefit information to enable consumers to make reasonable purchasing choices and comparisons. The labeling requirements for new covered AFVs became effective November 20, 1995.

Section 309.20 of the Rule provides that before offering a new covered AFV for acquisition to consumers, manufacturers must affix on a visible surface of each such vehicle a new vehicle label consisting of three parts. Part one must disclose objective information about the estimated cruising range and environmental impact of the particular AFV. Part two must disclose and explain specific factors consumers should consider before buying an AFV. Part three must list specific toll-free telephone numbers for consumers who want to call the Federal government for more information about AFVs. Section 309.20 of the Rule further states that no marks or information other than that specified by the Rule may appear on the label.

With respect to environmental impact, the labels must tell consumers whether or not the vehicle has met an Environmental Protection Agency (''EPA'') emission certification standard and, if so, what standard. If a vehicle has been certified, that fact must be noted with a mark in a box on the label, and a caret must be inserted above the standard the vehicle has been certified to meet. The graphic on the label depicts seven EPA emissions standards in increasing order of stringency.

For several years, EPA has promulgated emissions classification standards as part of its Federal Motor Vehicle Control Program, which establishes pollution limits for ''criteria air pollutants'' (i.e., hydrocarbons, carbon monoxide, nitrogen oxides, and particulate matter). Each of these pollutants is released into the air from an automobile's tailpipe as exhaust. In addition, hydrocarbons in vapor form also are released due to the evaporation of fuel and during refueling. The standards apply to new motor vehicles manufactured in specified model years.

After manufacturers submit appropriate test reports and data, the EPA Administrator issues a ''certificate of conformity'' to those vehicle manufacturers demonstrating compliance with the applicable emissions standards.

Pursuant to its authority under the 1990 Clean Air Act Amendments,[1] EPA began issuing stricter emission standards for each model year as a way of reducing levels of the criteria air pollutants. One set of standards, the Tier 1 standards, was phased in beginning with the 1994 model year. The second set of standards establishes five stricter standards as part of a new ''clean-fuel vehicles'' program.[2] To qualify as a clean-fuel vehicle, a vehicle must meet one of five sets of increasingly stringent standards. The standards are denominated, in increasing order of stringency, TLEV (''Transitional Low Emission Vehicle''), LEV (''Low Emission Vehicle''), ULEV (''Ultra Low Emission Vehicle''), ILEV (''Inherently Low Emission Vehicle''), and ZEV (''Zero Emission Vehicle''). Disclosures regarding both sets of EPA emission standards are required on the Rule's labels for new covered AFVs because the Commission determined that information concerning EPA emission certification levels provides a simple way of comparing different AFVs and, therefore, is useful to consumers considering AFV acquisitions.[3]

Part B—Ford's Proposal

In 1996, after the Commission promulgated its Rule, the State of California Air Resources Board (''CARB'') established a stringent emission standard denominated SULEV (''Super Ultra Low Emission Vehicle''). Although EPA has not amended its regulations to adopt this standard, according to staff at EPA and CARB, an AFV in California certified as meeting the requirements of the CARB SULEV standard is certified to a stricter emissions standard than a ULEV plus ILEV certified vehicle.[4] Furthermore, a vehicle certified to a SULEV plus ILEV standard is certified to a stricter emissions standard than a SULEV certified vehicle.

The California LEV program requires Ford to sell a specified percentage of vehicles that are certified to the LEV and ULEV standards. By certifying vehicles to the SULEV standard, however, Ford receives additional vehicle credits to comply with this program. Ford is in the process of certifying AFVs in California to the CARB SULEV emission standard and the EPA ILEV emission standard. Ford wishes to disclose to consumers in California information indicating that an AFV has been certified to the CARB SULEV emission standard. The problem Ford has encountered is that the Commission's AFV label provides no means of conveying such information because the SULEV emission standard did not exist at the time the Rule was promulgated, and, therefore, is not included as a disclosure on the Commission's AFV label.

Ford, therefore, petitioned the Commission to permit it to use an AFV label, in California only, that differs in two respects from the AFV label described in section 309.20 of the Rule:[5]

(1) To convey accurate information to consumers in California, Ford requested permission to add a check-box to the label with accompanying text that reads, ''This vehicle meets the California Air Resources Board emission standard noted below.''

(2) For applicable new covered vehicles, Ford also requested permission to add ''SULEV'' and ''SULEV + ILEV'' disclosures to the list of emissions standards on the AFV label, between the ''ULEV + ILEV'' and ''ZEV'' standards.

Ford asserted that granting its petition will provide additional useful information to consumers considering AFV acquisitions in California, and will permit it to demonstrate to consumers in that state the technological advances it has made in producing cleaner, lower-emitting vehicles.[6]

The Commission has determined that including the CARB SULEV emission standard on labels in California for new covered AFVs, in the format proposed by Ford, is appropriate, feasible, and consistent with the Rule's intent. In issuing the Rule, the Commission concluded that requiring disclosure of emission certification standards is appropriate and would be useful to consumers. The Commission noted further that incorporating environmental considerations into national energy policy was a key goal of the Energy Policy Act of 1992 (''EPA 92''),[7] pursuant to which the Rule was promulgated, and improving the environment was a principal purpose of that statute. EPA 92 gives special attention to the fact that the environmental performance of alternative fuels differs, and that those differences need to be explained to consumers.[8]

In the Commission's view, granting Ford's petition to permit it to include the SULEV emission standard on AFV labels will provide additional comparative information regarding alternative fuels that will be helpful to consumers in California considering AFV acquisitions (e.g., fleet operators as well as environmentally concerned consumers). Specifically, because AFVs are certified to a specific emission standard, disclosure of the SULEV certification level will provide a simple and even more useful way of comparing different AFVs in California. Disclosure of additional objective data such as the SULEV certification level also will benefit consumers in California attempting to evaluate competitive advertising and marketing claims regarding any AFV's environmental performance.

In addition, the Commission has determined that the AFV labeling approach proposed by Ford offers a clear, conspicuous, and easily readable disclosure to consumers of all Rule-required information and complies with the intent of the regulation. Furthermore, granting the AFV label variances requested will not adversely affect the public interest or result in any consumer injury, but rather will provide additional useful information to consumers while accommodating a technological development in the industry. Therefore, the Commission is granting Ford permission to use its proposed AFV label on new covered AFVs, provided that Ford uses its modified AFV label only in the State of California, and complies with the Rule's AFV label specifications in all other respects.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–20797 Filed 8–6–97; 8:45 am]

BILLING CODE 6750–01–M

[1] Pub. L. 101–549, 104 Stat. 2399 (1990).

[2] *See* 40 CFR 88 (1996).

[3] 60 FR 26926, 26946 (May 19, 1995).

[4] According to EPA, a vehicle certified as meeting the requirements to both the ULEV and ILEV standards has lower combined exhaust and evaporative emission than an ILEV certified vehicle.

[5] Ford is a manufacturer of AFVs covered by the Rule. *See* 16 CFR 309.1(f) and 309.1(r).

[6] The Commission previously has granted similar requests without notice and comment procedures. *See* Fuel Rating Rule (formerly Octane Rule) exemptions granted to Sunoco in 1979 (44 FR 33740) and in 1990 (55 FR 1871); to Gilbarco, Inc. in 1988 (53 FR 29277); to Gilbarco on behalf of Exxon in 1989 (54 FR 14072); to Dresser Industries, Inc. on behalf of several gasoline refiners in 1991 (56 FR 26821); to the Bennett Pump Co. on behalf of Wesco Oil Co. in 1993 (58 FR 64406); and to Gilbarco on behalf of several gasoline refiners in 1995 (60 FR 57584).

[7] Pub. L. 102–486, 106 Stat. 2776 (1992).

[8] 60 FR 26926, 26946.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

David N. Shapiro, M.D., St. Jude Children's Research Hospital: Based upon a report from St. Jude Children's Research Hospital as well as information obtained by the Office of Research Integrity (ORI) during its oversight review, ORI found that Dr. Shapiro, former faculty member, St. Jude Children's Research Hospital, engaged in scientific misconduct by falsifying the authorship of five publications listed in his biographical sketches in several National Institutes of Health (NIH) grant applications, including applications submitted to the National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), the National Institute of General Medical Sciences (NIGMS), the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), and the National Cancer Institute (NCI).

Specifically, Dr. Shapiro listed himself as an author when he was not. Dr. Shapiro also fabricated data for Figures 5 and 7 in the following publication: Sublett, J.E., Jeon, I.S., & Shapiro, D.N. ''The aveolar rhabdomyosarcoma *PAX3/FKHR* fusion protein is a transcriptional activator.'' *Oncogene* 11:545–552, 1995. Dr. Shapiro has submitted a letter to *Oncogene* requesting retraction of these figures.

Dr. Shapiro has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed:

(1) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on July 29, 1997;

(2) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 CFR part 76 (Debarment Regulations) for a period of two (2) years, beginning on July 29, 1997;

(3) That any institution that submits an application for PHS support for a research project on which Dr. Shapiro's participation is proposed or that uses him in any capacity on PHS supported research must concurrently submit a plan for supervision of his duties to the funding agency for approval for a period of one (1) year following the two (2) year exclusion. The supervisory plan must be designed to ensure the scientific integrity of Dr. Shapiro's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 97–20816 Filed 8–6–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Notice of Meeting

The Agency for Toxic Substances and Disease Registry announces the following meeting.

Name: Expert Workshop Regarding Medical Monitoring in Bunker Hill, Idaho.

Times and Dates: 8:30 a.m.–5 p.m., August 19, 1997. 8:30 a.m.–5 p.m., August 20, 1997.

Place: Kellogg Middle School Library, 800 Bunker Avenue, Kellogg, Idaho 83837, telephone 208/784–1348.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: Target population(s) of residents and workers in and surrounding the former Bunker Hill lead and zinc smelting facility in Idaho have received past exposures to lead (and possibly other heavy metals).

The exposures have decreased markedly, but studies show adverse health outcomes in these populations, most probably as a result of the past exposures. The literature supports an association between known adverse health outcomes and lead exposure.

ATSDR wants to determine if there is a definable population at significantly increased risk of disease who may benefit from a medical monitoring program. ATSDR will judge the appropriateness of such a program by applying its medical monitoring criteria. If a program is deemed appropriate, the agency will develop a medical monitoring plan for the target population(s). ATSDR is planning three workshops consisting of external experts to provide individual input and guidance about applying the medical monitoring criteria to Bunker Hill. This announcement is for the first workshop; all three workshops will be open to the public.

Matters To Be Considered: The objective of the first workshop is to use all available information from ATSDR and other relevant data to make individual recommendations and answer questions related to the application of the first four ATSDR medical monitoring criteria at Bunker Hill, definition of the target populations, and specific outcomes as candidates for monitoring. Community and local health representatives and nationally recognized lead experts will convene to consider the first four ATSDR Medical Monitoring Criteria as they apply to Bunker Hill.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Vivian Rush, M.D., Medical Officer, ATSDR-Division of Health Education and Promotion, 1600 Clifton Road, NE, M/S E–33, Atlanta, Georgia 30333; telephone 404/639–5080.

Dated: August 1, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–20785 Filed 8–6–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–123]

ATSDR's Interim Policy Guideline and Technical Support Document on Dioxin and Dioxin-Like Compounds in Soil

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of ATSDR's ''Interim Policy Guideline: Dioxin and Dioxin-Like Compounds in Soil,'' and the ''Technical Support Document for ATSDR Interim Policy Guideline: Dioxin and Dioxin-Like Compounds in Soil.'' ATSDR has adopted this interim policy guideline to assess the public health implications of dioxin and dioxin-like compounds in residential soils near or on hazardous waste sites. These compounds include 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD), related chlorinated dibenzo-p-dioxins (CDDs), chlorinated dibenzofurans (CDFs), and other structurally related groups of chemicals from the family of halogenated aromatic hydrocarbons.

DATES: Comments concerning this notice and the interim guidelines must be received by October 6, 1997.

ADDRESSES: Requests for a copy of these documents should be sent to the attention of Ms. Kim E. Jenkins, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE Atlanta, Georgia 30333. Requests for the documents must be in writing.

Comments on this notice should bear the docket control number ATSDR–123 and should be sent to the attention of Dr. Jim Holler, Agency for Toxic Substances and Disease Registry, Division of Toxicology, Emergency Response and Scientific Assessment Branch, 1600 Clifton Road, NE Mailstop E–29, Atlanta, Georgia 30333. Comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 4, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher T. De Rosa, Director, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE Mailstop E–29, Atlanta, Georgia 30333, telephone (404) 639–6300.

SUPPLEMENTARY INFORMATION: This interim policy guideline provides a description of ATSDR's current approaches and judgments regarding hazards posed by the presence of TCDD and its less toxic dioxin-like congeners, the CDDs and CDFs, in residential soils. Likely users of this interim policy guideline include health assessors at ATSDR and in the States, and ATSDR partners including relevant Federal, State, and local health and environmental entities, and concerned community groups who may be involved in a range of health assessment and risk management decisions.

The technical support document is intended to serve as technical background and support for the agency interim policy guideline and, to the extent practicable, harmonize such efforts with those of other Federal agencies and relevant organizations. This document reflects an assessment of current practice within the agency and defines the appropriate roles of professional judgment and emerging scientific principles in ATSDR's public health assessments of exposures to dioxin and dioxin-like compounds.

These guidelines and procedures apply to human exposure by direct ingestion of soils contaminated with dioxin and dioxin-like compounds in residential areas and may not be appropriate for exposure by other routes or media. This guidance will be evaluated in the future in view of new data that may become available.

Dated: July 31, 1997.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 97–20740 Filed 8–6–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0040]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by September 8, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Survey of Food Safety Practices of Food Processing Firms—New Collection

FDA is evaluating the marginal costs of requiring food processors to use Hazard Analysis and Critical Control Point (HACCP) systems. HACCP is already required for seafood processors, and FDA is considering whether to issue regulations requiring HACCP for processors of other foods under the agency's jurisdiction. The analysis of marginal costs requires information about the prevalence of specific HACCP systems and practices among food manufacturers and repackers. FDA will collect this information through an anonymous voluntary survey of a random sample of food processors. Additionally, through a series of onsite visits to selected processors, a contractor will collect information on the marginal cost of various procedures required to operate a HACCP system. The information will help the Center for Food Safety and Applied Nutrition determine the baseline level of HACCP use from which to estimate the economic costs to the industry of mandatory HACCP regulations for foods other than seafood. FDA will use this information in tailoring any HACCP regulations that may issue so that costs and benefits of such regulations are appropriately considered.

In the **Federal Register** of February 28, 1997 (62 FR 9194), the agency requested comments on the proposed collection of information. FDA received one comment that supported the implementation of HACCP but questioned several aspects associated with the proposed survey. First, the comment questioned whether the survey would yield ''reliable'' or ''practical'' data because it was difficult to interpret what ''critical control point'' means and what the term ''hazards'' includes. The comment stated ''it is difficult to identify costs attributable only to HACCP in facilities where the system has been implemented.'' This comment is not relevant to the survey because the survey does not ask processors about critical control points, hazards, or costs of HACCP but, instead, seeks information on the processes and controls currently in place.

The comment also stated that FDA should use other sources of data. In fact, FDA is already planning to used multiple sources of information to estimate the marginal costs of requiring HACCP. These sources include interviews with food processing firms and information taken from pilot plants that are already using HACCP, and comments received during other HACCP rulemakings.

Finally, the comment stated that FDA's reporting burden estimate is too low because successful telephone contact typically requires multiple attempts. FDA disagrees with this comment for two reasons: First, the burden of making multiple attempts to contact a potential survey respondent will fall on FDA, not on the potential respondent. Second, the burden estimate already includes time to be spent by respondents to set up a subsequent interview.

FDA estimates the burden of this survey as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Burden Element	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Part 1—Computer Assisted Telephone Interview (CATI)					
Respond to initial recruitment telephone call	1,231	1	1,231	0.2	246.2
Receive and read introductory letter, key term definitions	1,231	1	1,231	0.25	307.75
Obtain data to prepare for the telephone interview	1,231	1	1,231	0.35	430.85
Respond to telephone interview	1,231	1	1,231	0.5	615.50
Totals		1			1,600.3
Part 2—Onsite Cost Interview					
Receive initial recruitment telephone call	17	1	17	0.2	3.4
Receive and read introductory letter and materials	17	1	17	0.25	4.25
Obtain data to prepare for the site visit	17	1	17	0.5	8.5
Respond to questions during site visit	17	1	17	3.0	51.0
Followup questions	17	1	17	0.25	4.25
Total burden hours, onsite interviews					71.4

There are no capital costs or operating and maintenance costs associated with this collection of information.

The total burden hours for Part 1—CATI and Part 2—Onsite Cost Interview are 1,671.7.

The burden hour estimates are based on a pretest conducted with three focus groups.

Dated: July 30, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–20754 Filed 8–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0317]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by September 8, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Interstate Shellfish Dealers Certificate—(OMB Control Number 0910– 0021)—Reinstatement

Under 42 U.S.C. 243, FDA is required to cooperate with and aid State and local authorities in the enforcement of their health regulations and is authorized to assist States in the prevention and suppression of communicable diseases. Under this authority, FDA participates with State regulatory agencies, some foreign nations, and the molluscan shellfish industry in the National Shellfish Sanitation Program (NSSP). The NSSP is a voluntary, cooperative program to promote the safety of molluscan shellfish by providing for the classification and patrol of shellfish growing waters and for the inspection and certification of shellfish processors. Each participating State and foreign nation monitors its molluscan shellfish processors and issues certificates for those that meet the State or foreign shellfish control authority's criteria. Each participating State and nation provides a certificate of its certified shellfish processors to FDA on Form FDA 3038, ''Interstate Shellfish Dealer's Certificate.'' FDA uses this information to publish the ''Interstate Certified Shellfish Shippers List,'' a monthly comprehensive listing of all molluscan shellfish processors certified under the cooperative program. If FDA did not collect the information necessary to compile this list, participating States would not be able to identify and keep out shellfish processed by uncertified processors in other States and foreign nations. Consequently, the NSSP would not be able to control the distribution of uncertified and possibly unsafe shellfish in interstate commerce, and its effectiveness would be nullified.

ESTIMATED ANNUAL REPORTING BURDEN

Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 3038	33	70	2,310	.10	231

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of certificates received in 1996.

Dated: July 31, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–20868 Filed 8–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0143]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Citizen Petition'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 28, 1997 (62 FR 22959), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). OMB has now approved the information collection and has assigned OMB control number 0910–0183. The approval expires on June 30, 2000. 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.

Dated: July 31, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–20869 Filed 8–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0323]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by September 8, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Notice of Participation—(21 CFR 12.45) (OMB Control Number 0910–0191—Reinstatement)

Under part 12 (21 CFR part 12) regulations issued under sections 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393), any interested person may participate in a formal evidentiary hearing, either personally or through a representative by filing a notice of participation under § 12.45. Section 12.45 requires that any person filing a notice of participation state the person's specific interest in the proceedings, including the specific issues of fact about which the person desires to be heard. This section also requires that the notice include a statement that the person will present documentary evidence on testimony at the hearing and will comply with specific requirements in § 12.85 or, in the case of a hearing before a Public Board of Inquiry, in 21 CFR 13.25, concerning disclosure of data and information by participants. A participant's appearance can be struck by the presiding officer in accordance with § 12.45(e).

The information obtained is used by the presiding officer and other participants in a hearing to identify specific interests to be presented. This preliminary information serves to expedite the prehearing conference and commits participation.

The affected respondents are individuals or households, State or local governments, not-for-profit institutions and businesses or other for-profit groups and institutions.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.45	92	1	92	3	276

There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency bases this estimate on fiscal year 1995 data in which each notice of participation filed took an estimated 3 hours to complete.

Dated: July 31, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–20870 Filed 8–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0325]

Duramed Pharmaceuticals, Inc., and Barr Laboratories, Inc.; Conjugated Estrogens Tablets; Proposal to Refuse to Approve Two Abbreviated New Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Center for Drug Evaluation and Research (CDER) is proposing to refuse to approve two abbreviated new drug applications (ANDA's) for synthetic conjugated estrogens tablets. Conjugated estrogens tablets are intended for estrogen replacement to treat symptoms of menopause or to prevent osteoporosis. ANDA 40–115 (Cenestin, conjugated estrogens tablets, 0.3 milligrams (mg), 0.625 mg, 0.9 mg, 1.25 mg, and 2.5 mg) has been submitted by Duramed Pharmaceuticals, Inc., 5040 Lester Rd., Cincinnati, OH 45213 (Duramed). ANDA 40–154 (conjugated estrogens tablets, 0.625 mg and 1.25 mg) has been submitted by Barr Laboratories, Inc., 2 Quaker Rd., Pomona, NY, 10970 (Barr). Food and Drug Administration (FDA) is offering Duramed and Barr an opportunity for a hearing on the proposal. The primary basis for CDER's proposed refusal to approve the ANDA's is the agency's conclusion that there is insufficient information to show that the active ingredients of synthetic conjugated estrogens tablets are the same as the active ingredients of the reference listed drug.

DATES: A hearing request is due on or before September 8, 1997; data and information in support of the hearing request are due on or before October 6, 1997.

ADDRESSES: A request for hearing, supporting data, and other comments are to be identified with Docket No. 97N–0325 and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carol E. Drew, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Both Duramed and Barr have submitted ANDA's for synthetic conjugated estrogens tablets intended for estrogen replacement to treat symptoms of menopause or to prevent osteoporosis. The reference listed drug for this product is Premarin, manufactured by Wyeth-Ayerst, and derived from a natural source material, the urine of pregnant mares.

On September 26, 1994, Duramed submitted ANDA 40–115 for Cenestin (conjugated estrogens tablets) under section 505 (j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)). Duramed filed amendments to this ANDA on March 7 and 25, 1996; April 2 and 3, 1996; May 9 and 14, 1996; June 28, 1996; July 12, 1996; August 14, 15, 19, and 29, 1996; October 8 and 9, 1996; December 17, 1996; January 23 and 31, 1997; and February 14, 1997. On May 5, 1997, in accordance with § 314.120 (21 CFR 314.120), CDER notified Duramed by letter that Duramed's ANDA was not approvable under section 505 (j)(2)(A)(ii)(II) and (j)(3)(C)(ii) because the ANDA was insufficient to show that the active ingredients of the proposed generic drug product were the same as the active ingredients of the reference listed drug.

On July 20, 1995, Barr submitted ANDA 40–154 for conjugated estrogens tablets under section 505(j) of the act. Barr filed amendments to this ANDA on May 13, 1996, and November 14 and 18, 1996. On May 5, 1997, in accordance with § 314.120, CDER notified Barr by letter that Barr's ANDA was not approvable under section 505 (j)(2)(A)(ii)(II) and (j)(3)(C)(ii) of the act because the ANDA was insufficient to show that the active ingredients of the proposed generic drug product were the same as the active ingredients of the reference listed drug.

CDER attached a detailed memorandum to the not approvable letters issued to both Duramed and Barr. This memo, from the CDER Director to the Director of the Office of Generic Drugs, outlined the legal and scientific rationale for CDER's position that a synthetic generic version of Premarin should not be approved until the active ingredients of Premarin have been sufficiently well defined to permit an ANDA applicant to show that a synthetic generic form of Premarin has the same active ingredients. In the not approvable letters of May 5, 1997, CDER notified Duramed and Barr that they each had the option to amend or withdraw their respective ANDA's under § 314.120, or request an opportunity for a hearing under § 314.200 (21 CFR 314.200).

In response to CDER's not approvable letter, Duramed submitted an initial response on May 15, 1997, and under § 314.120(a)(5), requested a 30-day extension of time to respond pending review by its scientific and medical personnel of the not approvable letter and other information.

In a letter dated June 13, 1997, Duramed requested the opportunity for a hearing under § 314.120(a)(3) on the question of whether there are grounds for denying approval of ANDA 40–115.

On June 26, 1997, CDER issued a response to Duramed's May 15, 1997, letter documenting CDER's decision to honor Duramed's request for an extension contingent upon Duramed's agreement, under § 314.120(a)(3), that CDER would have until August 8, 1997, to give written notice of an opportunity for a hearing to Duramed, under § 314.200, on the question of whether there are grounds for refusing to approve the ANDA.

On May 15, 1997, Barr submitted a letter to FDA requesting a 60-day extension to respond to the not approvable letter dated May 5, 1997. On July 3, 1997, CDER issued a letter granting Barr's May 15, 1997, request for an extension contingent on Barr's agreement that FDA would have 50 days from the date of Barr's request for the opportunity for a hearing to provide written notice of an opportunity for a hearing. Barr submitted a letter to FDA on July 7, 1997, requesting an opportunity for a hearing on the not approvable letter and agreeing to the condition that FDA would have 50 days from July 7, 1997, to respond.

This notice includes CDER's proposed order to refuse to approve the Barr and Duramed ANDA's for synthetic conjugated estrogens drug products and responds to both Duramed's and Barr's requests for an opportunity for a hearing on the question of whether there are grounds for refusing to approve those ANDA's.

II. Regulatory History of Conjugated Estrogens

FDA first permitted a new drug application for Premarin to become effective in 1942 under the new drug provisions of the act (Pub. L. 75–717, 52 Stat. 1040 (1938)), based on chemistry, manufacturing, and controls information acceptable at that time and a showing, from reports of clinical investigations, that the drug product was safe for its intended use in the treatment of menopausal symptoms and related conditions. The product was known at that time to contain estrone and equilin, and it was known that additional estrogens were present in smaller amounts. The tablet strengths and estrogenic potencies of Premarin tablets were controlled using a colorimetric assay and a rat bioassay, respectively, with estrone as the reference standard. Thus, the 0.625 mg Premarin tablet was assigned this value because it contained estrogenic potency that, in the rat model, was equivalent to 0.625 mg of sodium estrone sulfate.

In 1970, the United States Pharmacopeia (USP) published monographs for conjugated estrogens and conjugated estrogens tablets, establishing the first compendial standards for these products (Ref. 1). The USP described conjugated estrogens as containing sodium estrone sulfate and sodium equilin sulfate.[1] This description appears to have been based on the known quantity, in Premarin, of each of the two ingredients as well as their demonstrated clinical estrogenic effects (Refs. 2, 3, and 4). The two compounds were known to be the most abundant estrogens in Premarin. Clinical data showing estrone to be an active estrogen were available, and small-scale clinical studies of sodium equilin sulfate indicated that it was a more potent estrogen than estrone (Ref. 6). Limited data from a study completed in 1963 and published in 1971 suggested that sodium 17α-dihydroequilin sulfate, the third most abundant estrogen, had little clinical activity (Ref. 6).

With the publication of the monographs in 1970, the rat potency test was eliminated and replace by a chemical assay for the two active ingredients. However, the traditional strength assignment was maintained, even though the tablets contained fewer milligrams of sodium estrone sulfate and sodium equilin sulfate than the milligram dose stated on the label.

In 1972, FDA published an assessment of the effectiveness of Premarin (Ref. 7). Drugs such as Premarin that were approved prior to 1962 were required to demonstrate safety but not effectiveness at the time of approval. In 1962, enactment of the Harris-Kefauver amendments to the act created a requirement for a demonstration of the effectiveness of new drugs including new drugs approved between 1938 and 1962 (Pub. L. 87–781, 76 Stat. 780). FDA contracted with the National Academy of Sciences/National Research Council to carry out the Drug Efficacy Study to assess the evidence of effectiveness available for new drugs approved prior to 1962. FDA then implemented the results in an effort known as the Drug Efficacy Study Implementation (DESI). The 1972 **Federal Register** notice announced FDA's conclusion that a number of estrogen products, including Premarin, had been shown to be effective for menopausal symptoms (and several other conditions) based on the DESI Panel recommendations and other available evidence. FDA also found that the listed estrogen products were ''probably effective'' for prevention of osteoporosis. For indications found to be ''probably effective,'' FDA required sponsors to either submit substantial evidence of effectiveness or remove the indication from the product labeling within a certain period of time.

In 1978, Ayerst Laboratories proposed that conjugated estrogens be required to contain seven estrogenic components. Ayerst subsequently modified this proposal to request only that 17α-dihydroequilin be added to the existing USP monograph (Ref. 8). In 1982, FDA and USP convened a public meeting to discuss Ayerst Laboratories' proposal that the monograph for conjugated estrogens include 17α-dihydroequilin (Ref. 9). FDA stated at that time that the composition of conjugated estrogens should be determined by estrogenic potency and that the proposed compound had low potency and likely did not contribute to the clinical effect. USP determined that 17α-dihydroequilin should not be added to the monograph as an active ingredient.

In 1980, FDA published the first version of the document now known as the Approved Drug Products with Therapeutic Equivalence Determinations, also known as the ''Orange Book'' (Ref. 10). This document lists the FDA assignment of therapeutic equivalence among duplicate drug products based on available data pertaining to their pharmaceutical equivalence and bioequivalence. Existing conjugated estrogens tablet products were classified as ''BS,'' i.e., not considered therapeutically equivalent, because of concern that the USP monograph specifications for estrone sulfate and equilin sulfate were inadequate to ensure that products meeting the monograph standard would necessarily produce equivalent therapeutic effects in patients (Ref. 11). The ''BS'' code is used by FDA to indicate that drug products are not considered therapeutic equivalents due to deficient drug standards.

In 1986, FDA announced in the **Federal Register** that a 0.625 mg dose of Premarin daily was found to be effective for prevention of osteoporosis in postmenopausal women (Ref. 12). Two dose-response studies evaluating the effect of Premarin on bone mineral density had been published in the literature (Refs. 13 and 14).

In 1986, while developing an appropriate in vitro dissolution test standard for conjugated estrogens bioequivalence testing, FDA discovered that Premarin tablets were a modified release dosage form (Ref. 15). This unexpected characteristic of the Premarin formulation meant that generic copies were unlikely to be bioequivalent unless they also had similar modified release characteristics. Because of this discovery, FDA changed the Orange Book code for generic conjugated estrogens tablets from ''BS'' to ''BP'' (Ref. 16). The code ''BP'' means that generic products so labeled are not considered therapeutically equivalent due to a potential bioequivalence problem. FDA then began to require that generic conjugated estrogens products demonstrate bioequivalence through in vivo human subject bioequivalence testing (Ref. 17). Because bioequivalence testing is ordinarily performed on the active ingredients of a product, the question of the active ingredients of Premarin again was raised.

In 1989, FDA's Fertility and Maternal Health Drugs Advisory Committee considered the question of the active ingredients in Premarin (Ref. 18). The Committee agreed that sodium estrone sulfate and sodium equilin sulfate are active ingredients, but could not reach a consensus on whether or not other

[1] In the preamble to the final rule implementing Title I of the Drug Price Competition and Patent Term Restoration Act of 1984, FDA stated that, although in most cases the agency will consider an active ingredient to be the same as that of the reference listed drug if it meets the standards of identity described in the USP, ''in some cases, FDA may prescribe additional standards that are material to an ingredient's sameness.'' (See 57 FR 17950 at 17959, April 28, 1992). See also § 320.1(c) (21 CFR 320.1(c)), which states that an identical active drug ingredient may meet ''identical compendial *or other applicable standards*'' (emphasis added). FDA applies current scientific knowledge in making its regulatory decisions, even if that knowledge has not yet been incorporated into the USP monograph.

estrogens in Premarin were active ingredients (Ref. 19). In 1990, an Ad Hoc Subcommittee of the Fertility and Maternal Health Drugs Advisory Committee met to consider Premarin bioequivalence issues (Ref. 20). Again, the group agreed that the two named active ingredients were correctly designated, but could not reach a consensus on whether additional components should be regarded as active ingredients (Ref. 21).

In 1990, FDA published a proposal to withdraw approval of the ''BP'' coded generic conjugated estrogens formulations for which therapeutic equivalence could not be ensured (Ref. 22). The proposal included withdrawing all generic conjugated estrogens marketed at that time. The agency withdrew approval for these products in 1991, and there are currently no approved generic conjugated estrogens tablets on the U.S. market (Refs. 23 and 24).

In February 1991, FDA's Generic Drugs Advisory Committee met to consider issues of pharmaceutical equivalence and bioequivalence for conjugated estrogens (Ref. 25). FDA proposed to the committee that three of the additional estrogens in Premarin be recommended for inclusion as ''concomitant components'' in the USP monograph for conjugated estrogens (Refs. 26 and 27). These particular ''concomitant components'' would be required to be in the product, but would not be considered active ingredients and, thus, would not need to be included in bioequivalence testing (Ref. 28). The Generic Drugs Advisory Committee endorsed this proposal (Ref. 29). Subsequently, the USP monographs on conjugated estrogens were amended to include the three additional ''concomitant components'' (Ref. 30).

On November 30, 1994, Wyeth-Ayerst submitted a citizen petition requesting, among other things, that FDA not approve any generic conjugated estrogens products that do not contain the compound sodium ''8,9-dehydroestrone sulfate (DHES) (Ref. 31). Wyeth-Ayerst also submitted a petition for a stay of action requesting that FDA stay any decision to ''receive'' an ANDA for a conjugated estrogens product that does not contain DHES and stay any approval of such an application until FDA responds to the petition (Ref. 32).

Because of the complex scientific issues associated with determining the active ingredients of conjugated estrogens, in the summer of 1995, CDER formed an Ad Hoc Conjugated Estrogens Working Group to consider these issues. That group of CDER staff examined available data related to the composition of conjugated estrogens and prepared a background document for the Fertility and Maternal Health Drugs Advisory Committee.

On July 27 and 28, 1995, FDA's Fertility and Maternal Health Drugs Advisory Committee, with representation from FDA's Generic Drugs Advisory Committee and FDA's Endocrinologic and Metabolic Drugs Advisory Committee, heard presentations and discussions on the composition of conjugated estrogens (Ref. 33). At the end of the deliberations, in answer to questions regarding what additional components, if any, beyond the two recognized active ingredients contribute to the clinical safety and effectiveness of Premarin, the Committee voted unanimously in favor of the following statement:

> The Committee feels that insufficient data were presented to determine *whether or not* any individual component of Premarin or any combination of components in Premarin other than estrone sulfate and equilin sulfate must be present in order for Premarin to achieve its established levels of efficacy and safety [emphasis added].

(Ref. 34).

On November 1, 1996, FDA completed a ''Preliminary Analysis of Scientific Data on the Composition of Conjugated Estrogens' (Ref. 35).

On May 1, 1997, the Ad Hoc Conjugated Estrogens Working Group completed its final report providing a scientific clarity background for CDER's decision regarding the composition of conjugated estrogens (Ref. 36).

The regulatory history of conjugated estrogens reflects the complexity of the scientific issues involved. FDA's positions on these issues have evolved over time as new information has become available. As with any such complicated scientific issue, differences in scientific opinion arose and continue to exist concerning how available data are to be interpreted and applied in the regulatory context. These differing views (Refs. 37, 38, and 39) were considered prior to this proposed order refusing to approve the two ANDA's for synthetic conjugated estrogens identified above.

III. The Deficiencies in ANDA 40–115 and ANDA 40–154

The primary basis of this proposed order refusing to approve ANDA 40–115 and ANDA 40–154 is that these ANDA's fail to provide sufficient information to show that the active ingredients of the proposed generic drug products are the same as the active ingredients of the reference listed drug. Below is a summary of the applicable legal requirements and a detailed statement on the scientific basis for CDER's conclusion that the ANDA's fail to show that the active ingredients of the proposed generic drug products are the same as those of the reference listed drug.

A. Legal Requirements

Under section 505(j)(2)(A)(ii)(II) of the act, an ANDA for a drug product with more than a single ingredient must include information to show that the active ingredients of the drug that is the subject of the ANDA are the same as those in the reference listed drug, except for any different active ingredient for which a petition was approved under section 505(j)(2)(c) of the act. Furthermore, under section 505(j)(3)(J) of the act and § 314.127(a)(12) (21 CFR 314.127(a)(12)), FDA is required to refuse to approve any ANDA that fails to include such information. In addition, under § 314.127(a)(3)(ii), which implements section 505(j)(3)(C)(ii) of the act, FDA is required to refuse to approve an ANDA if ''information submitted with the abbreviated new drug application is insufficient to show that the active ingredients are the same as the active ingredients of the reference listed drug.''

Under 21 CFR 314.92(a)(1), the term ''same as'' is defined as ''identical in active ingredient(s)'' (Ref. 40). The term ''active ingredient'' is defined under 21 CFR 60.3(b)(2) and 210.3(b)(7) as follows:

> [A]ny component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals.

In the context of ANDA approvals, a generic product with the same active ingredients as the reference listed drug that is shown to be bioequivalent is approved without independent effectiveness data.[2] To meet the definition of an active ingredient, a component must be intended to furnish sufficient pharmacological activity, or other direct effect, to have some therapeutic effect (i.e., to diagnose, cure, mitigate, treat, or prevent disease, or to affect the structure or function of the body). An active ingredient performs a drug's therapeutic functions. The definition of ''pharmaceutical

[2] In enacting the Drug Price Competition and Patent Term Restoration Act of 1984, Congress intended that no safety or effectiveness data beyond that developed by the innovator company be needed to support approval of the generic product. (See H. Rept. 857 (Part I), 98th Cong., 2d sess. 14, 16–17 (1984).) The interpretation of the active ingredient definition in this notice is intended solely as applied to ANDA approval.

equivalents'' in § 320.1(c) is consistent with this definition of active ingredient in that it focuses on the therapeutic moiety:

Pharmaceutical equivalents means drug products that contain identical amounts of the identical active drug ingredients, i.e., the same salt or ester of the same therapeutic moiety * * * that meet identical compendial or other applicable standard of identity, strength, quality, and purity, * * * disintegration times and/or dissolution rates.

Consequently, not all components that ''furnish pharmacological activity or other direct effect'' meet the definition of an active ingredient. A component may be considered an active ingredient only if it provides a clinically meaningful contribution to the therapeutic effect of the drug. A subjective intent for a component to have such effect will not suffice in the absence of objective evidence of a clinically meaningful contribution. (*Cf.* 21 CFR 201.128 (defining intended use).) In most cases it will be clear what components of a drug make clinically meaningful contributions to the drug's therapeutic effects and, therefore, are the drug's active ingredients. However, where FDA has determined there is sufficient evidence that a component in the reference listed drug may make a clinically meaningful contribution to the therapeutic effect, the agency cannot approve a synthetic generic version of the drug that does not include such component until it has been determined whether the component makes such a contribution.

As discussed below, Duramed's ANDA 40–115 and Barr's ANDA 40–154 provide insufficient information to show that the active ingredients of their conjugated estrogens tablets are the same as the active ingredients of the reference listed drug, Premarin.

B. Active Ingredients of Premarin Are Not Fully Characterized

1. CDER's Historical Position on the Active Ingredients of Premarin

Although FDA's Scientific Advisory Committees were unable to provide definitive advice on this issue, FDA continued to support the position taken in the 1970 USP monograph (Ref. 41) that the ingredients sodium estrone sulfate and sodium equilin sulfate are the sole active ingredients in Premarin. The reasons for this position follow below (Ref. 42).

Scientific belief had been that all estrogens were similar in their pharmacologic actions on the body, i.e., ''an estrogen is an estrogen.'' Therefore, it was thought that the pharmacologic activity of an estrogen preparation could be described in terms of its total estrogenic potency. It was believed that the effects of different estrogens in a mixture were additive and that the identity of the particular estrogen contributing the estrogenic potency was not crucial. Epidemiologic data did not reveal safety or effectiveness differences among various estrogen preparations used for hormone replacement therapy.

As a result, Premarin had historically been defined in terms of total estrogenic potency rather than the sum of the potencies of various components. In 1970, when the first USP monograph was published, little information was available on the effects of estrogens on bone, and the estimates of estrogenic potency of Premarin components were derived from clinical studies of menopausal symptoms. Much of Premarin's estrogenic potency for menopausal symptoms can be attributed to the effects of estrone and equilin.

Available data on the detailed composition of Premarin and the pharmacologic activity of its components were limited. Much of the available data indicated that many compounds found in Premarin were present in small amounts and had weak estrogenic activity.

Based on the results of early studies, including studies of Premarin, the effects of estrogen on bone mineral density appeared to have a very steep dose-response relationship, and the 0.625 mg dose of Premarin appeared to be near the top of the dose-response curve. Therefore, it was believed that small differences in the estrogenic potency of conjugated estrogens preparations, resulting from omission of components from generic copies, would not be clinically meaningful.

In addition, the monograph ranges for the content of sodium estrone sulfate and sodium equilin sulfate in conjugated estrogens are wide (Ref. 43). Therefore, it was believed that minor differences in estrogen content between synthetic generic products and Premarin due to the absence in the generic copies of several minor Premarin constituents could not make a clinically meaningful difference.

Note: the percent coefficient of variation of sodium estrone sulfate is 1.98, and of sodium equilin sulfate is 3.01, based on percent estrogen composition in 500 batches of Premarin Tablets (Ref. 44).

2. CDER's Current Position on Premarin's Active Ingredients

CDER's current position on Premarin's active ingredients is that Premarin is not sufficiently characterized at this time to determine all of its active ingredients, for the reasons that follow below.

Emerging scientific evidence demonstrates that all estrogens do not exert their effects in a uniform manner with respect to different target tissues. These differential effects may be due to variable pharmacokinetics,[3] tissue metabolism, tissue-specific receptor factors, or additional reasons (Refs. 45, 46, 47, 48, 49, and 50). For example, clinical studies have shown that the potency of equilin sulfate relative to estrone sulfate varies depending on the pharmacodynamic[4] effect being studied (Refs. 6 and 51). A dose of equilin sulfate that is equipotent to estrone sulfate using one parameter may be more or less potent when evaluated using a different measure. For this reason, the active ingredients of Premarin cannot be defined solely in terms of overall estrogenic potency in any single system, but must be defined based on their contributions to particular estrogenic effects.

Put simply, the new scientific evidence shows that one estrogen can be more active than another in a specific tissue or organ, such as breast, uterus, or bone. The most striking example of this is the synthetic estrogen analog tamoxifen, which blocks estrogen actions in breast tissue, but has estrogen-like activity on bone. These new findings have stimulated extensive research into new pharmaceuticals that could have selective actions on specific tissues and thus might provide beneficial hormone replacement therapy without some of the undesirable side effects, or could be useful in the treatment of cancer or other conditions.

Compositional analysis of Premarin using modern analytical techniques demonstrates that it consists of a mixture of a substantial number of compounds with potential pharmacologic activity. In fact, the steroidal content of Premarin has not been completely defined (Ref. 52). Undoubtedly, many of the compounds present in Premarin do not provide a clinically meaningful contribution to the therapeutic effects of the drug and are best thought of as impurities. However, the clinical tests, on which the findings of the safety and efficacy of Premarin were based, were performed on the entire mixture, not on individual components. A basic understanding of the chemical composition of Premarin must be achieved as a first step in

[3] Pharmacokinetics can be defined as drug absorption, excretion, metabolism, or distribution.

[4] Pharmacodynamics can be defined as a pharmacologic or clinical response to a given concentration [of a drug] in blood or other tissue (58 FR 39406 at 39409 (July 22, 1993)).

adequately characterizing the product unless a complete understanding of which components provide a meaningful clinical contribution to the effects of the product is achieved by clinical trials alone.

Clinical studies have revealed that the assigned potencies of Premarin tablets, which were based on the rat bioassay, do not correctly reflect the tablets' relative potencies in human studies (Refs. 6, 50, 51, and 53). For example, clinical studies have shown that Premarin is between 1.4 and 2.5 times more potent than estrone sulfate for suppression of follicle-stimulating hormone (FSH) and menopausal symptoms in postmenopausal women (Refs. 6 and 50). Because the human studies evaluating the relative potency of Premarin have been small, a precise estimate of the estrogenic potency of Premarin relative to estrone sulfate has not been determined. Because the relative potencies of Premarin, estrone sulfate, and equilin sulfate are not clearly established, it is not possible to tell how much of the effect of Premarin can be accounted for by the effects of equilin sulfate and estrone sulfate. Measuring these effects is further complicated by the fact that the importance or contribution of each ingredient may depend on the tissue that is being tested, e.g., bone, breast, pituitary, or uterus.

New clinical studies have clearly demonstrated that there is a dose-response relationship between estrogen administration and bone mineral density in postmenopausal women (Refs. 54 and 55). It follows that ensuring an equivalent estrogenic potency is important in the approval of generic copies of estrogen products intended for prevention of osteoporosis. In other words, it is important for the osteoporosis indication that synthetic generic conjugated estrogens based on Premarin have estrogenic strength that is identical to the Premarin tablet.

The recent findings with regard to Δ 8,9-dehydroestrone sulfate (DHES) illustrate a number of the above points. This compound was first detected in Premarin in 1975 (Refs. 56 and 57). DHES represents only a small percentage of the estrogenic compounds present in the product: 4.4 percent of the ''label claim'' (i.e., 4.4 percent of 0.625 mg or approximately 0.0275 mg of DHES per 0.625 mg tablet). (Note: Premarin also contains a small amount of the DHES metabolite sodium 17β-Δ 8,9-dehydroestradiol sulfate (Ref. 58). This metabolite comprises approximately 0.003 mg per 0.625 mg tablet. Therefore, the total DHES plus sodium 17β-Δ 8,9-dehydroestradiol sulfate content of a 0.625 mg tablet is about 0.03 mg or approximately 5 percent of label claim.) Until recently little has been known about DHES or sodium 17β-Δ 8,9-dehydroestradiol sulfate.

Pharmacokinetic studies submitted by Wyeth-Ayerst demonstrate that, after single or repeated oral dosing of Premarin in women, the plasma concentrations or areas under the curve (AUC's) of the (conjugated plus unconjugated) 17β-Δ 8,9-dehydroestradiol metabolite of DHES are the same order of magnitude as the concentration of the 17β-diol metabolites of the active ingredients estrone and equilin (Refs. 59, 60, and 61). The 17β Δ 8,9-estradiol concentration is approximately 34 percent of the combined concentrations of the 17β-diol metabolites of estrone and equilin, or 26 percent of the 17β-diol metabolites from the three estrogens. The finding that a low-level (5 percent) component of the tablet would generate a significant concentration of a potentially active metabolite was completely unexpected and illustrates the longstanding inadequate characterization of Premarin. These pharmacokinetic data do not themselves prove that the DHES in Premarin makes a clinically meaningful contribution to the therapeutic effect of Premarin. However, preliminary clinical studies indicate that the potency of DHES may be similar to that of equilin. (See detailed discussion below.)

Based on this new scientific information, CDER concludes that Premarin is not adequately characterized and that, therefore, at this time, its active ingredients cannot be fully determined. Additional information on both composition and relative potencies of components will be necessary to adequately characterize this product. This conclusion is in agreement with the findings of FDA's Fertility and Maternal Health Advisory Committee at its July 27 and 28, 1995, meeting on this subject (Ref. 33).

3. Unresolved Issues Concerning the Current Characterization of Premarin

At the time of marketing, products such as Premarin, that are derived from natural source material, frequently are not characterized as completely as synthetic products would be. The term ''adequate characterization'' is intended to mean an amount of scientific information on a product that is sufficient to determine what constituents in the product are responsible for making clinically meaningful contributions to its therapeutic effects. In other words, it is possible to define the active ingredients of a product that is adequately characterized.

There are at least two possible ways to characterize a product. The most straightforward method includes, first, chemical analysis to determine what components are present at significant levels in the product. The interpretation of ''significant levels'' cannot be exact and would depend on the specific product; however, it is desirable that components present at the 0.1 percent level or greater be identified and quantified. Once the components of the product are identified, the next step in characterization would be to determine which of them have potential human pharmacologic activity. Such a determination may be based on the following: The quantitative amount in the product, structure-function relationships, in vitro tests, animal studies, human studies, or a combination of these. Finally, for components that may contribute to the therapeutic effect based on potential pharmacologic activity, a study could be conducted comparing the effects of each component alone, and in combination with additional components, to the effects of the entire product, to demonstrate that the ''candidate'' components achieved all of the therapeutic effects of the product.

Alternatively, in cases where there is some confidence that the ''candidate'' active ingredients have all been identified, even though the product is not fully chemically characterized, a head-to-head comparative dose-response clinical trial(s) comparing the effects of the combined ''candidate'' active ingredients against the original product could, if carried out carefully, demonstrate that the combination contributed all the clinically meaningful therapeutic effects of the original product. This approach might not clearly identify which of the ''candidates'' were actually active, but could ensure that the combination tested included all of the active ingredients in the product.

The following sections discuss the available scientific evidence on the characterization of Premarin.

a. *Composition of Premarin.* At least ten estrogenic compounds have been identified and quantified in Premarin. The composition data for the 10 estrogenic compounds cited in the Conjugated Estrogens USP monograph, and listed in Table 1, were generated by CDER's Division of Drug Analysis from an analysis of 2 batches of Premarin

0.625 mg tablets (Ref. 62). These results agree generally with other data available to CDER.

TABLE 1.—COMPOSITION DATA FOR 10 ESTROGENIC COMPOUNDS

Sodium estrogen sulfate	Mg/tablet
Estrone	0.370
Equilin	0.168
17α-Dihydroequilin	0.102
17α-Estradiol	0.027
17β-Dihydroequilin	0.011
l7α-Dihydroequilenin	0.011
17β-Dihydroequilenin	0.021
Equilenin	0.015
17β-Estradiol	0.005
Δ8,9-dehydroestrone	0.026

Additional information on the component DHES and its metabolite are discussed below. Additionally, the fact that Premarin contains progestational agents (composition unspecified) has been disclosed by Wyeth-Ayerst (Ref. 63). It is known that Premarin also contains additional steroidal compounds (Ref. 52). However, precise data on Premarin's composition are currently very limited (Refs. 64, 65, 66, and 67).

Detailed analytical information on Premarin's composition is the necessary basis for adequate characterization of the product. Obtaining this information is feasible. The constituents of Premarin are small molecules that can be fully characterized by analytical chemistry, unlike the macromolecular constituents of most biological products, which are difficult to fully characterize due to biologic variability. It is desirable that the components present in Premarin at or above 0.1 percent be characterized and their biological activities determined (Ref. 68).

It has been argued that DHES cannot be considered an active ingredient of Premarin because its presence in and percent composition of the formulation are not specifically controlled during the manufacturing process (Ref. 69). Wyeth-Ayerst has submitted data demonstrating that DHES is present at about 4.4 percent of label claim with a range of 4.0 to 5 percent (based on 10 lots of 0.625 mg Premarin tablets) (Ref. 70). It is desirable that any active ingredients, once identified, be controlled during the manufacturing process.

b. *Pharmacokinetics.* Pharmacokinetic data on Premarin components are presented in the FDA report entitled ''A Pharmacokinetic Analysis of Conjugated Estrogens Including Δ8,9 Dehydroestrone and 17β-Δ8,9 Dehydroestradiol,'' dated October 25, 1996 (OCPB Report) (Ref. 71), and its addendum dated February 12, 1997 (Addendum) (Ref. 72), and also in information submitted to the docket of the Wyeth-Ayerst citizen petition (Refs. 59 and 60). The OCPB Report details plasma concentrations of estrone sulfate, equilin sulfate, DHES, and their metabolites, as well as concentrations of 17α-dihydroequilin, after ingestion of various doses of Premarin (Ref. 72). Additional pharmacokinetic data on Premarin components and metabolites, presented in Addendum 2, dated March 31, 1997, to the OCPB Report (Ref. 73), and also in information submitted to the docket by Wyeth-Ayerst on March 11, 1997 (Ref. 61), confirm the original finding discussed in the OCPB Report.

Table 2 is derived from pharmacokinetic data submitted by Wyeth-Ayerst based on 7-day dosing of women with two 0.625-mg tablets daily (Ref. 61). The steady-state AUC data are calculated from day 7 plasma sampling. Table 2 summarizes the relationships among oral dose, total ketone, and total diol for three estrogens.

TABLE 2.—RESULTS OF PHARMACOKINETIC STUDIES

Estrogen	Estrone	Equilin	Δ8,9–DHE
Measured dose or AUC	.....	.....	.....
mg per 2X 0.625mg tab	0.740	0.336	0.052
Total plasma ketone (ng•hr/mL)	94.200	43.145	13.610
Uncon.plasma ketone (ng•hr/mL)	4.083	1.201	0.072
Total plasma 17βdiol (ng•hr/mL)	8.565	10.623	6.624
Uncon.plasma 17βdiol (ng•hr/mL)	0.659	1.060	0.331

The pharmacokinetics of Premarin components are complex, as revealed in these data. Estrone, equilin, Δ8,9-dehydroestrone (DHE), their active 17β-reduced metabolites, and other estrogenic components of Premarin circulate in the plasma both as the conjugated (primarily sulfate ester) and unconjugated derivatives and with various degrees of protein binding, as discussed in the OCPB Report. There is interconversion between the ketone and 17β-reduced forms of each estrogen and among the conjugated and unconjugated derivatives. The degree of protein binding of each derivative may be important to its clinical activity.

Put simply, this information shows that there is not a one-to-one relationship between the amount of each estrogen in the tablet and the amount of active forms (derivatives) of that estrogen in the blood. Each of the three estrogens evaluated in this clinical trial distributes differently into its derivatives in the body. This means that each of the three estrogens might cause different effects simply as a result of these distributional differences.

The actual magnitude of the contribution of each derivative of any component estrogen to the overall estrogenicity of Premarin is not well understood. As just stated, the pharmacokinetic data show that the ratios of the concentrations of the different derivatives are distributed differently for those estrogens that have been studied: Estrone, equilin, and DHE. If there are tissue-specific effects of derivatives, then the size of a derivative's contribution could vary depending on the tissue tested. The available data suggest that these tissue-specific differences exist. For example, in vitro potency data for estrone and 17β-estradiol were submitted by Wyeth-Ayerst (Ref. 74). When potency was tested by estrogen receptor binding, estrone was shown to be much less potent than estradiol (about 200 times less), as has been previously shown by receptor binding and cellular assays. In contrast, when potency testing was performed in a liver (Hep-G2) cell line using functional activation, estrone's potency appeared to be of the same order of magnitude as estradiol's potency. The experimenters were able to show that this increased potency of estrone resulted from its conversion to estradiol by the cells. Therefore, in tissues that have the capability to metabolize ketone forms to diols (e.g., estrone to estradiol), circulating ketone forms could make a large contribution to observed effects in that tissue. Similarly, conversion of conjugated (sulfated) forms of circulating estrogens to the unconjugated forms has been shown to occur in target tissues such as breast

(Ref. 75). In these tissues, total estrogen concentrations (i.e., conjugated plus unconjugated) may be more important than in tissues that cannot convert the conjugated forms to the active, unconjugated forms.

One striking finding in the pharmacokinetic data is the differences in the proportions of the 17β-diol concentrations resulting from the three estrogens (sodium estrone sulfate, sodium equilin sulfate, and DHES), compared to the ratios of the three estrogens in the tablet. It is known that the 17β-diol derivatives of equilin and estrone are potent estrogens. The pharmacokinetic data as a whole show that, after dosing with Premarin, the plasma concentration of unconjugated 17β-dihydroequilin is about twice (1.6 times) as high as the concentration of 17β-estradiol, even though there is only about half as much equilin as estrone in the tablet. The difference in the concentration of the active metabolite may account for the known greater clinical estrogenic potency of equilin. As discussed above, an unexpected finding from the pharmacokinetic data in the Missouri study (Ref. 61), the most reliable data generated to date, was that the plasma concentration of unconjugated 17β-Δ8,9-dehydroestradiol is about half the concentration of unconjugated 17β-estradiol, even though there is more than 10 times more estrone sulfate than DHES in Premarin. This may account for the high oral potency of DHES that has been found in the limited clinical studies performed with this compound (Refs. 76 and 77).

Put simply, these data show that a dose of DHES results in a much higher blood level of the active metabolite than would result from the same dose of estrone sulfate. This finding alone suggests, but does not prove, that a low dose of DHES could have a much larger than expected effect.

The above pharmacokinetic data provide a basis for beginning to understand the complex relationship between the composition of Premarin and its clinical effects. However, this understanding is still incomplete. The pharmacokinetics must be understood in the context of pharmacodynamic properties of the various components, including their clinical effects.

c. *Clinical effects of Premarin.* Premarin and certain Premarin components have been tested fairly extensively in animals, particularly rodents. Animal data, either in vitro or in vivo, have not proven to be quantitatively predictive of the effects found in women (Ref. 78). Therefore, animal tests, while useful in screening compounds for activity, cannot be used to definitively assign human clinical effects. The most confident conclusions can be drawn from human clinical testing. The following summarizes what is known about the contribution of Premarin components to its overall activity from in vitro or in vivo human testing.

i. Pharmacodynamics. The term ''pharmacodynamics'' refers to pharmacologic or clinical responses to a given concentration of a drug in blood or other tissue.[5] For example, raising or lowering blood pressure, causing dry mouth, or constricting the pupils are pharmacodynamic effects of various drugs. Pharmacodynamic effects can be beneficial, harmful, or neutral. The benefits of most drugs derive from their desired pharmacodynamic effects, while drug side effects often result from undesirable pharmacodynamic activity.

Premarin and its components, like other estrogens, affect a wide variety of human tissues, including pituitary, breast, uterus, bone, liver, and endothelium (Ref. 47). Some of these actions result in the beneficial effects of the drug, some cause side effects, and some (for example, cardiovascular or lipoprotein effects) have not been definitively evaluated. There are studies in the literature of effects of estrogen on each of these tissues, especially effects on the pituitary, uterus, and bone. This section discusses the pharmacodynamic effects of Premarin and its components other than the relief of menopausal symptoms and prevention of osteoporosis.

A dose-response relationship exists between estrogen treatment and FSH suppression (Ref. 79). Some pharmacodynamic data on suppression of FSH, including dose-response data, exist for equilin sulfate, estrone sulfate, and Premarin (see also menopausal symptoms, below) (Refs. 5, 6, 50, and 80). In a study of suppression of urinary gonadotrophins, equilin was found to be about twice as potent as Premarin and five times more potent than estrone sulfate for this effect, while Premarin was 2.5 times more potent than estrone sulfate (Ref. 6). In studies of human serum FSH levels, Premarin has been found to be about 1.4 to 2.0 times as potent as estrone sulfate (Refs. 50 and 81). These studies are in relative agreement.

The published data on the effects of Premarin and its components on uterine or vaginal markers are limited. Beck and Friedrich found equilin sulfate to be two to three times more potent than Premarin for effects on vaginal epithelium and endometrium (Ref. 82). Varma et al. found Premarin to be twice as potent as estrone sulfate for endometrial changes (Ref. 81). Geola et al. evaluated the dose-response relationship between Premarin and vaginal cytologies and concluded that 1.25 mg Premarin daily was necessary for achieving full replacement levels for this parameter (Ref. 80). These studies are not adequate for drawing firm conclusions about the relative contributions of equilin and estrone to the effects of Premarin on uterine or vaginal markers.

A number of studies of Premarin or its components have evaluated pharmacodynamic markers of bone effects (Refs. 14, 51, 79, 80, and 83). Jones et al. estimated that Premarin was twice as potent as estrone sulfate for reduction of the urinary calcium/creatinine ratio. This ratio is a measure of bone resorption. Geola et al. performed a dose-response study evaluating the effect of Premarin on the calcium/creatinine ratio, and found that 0.3 mg Premarin was the lowest dose to have a significant effect. Lobo et al. found that Premarin was twice as potent as both estrone sulfate and equilin sulfate for reduction of the urinary calcium/creatinine ratio. The Lobo finding of a significant effect of 0.3 mg Premarin was not duplicated in a larger study by Lindsay et al. (Ref. 14). Because of limitations in study designs and because the pharmacodynamic markers for bone are not sufficiently quantitative, no conclusions about comparative pharmacodynamic effects on bone of Premarin or its components can be drawn from these results.

Data on Premarin or Premarin component effects on lipoproteins and other plasma proteins, or other pharmacodynamic markers are quite limited (Refs. 49, 50, 51, 53, and 84). Having information about these effects is important for several reasons. Stimulatory effects on liver proteins may affect drug safety. In addition, as discussed in the OCPB Report (Ref. 71), levels of circulating unconjugated estrogens may be affected by binding to plasma proteins, particularly sex hormone binding globulin (SHBG). Stimulation of SHBG could alter drug availability. Available data suggest that certain Premarin components differ in the ability to stimulate SHBG (Ref. 50). Human pharmacodynamic data on DHES submitted by Wyeth-Ayerst demonstrated that 1.25 mg estrone sulfate had a much greater effect on SHBG levels than did 0.125 mg DHES (Ref. 85); however, this result requires confirmation.

Taken as a whole, the available pharmacologic data demonstrate that

[5] See footnote 3, supra.

estrone sulfate (as the piperazine salt), equilin sulfate, and Premarin have different pharmacodynamic effects when potency on various tissues is evaluated (Refs. 6, 50, 51, and 53). For example, in a single study, Premarin was found to be 1.4 times more potent than piperazine estrone sulfate (expressed as the sodium rather than piperazine salt) for FSH suppression, a pituitary effect (Ref. 50). In contrast, Premarin was 3.5 times more potent than estrone sulfate for stimulation of angiotensinogen and 3.2 times more potent for stimulation of sex hormone binding globulin (SHBG). Presumably, this difference arises because other components of Premarin contribute to these effects in a manner different from estrone sulfate. It is not known if these differential pharmacodynamic effects are completely attributable to the presence of equilin sulfate.

In summary, the two Premarin components that have been carefully studied, equilin sulfate and estrone sulfate, differ from each other and from Premarin in phamacodynamic profile. It is not well understood which of the pharamcodynamic actions are desirable and which contribute to unwanted side effects. Adequate characterization of Premarin will require an understanding, based on scientific data, of those Premarin components that contribute to the pharmacodynamic effects of Premarin.

ii. Clinical effects: menopausal symptoms. A number of clinical studies evaluating Premarin and Premarin components for the treatment of menopausal symptoms have been performed (Refs. 79, 80, 82, and 86). Equilin sulfate has been found to be about three times more potent than Premarin for alleviating vasomotor symptoms (Ref. 82). The data submitted by Wyeth-Ayerst on DHES show that DHES is more potent than estrone sulfate for these effects, but the data are not adequate to precisely assign a potency (Ref. 76). Without dose-response studies to determine the potency of DHES for menopausal symptoms relative to the potency of estrone sulfate and equilin sulfate, the contribution of DHES to the activity of Premarin in treating menopausal symptoms cannot be determined. Similarly, without a head-to-head comparison of the dose-related effects of Premarin, estrone sulfate, and equilin sulfate in the treatment of menopausal symptoms, the extent of contribution of the two components to the overall estrogenic potency of Premarin for this effect also cannot be accurately determined, although it is clear that both contribute.

iii. Clinical effects: osteoporosis. (1) Use of surrogate markers. The goal of preventive therapies for osteoporosis is the prevention of fractures and deformity. For estrogens, FDA accepts measurement of bone mineral density as an adequate surrogate for preventing these longer term clinical outcomes (Ref. 87). A number of other markers for evaluating pharmacodynamic effects on bone have been developed (Ref. 88). None of these other markers is sufficiently well understood or quantitative to permit its use as a surrogate for osteoporosis prevention effects. Therefore, in the absence of other validated surrogate markers, definitive data on bone effects must come from human trials evaluating bone mineral density, fractures, and/or deformity.

(2) Use of blood 17β-estradiol levels as a surrogate marker. Comments submitted to the docket of Wyeth-Ayerst's citizen petition (Ref. 89), as well as statements in the scientific literature, assert that achievement of certain levels (e.g., 39 picograms (pg)/milliliter (mL) (Palacios et al.) or greater than 60 pg/mL (Reginster et al.)) of serum 17β-estradiol is an adequate surrogate for preservation of bone mineral density because there is a strong correlation between the two both in clinical trials and in untreated perimenopausal women (Refs. 83 and 90).

The study by Palacios et al. evaluated women who had undergone surgical menopause and who were randomized to percutaneous estradiol, conjugated estrogens (source unspecified), or no therapy over 2 years. Untreated women lost a mean of 9 percent of spine bone mineral density over 2 years, whereas the estradiol treated group and the conjugated estrogens treated group gained 4.1 percent and 5.6 percent spinal bone mineral density respectively. Women treated with percutaneous estradiol were reported to have a mean serum estradiol level of about 80 pg/mL over the course of the study. The conjugated estrogens treated women had a mean serum estradiol level of about 40 pg/mL. It is not possible to conclude anything about a protective level of 17β-estradiol from the conjugated estrogens arm of this study since conjugated estrogens also contain, at a minimum, equilin and possibly other components that contribute to the effect on bone. The value of 80 pg/mL from the percutaneous estradiol arm is not inconsistent with the data reported by Reginster et al. who found that circulating levels of 17β-estradiol between 60 and 90 pg/mL correlated well with pharmacodynamic markers of beneficial bone effects. This correlation suggests, but does not prove, that estrogen replacement therapies achieving such levels of circulating estradiol may be effective in preventing bone loss.

FDA does not currently accept 17β-estradiol levels as an adequate surrogate for osteoporosis prevention in women. Trials of bone mineral density are required. In addition, the available data do not indicate that the potentially protective levels of 17β-estradiol are attained after administration of Premarin.

The Palacios study found that treatment with conjugated estrogens 0.625 mg resulted in a mean estradiol level of 40 pg/mL, which is below the 60 pg/mL minimum suggested by Reginster. However, the Librach and Nickel study submitted to the docket, as well as the Reginster study and other data reported in the literature, found that serum levels of 17β-estradiol above 60 pg/mL are achieved in women treated with Premarin or a Canadian generic copy of Premarin (Refs. 89 and 91). In the Librach and Nickel study, women treated with Premarin achieved a 17β-estradiol level of 85.5 pg/mL while women treated with the Canadian product had mean serum levels of 94.9 pg/mL. These differences appear to relate to problems with analytical methodology, possibly due to cross-reactivity of radio-immunoassay reagents with other components in Premarin. When serum 17β-estradiol is measured by direct chemical means, the high 17β-estradiol levels are not found in women treated daily with 0.625 mg Premarin (Refs. 60 and 61). This latter finding is corroborated by data from a study of the effects of esterified estrogens (Estratab, USP) on bone mineral density, which was recently presented in abstract (Ref. 92). In this study, daily dosing with 0.625 mg of esterified estrogens, which contains approximately 0.518 mg sodium estrone sulfate (Ref. 93) (0.625 mg Premarin contains about 0.370 mg sodium estrone sulfate) resulted in a mean plasma concentration of 17β-estradiol of 40 pg/mL. In addition, in this same study, daily administration of 0.3 mg esterified estrogens, which contain about 0.248 mg sodium estrone sulfate, resulted in a mean plasma concentration of 26 pg/mL of 17β-estradiol. These results are inconsistent with the serum level results presented by Librach and Nickel, but generally agree with Palacios' findings and with Wyeth-Ayerst's bioavailability data. Therefore, the available data on serum 17β-estradiol levels do not indicate that levels over 60 pg/mL are

attained with the dose of Premarin recommended for the prevention of osteoporosis.

iv. Clinical effects: bone mineral density. The clinical effects of Premarin on bone are well established. A number of clinical trials have confirmed the effects of Premarin in preserving and increasing bone mineral density in postmenopausal women (Refs. 13, 14, and 94). Ettinger et al. demonstrated in a nonrandomized trial that 0.3 mg Premarin, when administered with calcium supplementation, was adequate to prevent bone mineral loss in the spine and hip (Ref. 95). The recent Post-menopausal Estrogens/Progestins Intervention (PEPI) trial demonstrated that the currently recommended 0.625 mg dose of Premarin resulted in an increase in bone mineral density in women treated for over 2 years, while untreated women lost bone (Ref. 96).

Estrone is approved as a single estrogen (marketed under the brand name Ogen by Upjohn, generic name estropipate), but as a different salt from the estrone in Premarin (the piperazine rather than the sodium salt of estrone sulfate) for the treatment of menopausal symptoms and the prevention of osteoporosis. The recommended dose for osteoporosis is 0.75 mg of estropipate, which is equivalent to 0.625 mg sodium estrone sulfate. A dose-response study has shown that a dose equivalent to 0.300 mg estrone sulfate, combined with 1 gram daily calcium supplementation, is not effective in preserving bone mineral density (Ref. 97). In this study, 0.625 mg of estrone sulfate resulted in preservation of bone mineral density compared to baseline. There was no statistically significant difference in bone mineral density between patients dosed with 0.625 mg and those given 1.25 mg; however, only the 1.25 mg group had bone mineral densities statistically greater than the placebo group at 2-year followup. Based on the data from this trial, the amount of estrone sulfate in Premarin (approximately 0.370 mg) is too small to account for all of Premarin's known effects on bone mineral density, so other estrogens present in the product must be contributing to this effect.

Additional information on the effects of equilin on bone has recently become available. On October 30, 1996, Duramed submitted to the docket an abstract of a clinical study that had recently been presented at a scientific meeting (Ref. 89). The study provided new information germane to the clinical effects of Premarin on bone (Ref. 55). This study, sponsored by Solvay Pharmaceuticals, was a clinical trial of their product, Estratab (this trial was also discussed in the section on estradiol blood levels). Estratab is a generic esterified estrogens product. Esterified estrogens USP contain sodium estrone sulfate and sodium equilin sulfate in different amounts than are in Premarin (Ref. 98) (based on presentations by Solvay, 0.300 mg of their esterified estrogens product contains approximately 0.248 mg estrone sulfate and 0.038 mg equilin sulfate) (Ref. 93). The study was a 2-year placebo controlled trial testing three doses of Estratab combined with calcium supplementation in postmenopausal women evaluating bone mineral density and side effects. According to the abstract, all three doses were effective at 12, 18, and 24 months in preserving bone mineral density compared to placebo. The abstract reveals a dose response among the three Estratab doses tested. Also significant is the fact that the lowest dose tested, 0.3 mg Estratab, appeared to be effective in preserving bone mineral density when given continuously in conjunction with calcium supplementation. There are lower amounts of both estrone sulfate and equilin sulfate in this dose of Estratab than are required to be in the 0.625 mg tablet of generic conjugated estrogens according to the current conjugated estrogens USP monograph. Therefore, if the data in the abstract are correct, it could be concluded that a product containing the amounts of estrone sulfate and equilin sulfate required in the current monograph for conjugated estrogens USP would be effective in preserving bone mineral density when given continuously with supplemental calcium. Since the study by Harris et al. (Ref. 97) showed that 0.3 mg of estrone sulfate alone is not effective in preserving bone mineral density, then it is likely that there was a contribution from the equilin sulfate in the Solvay product, although firm conclusions cannot be drawn from cross-study comparisons. This information addresses to some extent one of the questions raised in FDA's ''Preliminary Analysis of Scientific Data on the Composition of Conjugated Estrogens,'' (Ref. 35) that is, that the contribution of equilin to preserving bone mineral density had not been demonstrated.

Despite this additional information, the question of what are the active ingredients in Premarin for the indication of maintaining bone is not completely resolved. The Solvay study demonstrated a dose response for bone mineral density. The lowest dose, 0.3 mg, was effective in preserving bone density. The two higher doses, 0.625 mg and 1.25 mg, of esterified estrogen actually increased bone density over the 2-year period. This finding is consistent with other published data (Refs. 54 and 61). In the case of the Solvay study, it is not known whether, at the higher doses, more women responded with bone preservation than at lower doses, or whether women who would have responded to 0.3 mg simply had a larger response to the higher doses. In either case, estrogenic potency has been shown to be important to the clinical effect on bone within this dose range. It has been estimated that a proportion of women taking the recommended dose of Premarin continue to lose bone mineral, even though mean values are sustained or improved (Ref. 99).

The finding that sodium equilin sulfate and sodium estrone sulfate, at the doses present in Estratab, preserve bone mineral density provides support for the proposition that equilin contributes to the bone preservation effects of Premarin. However, as discussed at the beginning of this memorandum, the requirement for approval of an ANDA is not that generic drugs have effects similar to the reference listed drug but, rather, that they have the same active ingredients. Only if the active ingredients are the same can generic copies be relied upon to have the same estrogenic potency and, therefore, the same effects on bone.

Limited data on the pharmacodynamic effects of DHES on bone have been submitted by Wyeth-Ayerst (Refs. 76 and 77). These data show that DHES has a pharmacodynamic effect on bone markers, but the data do not shed light on whether the DHES component of Premarin has a meaningful clinical effect on bone.

v. Safety. There are safety concerns about all estrogen preparations currently approved for long-term administration for the prevention of osteoporosis. Long-term estrogen administration is associated with an increased incidence of endometrial cancer in women who have not undergone hysterectomy, and there is an ongoing controversy about the relationship of long-term estrogen replacement therapy to breast cancer.

No head-to-head studies have compared the long-term safety of various estrogen preparations when used chronically for the prevention of osteoporosis. The available epidemiologic evidence, summarized at the July 27 and 28, 1995, Advisory Committee meeting, does not definitively establish safety differences among various estrogens (Ref. 100). Thus, it is not known to what extent, if

any, differences in the types of estrogens used may affect safety.

There are no comparative safety trials of Premarin components available. There are few pharmacodynamic markers available with which to assess safety for effects such as cancer. Therefore, sufficient clinical data do not exist to fully characterize the contributions (either positive or negative) of various Premarin components to its clinical safety.

vi. Other pharmacologic effects. There is currently intense interest in the role of estrogen replacement therapy (ERT) in the prevention of cardiovascular disease and possibly other age-related disorders in women (Ref. 101). No estrogen product is currently approved by FDA for such indications. If Premarin were to be found effective for prevention of cardiovascular disease, elucidating the effects of Premarin and its components on relevant pharmacodynamic parameters would be important in fully characterizing the product. There are clinical data suggesting that equine estrogens may have differential effects on parameters such as lipoprotein levels and lipid peroxidation (Refs. 51 and 84); however, these data are as yet very incomplete.

d. *Inclusion of* Δ8,9-dehydroestrone sulfate (DHES). Many of the issues raised by Wyeth-Ayerst in its citizen petition submitted in November 1994, and addressed in numerous submissions to the docket, pertain to the need to include DHES in generic copies of Premarin. The scientific issues related to this compound are addressed below insofar as they relate to the approvability of generic copies of Premarin, such as Duramed's and Barr's synthetic conjugated estrogens products.

As discussed previously at the beginning of this section (section III.B.2), DHES is a conjugated estrogens component that comprises about 4.4 percent of the ''label claim'' of Premarin. It has been recognized as a constituent of Premarin for two decades (Ref. 57). However, little scientific data have been available on its activity, and it has been treated as an impurity. Information submitted by Wyeth-Ayerst on the pharmacokinetics of DHES in Premarin reveal that its metabolite, 17β-Δ8,9-dehydroestradiol, is present in surprisingly large concentrations in the plasma, considering the composition of the tablet (Refs. 59 and 60). FDA analyses support this finding (Ref. 71). The 17β-Δ8,9-dehydroestradiol concentration is important because the diol form of estrogen is usually the most active in the human body. After taking Premarin, the concentration (or AUC) of unconjugated 17β-Δ8,9-dehydroestradiol in the plasma is between 50 percent and 125 percent (depending on what study results are used) of the concentration of unconjugated 17β-estradiol and is one-third the concentration of unconjugated 17β-dihydroequilin.

The fact that a component is present at high concentrations in the plasma does not necessarily mean that it is clinically important. The significance of the finding that 17β-Δ8,9-dehydroestrodiol is present in high concentrations depends on the potency of 17β-Δ8,9-dehydroestradiol compared to the potency of the other circulating estrogens. If it is assumed that the potency of the 17β-diol metabolites derived from estrone sulfate, equilin sulfate, and DHES have equal potency, then the contribution of DHES to the overall estrogenic activity of the 17β-diol metabolites of the three estrogens would be 16 percent (based on unconjugated diol AUC's) to 26 percent (based on total diol AUC's) (Ref. 61). However, there are several ways to evaluate relative potency of estrogens. One method, testing in animal species, is useful for determining estrogenicity, but has not proven to be quantitatively predictive for humans (the original rat potency test for conjugated estrogens is a good example). This could be due to interspecies differences in metabolism, some of which have been confirmed (Ref. 102).

If animal testing is not adequately quantitative, in vitro studies using human cells or receptors may be performed, or human clinical tests may be carried out. Scientific data of both types assessing the relative potency of DHES have been submitted to the docket. Wyeth-Ayerst provided data on human estrogen receptor binding as well as functional activation data in HEP–2 cells (Ref. 103). In addition, Duramed provided data on functional activation of Ishikawa cells, a human uterine cell line (Ref. 104). The results of these studies are summarized in the OCPB Report of October 25, 1996 (Ref. 71), Addendum 1 to that report dated February 12, 1997 (Ref. 72), and Addendum 2 to that report dated March 31, 1997 (Ref. 73). These OCPB Reports attempt to quantify the clinical estrogenic contribution to Premarin from equilin, estrone, DHE, and 17-dihydroequilin based on the potencies derived from the various in vitro assays in combination with the pharmacokinetic data.

The OCPB Report estimates that, based on the in vitro potencies and the known pharmacokinetics, DHE and its metabolite contribute approximately 2.8 to 6.5 percent of the overall estrogenic potency of Premarin, depending on the assumptions used (Ref. 105).

Just as with the animal data, it is important to try to assess how reliably the in vitro data predict the actual clinical outcomes. A limitation of cellular assays is that only one tissue type is evaluated. The results of the OCPB analysis shows that widely differing estimates are arrived at depending on the system used (Ref. 106). This may be due to artifacts of the system (i.e., metabolism of estrone to estradiol, etc., in the Hep-G2 cells), true tissue differences, or other reasons. The best way to evaluate the in vitro potency assignments is to compare their results with known clinical outcomes. In this case, certain comparisons are possible because both estrone sulfate and equilin sulfate have been tested in women as single ingredients (Refs. 6 and 51). A number of clinical studies have shown that, for both FSH suppression and treatment of menopausal symptoms, equilin sulfate is roughly five times more potent than estrone sulfate when administered as a single ingredient. Comparison of this known clinical fact to the potency estimates in Tables 3 and 4 of OCPB Addendum 2 reveals that the Ishikawa cell potencies do not correctly predict the oral potency of equilin relative to estrone (Ref. 73). The Ishikawa cell data predict that oral equilin sulfate would be equipotent to or less potent than estrone sulfate. Of the other in vitro estimates, the estrogen receptor binding assay best predicts the known differences between equilin and estrone, predicting equilin sulfate to be between two to four times more potent than estrone sulfate depending on the assumptions used. Because of these widely differing estimates, it must be concluded that in vitro assays, even in human systems, cannot currently be relied upon to provide precise predictions of relative clinical potencies.

The other information available on the relative potency of DHES comes from human studies. Wyeth-Ayerst submitted the results of two human studies to the docket (Refs. 76 and 77). These studies were small, unblinded, uncontrolled trials, and would not be of the type relied upon for determining safety or efficacy of a drug. In addition, they did not use a dosage form equivalent to that of Premarin, and thus their results cannot be directly extrapolated to Premarin. However, they are quite similar to the types of studies that were originally used to evaluate the role of estrone sulfate and equilin sulfate in Premarin and can be used to assess certain comparative pharmacodynamic parameters. In these

trials, 0.125 mg of DHES was administered daily to postmenopausal women. This dose of DHES is about four times the amount in a 0.625 mg tablet of Premarin. In both studies, this dose of DHES caused approximately 15 to 26 percent suppression of FSH after 2 weeks of dosing. This is in the range of suppression resulting from 0.625 mg of estrone sulfate reported in the literature (Ref. 50). The study performed in Brazil included a comparison group given 1.25 mg estrone sulfate. This group achieved approximately a 40 percent reduction in FSH levels at 2 weeks. This effect is somewhat greater than has been previously reported (Refs. 50 and 81).

Based on these human data, the oral potency of DHES (for pituitary pharmacodynamic parameters) is (very roughly) five to six times that of estrone sulfate, or very similar to that of equilin sulfate and is about what would be predicted on pharmacokinetic grounds if the estrone and DHE derived diols were roughly equipotent. DHE, like equilin, is a B ring unsaturated estrogen. If DHES has the same oral potency as equilin and if the contributions of estrone sulfate, equilin sulfate, and DHES plus the small amount of 17β-Δ 8,9-dehydroestradiol sulfate were to be considered, then DHES and its metabolite would contribute about 9 percent of the estrogenic potency from these three components, at least for pituitary parameters.

It can be seen from the above analysis that the high end of the estimate of the contribution of DHES to the estrogenic potency of Premarin from the in vitro assays is similar to the estimate derived from clinical studies, i.e., about 9 percent, and both of the estimates are lower than the 16 percent to 26 percent estimate based on an assumption that each 17β-diol metabolite is equally potent. Unfortunately, all of the estimates have problems and uncertainties. A precise estimate of the potency of DHES relative to estrone sulfate is not available. In addition, none of the data provide insight into the contribution of these components to estrogenic potency with respect to bone. As discussed above, preliminary pharmacodynamic data indicate that DHES has an effect on bone markers. The available data demonstrate that DHES is a potent estrogen and may make a clinically meaningful contribution to the therapeutic effects of Premarin.

C. Conclusions

CDER proposes to refuse to approve Duramed's ANDA 40–115 and Barr's ANDA 40–154 primarily on the grounds that Duramed and Barr have failed to provide sufficient information to show that the active ingredients of their respective synthetic conjugated estrogens products are the same as the active ingredients of the reference listed drug product, Premarin. For a generic drug product with Premarin as the reference listed drug to be approved without approval of a petition under § 314.93 (21 CFR 314.93), the generic drug must have the same active ingredients as Premarin. This requirement, paired with a showing of bioequivalence of the generic drug to the reference listed drug, is meant to ensure that the data developed by the innovator company to demonstrate the safety and effectiveness of the reference listed drug will support approval of the generic drug. Independent demonstration of safety and effectiveness is not required for approval of generic drugs. Approval of generic copies of Premarin manufactured from combined synthesized components requires data sufficient to demonstrate that such copies contain the same active ingredients as Premarin.

CDER has determined that the reference listed drug Premarin is not adequately characterized at this time. In particular, the estrogenic potency of the product is not clearly defined relative to the estrogenic potency of its constituents. In addition, the contribution of the two most abundant estrogens, sodium equilin sulfate and sodium estrone sulfate, to the overall estrogenic potency is not well understood. Furthermore, the quantitative composition of Premarin with respect to potentially pharmacologically active components has not been defined. Without this information it is not possible to define the active ingredients of Premarin.

Investigations designed to produce the scientific data needed to determine the active ingredients are feasible. Such information would allow a determination of which components of Premarin make a clinically meaningful contribution to its overall effects. It is both feasible and desirable for the constituent active ingredients in Premarin to be characterized to this extent.

With regard to sodium Δ 8,9-dehydroestrone sulfate (DHES), the available scientific evidence indicates that DHES is an active estrogen that contributes to the estrogenic potency of Premarin. The clinical significance of this contribution has not been determined. DHES must be included in generic copies of Premarin unless scientific data are presented that demonstrate that the estrogenic activity of DHES is not clinically meaningful. Duramed and Barr have failed to provide sufficient information in their ANDA's to show that their conjugated estrogens products contain this same ingredient, or that the estrogenic activity of DHES is not clinically meaningful.

In addition to failing to provide sufficient information to show that the proposed generic drugs contain the same active ingredients as the reference listed drug, ANDA 40–115 and ANDA 40–154 also fail to provide sufficient information to demonstrate that such proposed generic drug products are bioequivalent to the reference listed drug.

Under section 505(j)(3)(F) of the act and § 314.127(a)(6), FDA must refuse to approve an ANDA for a proposed generic drug, unless sufficient information has been submitted to show that such drug is bioquivalent to the reference listed drug.[6] Bioequivalence depends on the rate and extent to which the active ingredient or active moiety becomes available at the site of action. See section 505(j)(7)(B) of the act and § 320.1(e). If a drug has not been established to contain the same active ingredients or active moieties, bioequivalence cannot be established. CDER finds that ANDA 40–115 and ANDA 40–154 do not present sufficient information to show that the proposed generic drugs contain the same active ingredients or the same active moieties as the reference listed drug. Therefore, these ANDA's cannot be approved by FDA under section 505(j)(3)(F) of the act and § 314.127(a)(6) because they fail to present sufficient information to show that the proposed generic drugs are bioequivalent to the reference listed drug.

Finally, in the event that each of the foregoing deficiencies is resolved, additional information may be required to address unresolved labeling, chemistry, bioequivalence, or manufacturing issues.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. Additional documents related to this notice appear in Dockets 94P–0429 and 94P–0430, and are incorporated by reference.

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[6] One exception to this general rule that is not applicable here relates to a drug for which a petition under section 505(j)(2)(C) of the act and § 314.93 has been approved. See § 314.127(a)(6)(ii).

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19. Id. at pp. 177–193.

20. Transcript and Summary Minutes of the meeting of the Ad Hoc Subcommittee of FDA's Fertility and Maternal Health Drugs Advisory Committee, Vols. I and II, May 3–4, 1990.

21. Id., Vol. II, pp. 117–135.

22. FDA, ''Abbreviated New Drug Applications for Conjugated Estrogens; Proposal to Withdraw Approval; Opportunity for a Hearing,'' **Federal Register**, Vol. 55, No. 30, pp. 5074, 5076–5078, February 13, 1990.

23. FDA, ''Conjugated Estrogens Tablets; Withdrawal of Approval of 28 Abbreviated New Drug Applications,'' **Federal Register**, Vol. 56, No. 57, p. 12376, March 25, 1991.

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38. Memorandum from the Associate Director for Medical Policy to the Director, Center for Drug Evaluation and Research, ''Conjugated Estrogens; Requirements for a Generic Product,'' [with attachments], May 4, 1997.

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99. Duursma, S. A., M. de Raadt, J. A. Raymakers, and A. A. Haspels, ''Is 1 mg of Estradiol Valerate or 0.625 mg of Conjugated Estrogens Sufficient for All Women to Prevent Menopausal Bone Loss?'' *Gynecological Endocrinology.,* 6:205–209, 1992.

100. Transcript and Summary Minutes of the meeting of FDA's Fertility and Maternal Health Drugs Advisory Committee, Vol. II, pp. 85–105, July 27–28, 1995.

101. Lafferty, F. W., and M. E. Fiske, ''Postmenopausal Estrogen Replacement: A Long-Term Cohort Study,'' *American Journal of Medicine,* 97:66–77, 1994.

102. Bhavnani, B. R., ''The Saga of the Ring B Unsaturated Equine Estrogens,'' *Endocrine Reviews,* 9:396–416, 1988.

103. Wyeth-Ayerst submission to the docket 94P–0429 (SUP 4), ''Contributions of Δ 8,9-dehydroestrone (Δ 8,9 DHES) to the Biologic Activities of Conjugated Estrogens,'' GTR–26521, pp. 38–40, September 25, 1995.,

104. Duramed submission to the docket 94P–0429 (C 94), January 8, 1997.

105. FDA, Center for Drug Evaluation and Research, Office of Clinical Pharmacology and Biopharmaceutics, Division of Pharmaceutical Evaluation II, ''A Pharmacokinetic Analysis of Conjugated Estrogens Including Δ 8,9-Dehydroestrone and 17Δ 8,9-Dehydroestradiol,'' October 25, 1996 (OCPB Report), Addendum 2, p. 26, March 31, 1997.

106. Id., p. 8, Table 5.

V. Notice of Opportunity for a Hearing

The Director of CDER (the Director) has evaluated the information discussed above and, on the grounds stated, is proposing to refuse to approve ANDA 40–115 and ANDA 40–154.

Therefore, notice is given to Duramed and Barr and to all other interested persons that under section 505 (j)(3)(C)(ii), (j)(3)(F), and (j)(3)(J) of the act and § 314.127 (a)(3)(ii), (a)(6), and (a)(12), the Director proposes to refuse to approve ANDA 40–115 and ANDA 40–154.

In accordance with section 505(j)(4)(C) of the act and § 314.200(a), the applicants are hereby given notice of an opportunity for a hearing to show that approval of ANDA 40–115 and ANDA 40–154 should not be refused.

An applicant who decides to seek a hearing shall file: (1) On or before September 8, 1997: a written notice of appearance and request for hearing, and (2) on or before October 6, 1997, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing, as specified in § 314.200(c). Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 and in 21 CFR part 12.

The failure of the applicant to file a timely written notice of appearance and request for a hearing, as required by § 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the proposed action, and a waiver of any contentions concerning the legal status of the referenced drug products.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that precludes the refusal to approve the application, or when a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for a hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 505) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: July 29, 1997.

Murray M. Lumpkin,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–20792 Filed 8–6–97; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0326]

Sterling Drug, Inc., et al.; Withdrawal of Approval of 28 New Drug Applications, 9 Abbreviated Antibiotic Applications, and 46 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 28 new drug applications (NDA's), 9 abbreviated antibiotic applications (AADA's), and 46 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: September 8, 1997.

FOR FURTHER INFORMATION CONTACT: Olivia A. Vieira, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 6–801	Neocurtasal	Sterling Drug, Inc., 90 Park Ave., New York, NY 10016.
NDA 8–472	Cyclaine	Merck & Co., Inc., P.O. Box 4, BLA–20, West Point, PA 19486.
NDA 8–656	Hydrocortone Acetate Topical Ointment	Do.

Application No.	Drug	Applicant
NDA 9–241	Serfia Tablets	Westerfield Pharma, 3941 Brotherton Rd., Cincinnati, OH 45209.
NDA 9–272	Evraserp Tablets	Evron Indust., 7475 North Rogers Ave., Chicago, IL 60626.
NDA 9–443	Rauwolfia Serpentina Tablets	Direct Laboratories, 377 Genesse St., Buffalo, NY 14204.
NDA 9–459	Hexamethonium Chloride Tablets	Global Pharms, 3725 Castor Ave., Philadelphia, PA 19124.
NDA 9–599	Sustac (Nitroglycerin) Extended-release Tablets, 2.6 milligrams (mg) and 6.5 mg	Key Pharms, 909 Third Ave., New York, NY 10022–4731.
NDA 9–720	Reserpine Tablets	S. F. Durst & Co., Inc., 1683 Winchester Rd., Philadelphia, PA 19020.
NDA 9–765	Reserpine Tablets	Hance Brothers & White Co., 12th & Hamilton Sts., Philadelphia, PA 19123.
NDA 9–812	Reserpine Tablets	Boyle & Co., 6330 Chalet Dr., Los Angeles, CA 90022.
NDA 9–926	Rauserpin Tablets	Ferndale Laboratories, Inc., 780 West Eight Mile Rd., Ferndale, MI 48220.
NDA 10–260	Ecolid Chloride	Novartis Pharms, 556 Morris Ave., Summit, NJ 07901.
NDA 10–408	Ekans Tablets 100 mg	Haag, Inc., 5 South 15th St., Richmond, VA 23219.
NDA 10–576	Perivas Tablets	Grant Chemical Co., Inc., 924 Rogers Ave., Brooklyn, NY 11226.
NDA 10–581	Hyserpin Tablets	Phys Products, 50 Washington St., Norwalk, CT 06856.
NDA 10–632	Serpena Tablets 0.25 mg (Reserpine)	Haag, Inc.
NDA 10–751	Reserpine Tablets	Horton & Converse Laboratories, Inc., 2200 South Figueroa St., Los Angeles, CA 90007.
NDA 10–883	Serpanray Injection	Panray, P.O. Box 150, Englewood, NJ 07631.
NDA 12–128	Fovane (benzthiazide) Tablets	Pfizer, 235 East 42d St., New York, NY 10017–5755.
NDA 12–285	Syntocinon (oxytocin nasal solution) Nasal Spray	Novartis Pharmaceutical Corp., 59 Rte. 10, East Hanover, NJ 07936–1080.
NDA 12–911	Metopirone (metyrapone USP) Tablets (only those portions of NDA that deal with Tablets)	Novartis Pharms.
NDA 12–985	Duphaston (Dydrogesterone) Tablets, 5, 10, and 20 mg	Solvay Pharmaceuticals, 901 Sawyer Rd., Marietta, GA 30062.
NDA 13–412	CUEMID	Merck & Co., Inc.
NDA 13–538	Decaderm	Do.
NDA 17–926	Regular Insulin (insulin injection, USP (Pork))	Novo Nordisk Pharmaceuticals, Inc., Suite 200, 100 Overlook Center, Princeton, NJ 08540–7810.
NDA 17–929	NPH Insulin (isophane insulin suspension, USP (Beef))	Do.
NDA 17–998	Lente Insulin (insulin zinc suspension, USP (Beef))	Do.
AADA 60–633	Tetracycline Syrup, 125 mg/5 milliliters (mL)	Alpharma, U.S. Pharmaceuticals Div., Suite 3500, 3333 Cassell Dr., Baltimore, MD 21224.
AADA 60–730	Neomycin and Polymyxin B Sulfates and Hydrocortisone Otic Solution, USP	Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043–4705.
AADA 61–450	Oxacillin Sodium Capsules, USP	Apothecon, Inc., P.O. Box 4500, Princeton, NJ 08543–4500.
AADA 62–300	Tetracycline Hydrochloride Capsules USP, 250 mg and 500 mg	Warner Chilcott, Inc., Rockaway 80 Corp. Center, 100 Enterprise Dr., Suite 280, Rockaway, NJ 07866.
AADA 62–521	Neomycin and Polymyxin B Sulfates and Hyrocortisone Otic Suspension, USP	Steris Laboratories, Inc.
AADA 62–625	Ampicillin Trihydrate Non-Sterile Bulk	SmithKline Beecham Pharmaceuticals, 1250 South Collegeville Rd., P.O. Box 5089, Collegeville, PA 19426–0989.
AADA 62–724	Cefadyl (Sterile Cephapirin Sodium, USP), ADD-Vantage vials	Apothecon, Inc.
AADA 62–973	Cephalexin Capsules USP, 250 mg	Do.
AADA 62–974	Cephalexin Capsules USP, 500 mg	Do.
ANDA 70–042	Metronidazole Injection USP, 5 mg/mL	Steris Laboratories, Inc.
ANDA 70–452	Methyldopa Tablets, USP, 500 mg	Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
ANDA 70–749	Methyldopa Tablets, USP, 125 mg	Do.
ANDA 70–750	Methyldopa Tablets, USP, 250 mg	Do.
ANDA 70–912	Diazepam Injection USP, 5 mg/mL	Steris Laboratories, Inc.
ANDA 71–122	Ibuprofen Tablets, USP, (200 mg, orange)	Purepac Pharmaceutical Co.
ANDA 71–455	Pseudoephedrine Hydrochloride and Chlorpheniramine Maleate Extended-Release Capsules, 120 mg/12 mg	KV Pharmaceutical Co., 2503 South Hanley Rd., St. Louis, MO 63144–2555.
ANDA 71–656	Metaproterenol Sulfate Syrup USP, (10 mg/5 mL)	Morton Grove Pharmaceuticals, Inc., 6451 West Main St., Morton Grove, IL 60053.
ANDA 71–664	Ibuprofen Tablets, USP, (200 mg, white)	Purepac Pharmaceutical Co.
ANDA 71–964	Ibuprofen Tablets, USP, 800 mg	Do.
ANDA 72–758	Triprolidine and Pseudoephedrine Hydrochlorides Extended-Release Caplets, 5 mg/120 mg	KV Pharmaceutical Co.
ANDA 80–325	Prednisolone Tablets, 5 mg	Purepac Pharmaceutical Co.
ANDA 80–753	Reserpine Tablets USP, 0.1 mg and 0.25 mg	Do.
ANDA 83–013	Cyanocobalamin Injection USP, 100 micrograms (μg)/mL	Steris Laboratories, Inc.
ANDA 83–064	Cyanocobalamin Injection USP, 1,000 μg/mL	Do.
ANDA 83–120	Cyanocobalamin Injection USP, 100 μg/mL and 1,000 μg/mL	Do.
ANDA 83–532	Promethazine Hydrochloride Injection USP, 50 mg/mL	Do.

Application No.	Drug	Applicant
ANDA 83–533	Diphenhydramine Hydrochloride Injection USP, 10 mg/mL	Do.
ANDA 83–534	Thiamine Hydrochloride Injection USP, 100 mg/mL and 200 mg/mL	Do.
ANDA 83–535	Procaine Hydrochloride Injection USP, 1% and 2%	Do.
ANDA 83–595	Testosterone Propionate Injection USP, 100 mg/mL	Do.
ANDA 83–627	Lidocaine Hydrochloride Injection USP, 1% and 2%	Do.
ANDA 83–654	Sterile Prednisolone Acetate Suspension USP, 25 mg/mL	Do.
ANDA 83–667	Testosterone Enanthate Injection USP, 100 mg/mL and 200 mg/mL	Do.
ANDA 83–759	Sterile Hydrocortisone Acetate Sterile Suspension USP, 25 mg/mL and 50 mg/mL	Do.
ANDA 83–760	Pyridoxine Hydrochloride Injection USP, 100 mg/mL	Do.
ANDA 84–355	Dexamethasone Sodium Phosphate Injection USP, 4 mg/mL (base)	Do.
ANDA 84–401	Testosterone Cypionate Injection USP, 100 mg/mL and 200 mg/mL	Do.
ANDA 84–740	Phendimetrazine Tartrate Tablets, 35 mg (Gray)	Inwood Laboratories, Inc., 909 Third Ave., New York, NY 10022–4731.
ANDA 84–741	Phendimetrazine Tartrate Tablets, 35 mg (Yellow)	Do.
ANDA 84–742	Phendimetrazine Tartrate Tablets, 35 mg (Pink)	Do.
ANDA 84–743	Phendimetrazine Tartrate Tablets, 35 mg (Green)	Do.
ANDA 85–374	Sterile Methylprednisolone Acetate Sterile Suspension USP, 40 mg/mL	Steris Laboratories, Inc.
ANDA 85–463	Lidocaine Hydrochloride and Epinephrine Injection USP 1%; 0.01 mg/mL	Do.
ANDA 85–528	Hydroxocobalamin Injection USP, 1,000 µg/mL	Do.
ANDA 85–529	Sterile Triamcinolone Diacetate Suspension USP, 40 mg/mL	Do.
ANDA 85–781	Sterile Prednisolone Acetate Suspension USP, 50 mg/mL	Do.
ANDA 86–052	Hydrocortisone Acetate Cream, 1%	Purepac Pharmaceutical Co.
ANDA 86–507	Sterile Methylprednisolone Acetate Suspension USP, 80 mg/mL	Steris Laboratories, Inc.
ANDA 87–192	Triamcinolone Acetonide Lotion USP, 1%	Alpharma, U.S. Pharmaceuticals Div.
ANDA 87–214	Phendimetrazine (Extended-release Capsules, 105 mg)	D. M. Graham Laboratories, Inc., 58 Pearl St., P.O. Box P, Hobart, NY 13788.
ANDA 87–248	Sterile Methylprednisolone Acetate Suspension USP, 20 mg/mL	Steris Laboratories, Inc.
ANDA 87–598	Nandrolone Decanoate Injection USP, 50 mg/mL	Do.
ANDA 87–599	Nandrolone Decanoate Injection USP, 100 mg/mL	Do.
ANDA 88–062	Hyrex-105 (Phendimetrazine Tartrate Extended-release Capsules, 105 mg)	D. M. Graham Laboratories, Inc.
ANDA 88–305	Axotal Tablets (Butalbital and Aspirin Tablets USP) 50 mg/650 mg	Savage Laboratories, 60 Baylis Rd., Melville, NY 11747.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective September 8, 1997.

Dated: July 17, 1997.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–20871 Filed 8–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Grantee Reporting Requirements for the Rural Health Network Grant Program—New—

The Rural Health Network Grant Program is authorized by Section 330A of the Public Health Service Act as amended by the Health Centers Consolidation Act of 1996 (Public Law 104–229). The purpose of the program is to assist in the development of vertically integrated networks of health care providers in rural communities. Grantees will be working to change the delivery system in their service areas and will be using the federal funds to develop network capabilities.

Grantees will be asked to submit a baseline report and semiannual tracking reports which provide information on progress towards goals and objectives of the network, progress toward developing the governance and organizational arrangements for the network, specific network activities,

certain financial data related to the grant budget, and health care services provided by the network.

The information will be used to evaluate progress on the grants, to understand barriers to network development in rural areas, to identify grantees in need of technical assistance, and to identify best practices in the development of provider networks in rural communities.

To minimize the burden on grantees, the reports will be submitted electronically. The estimated burden is as follows:

Form name	No. of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Wage cost	Total hour cost
First Year (Baseline report and first semiannual report)							
Baseline	40	1	40	2.0	80	$25	$2000
Semi-annual tracking	40	1	40	1.0	40	25	1000
Total first year burden	40	2	80	1.5	120	25	3000
Second and Subsequent Years							
Semi-annual tracking	40	2	80	1.0	80	$25	$2000

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 4, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–20875 Filed 8–6–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notification of Expiring Project Periods for Community and Migrant Health Centers

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that a total of 83 Community Health Center and Migrant Health Center (C/MHC) grantees will reach the end of their project periods during fiscal year (FY) 1998. Assuming the availability of sufficient appropriated funds in FY 1998, it is the intent of HRSA to continue to support health services in these areas, given the unmet need inherent in their provision of services to a medically underserved population. HRSA will open competition for awards under section 330 of the Public Health Service (PHS) Act (42 U.S.C. 254b(e) for CHCs and U.S.C. 254b(g) for MHCs) to support health services in the areas currently served by these grants.

This notice provides interested parties the opportunity to gather information and decide whether to pursue Federal funding as a C/MHC. During this process, communication with Field Office staff is essential (see Appendix I). A subsequent **Federal Register** notice, the *HRSA Preview*, will announce the availability of funds for FY 1998.

DATES: Current grant expiration dates vary by area throughout FY 1998. Applications for competing continuation grants are normally due 120 days prior to the expiration of the current grant award.

SUPPLEMENTARY INFORMATION: The C/MHC programs are carried out under the authority of section 330 of the Public Health Service Act. The program regulations are codified in Title 42 of the Code of Federal Regulation (CFR), parts 51c and 56. The C/MHC programs are designed to promote the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations.

The list of service areas for which a current section 330 grant project period expires in FY 1998 is set forth in Appendix II. The service areas are listed by city and county. Detailed information about each service area, such as census tracts, can be obtained by contacting the appropriate PHS field office (see Appendix I).

A project period is the total amount of time for which a section 330 grant has been programmatically approved. For the purposes of this notice, grant awards will be made for a one year budget period and project periods will be for up to three years.

Dated: August 4, 1997.

Claude Earl Fox,

Acting Administrator.

Appendix I—Field Office Staff

Field Office I: Bruce Riegel, Acting Director, Division of Health Services Delivery, DHHS—Field Office I, Rm 1826, JFK Federal Building #1401, Boston, MA 02203

Field Office II: Ron Moss, Director, Division of Health Services Delivery, DHHS—Field Office II, Rm 3337, 26 Federal Plaza, New York, NY 10278

Field Office III: Bruce Riegel, Director, Division of Health Services Delivery, DHHS—Field Office III, Rm 10200, MS 14, 3535 Market Street, Philadelphia, PA 19104

Field Office IV: Marlene Lockwood, Director, Division of Health Services Delivery, DHHS—Field Office IV, 101 Marietta Tower, Atlanta, GA 30323

Field Office V: Martin Bree, Acting Director, Division of Health Services Delivery, DHHS—Field Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603

Field Office VI: Frank Cantu, Director, Division of Health Services Delivery, DHHS—Field Office VI, Rm 1800, 1200 Main Tower Bldg, Dallas, TX 75202

Field Office VII: Hollis Hensley, Acting Director, Division of Health Services Delivery, DHHS—Field Office VII, Federal Office Building, 601 East 12th Street, Kansas City, MO 64106

Field Office VIII: Barbara Bailey, Director, Division of Health Services Delivery, DHHS—Field Office VIII, Federal Office Building, 1961 Stout Street, Denver, CO 80294

Field Office IX: Gordon Soares, Director, Division of Health Services Delivery, DHHS—Field Office IX, 50 United Nations Plaza, San Francisco, CA 94102

Field Office X: Doug Woods, Director, Division of Health Services Delivery, DHHS—Field Office X, Blanchard Plaza, 2201 Sixth Avenue, Seattle, WA 98121.

GRANTEES COMPETING IN FISCAL YEAR 1998 BY FIELD OFFICE AND STATE, 83 GRANTEES TOTAL, DUPLICATE COUNTY SITES WITHIN GRANTEES ARE NOT LISTED

	Number of grantees	Grant end date
FIELD OFFICE 01		
MAINE:		
CITY: BETHEL	2	01/31/98
COUNTY: OXFORD		
CITY: EASTPORT		03/31/98
COUNTY: WASHINGTON		
MASSACHUSETTS:		
CITY: SPRINGFIELD	2	06/30/98
COUNTY: HAMPDEN		
CITY: ROXBURY		01/31/98
COUNTY: SUFFOLK		
NEW HAMPSHIRE:		
CITY: BERLIN	1	06/30/98
COUNTY: COOS		
RHODE ISLAND:		
CITY: PAWTUCKET	1	12/31/97
COUNTY: PROVIDENCE		
FIELD OFFICE 02		
NEW YORK:		
CITY: BRONX	3	01/31/98
COUNTY: BRONX		
CITY: BRONX		01/31/98
COUNTY: BRONX		
CITY: BUFFALO		12/31/97
COUNTY: ERIE		
PUERTO RICO:		
CITY: RIO GRANDE	1	06/30/98
COUNTY: RIO GRANDE		
FIELD OFFICE 03		
PENNSYLVANIA:		
CITY: PHILADELPHIA	4	11/30/97
COUNTY: PHILADELPHIA		
CITY: CHESTER		01/31/98
COUNTY: DELAWARE		
CITY: HYNDMAN		01/31/98
COUNTY: BEDFORD		
CITY: PHILADELPHIA		05/31/98
COUNTY: PHILADELPHIA		
VIRGINIA:		
CITY: AXTON	2	01/31/98
COUNTY: HENRY		
CITY: ST CHARLES		05/31/98
COUNTY: LEE		
WEST VIRGINIA:		
CITY: RAINELLE	2	11/30/97
COUNTY: GREENBRIER		
CITY: GRAFTON		05/31/98
COUNTY: PRESTON		
FIELD OFFICE 04		
ALABAMA:		
CITY: TUSCALOOSA	4	11/30/97
COUNTY: TUSCALOOSA		
CITY: HUNTSVILLE		11/30/97
COUNTY: MADISON		
CITY: TUSCALOOSA		01/31/98
COUNTY: TUSCALOOSA		
CITY: BIRMINGHAM		01/31/98
COUNTY: JEFFERSON		
FLORIDA:		
CITY: WEST PALM BEACH	6	12/31/97
COUNTY: PALM BEACH		
CITY: POMPANO BEACH		12/31/97
COUNTY: BROWARD		
CITY: AVON PARK		01/31/98
COUNTY: HIGHLANDS		
CITY: WEWAHITCHKA		03/31/98

GRANTEES COMPETING IN FISCAL YEAR 1998 BY FIELD OFFICE AND STATE, 83 GRANTEES TOTAL, DUPLICATE COUNTY SITES WITHIN GRANTEES ARE NOT LISTED—Continued

	Number of grantees	Grant end date
COUNTY: GULF		
CITY: ST PETERSBURG		05/31/98
COUNTY: PINELLAS		
CITY: JACKSONVILLE		06/30/98
COUNTY: DUVAL		
GEORGIA:		
CITY: MORGANTON	4	11/30/97
COUNTY: UNION		
CITY: DECATUR		12/31/97
COUNTY: DEKALB		
CITY: COLUMBUS		06/30/98
COUNTY: MUSCOGEE		
CITY: OCILLA		06/30/98
COUNTY: IRWIN		
KENTUCKY:		
CITY: PRESTONBURG	1	01/31/98
COUNTY: FLOYD		
MISSISSIPPI:		
CITY: MOUND BAYOU	4	11/30/97
COUNTY: BOLIVAR		
CITY: BILOXI		12/31/97
COUNTY: HARRISON		
CITY: CLARKSDALE		05/31/98
COUNTY: COAHOMA		
CITY: LEXINGTON		06/30/98
COUNTY: HOLMES		
NORTH CAROLINA:		
CITY: SNOW HILL	2	11/30/97
COUNTY: GREENE		
CITY: YANCEYVILLE		05/31/98
COUNTY: CASWELL		
SOUTH CAROLINA:		
CITY: GREENVILLE	6	01/31/98
COUNTY: GREENVILLE		
CITY: EASTOVER		01/31/98
COUNTY: RICHLAND		
CITY: ROCK HILL		01/31/98
COUNTY: YORK		
CITY: WINNSBORO		01/31/98
COUNTY: FAIRFIELD		
CITY: FAIRFAX		03/31/98
COUNTY: ALLENDALE		
CITY: MCCLELLANVILLE		03/31/98
COUNTY: CHARLESTON		
TENNESSEE:		
CITY: WARTBURG	1	12/31/97
COUNTY: MORGAN		
FIELD OFFICE 05		
ILLINOIS:		
CITY: CHICAGO	2	01/31/98
COUNTY: COOK		
CITY: CHICAGO		06/30/98
COUNTY: COOK		
MICHIGAN:		
CITY: SPARTA	5	12/31/97
COUNTY: KENT		
CITY: DETROIT		01/31/98
COUNTY: WAYNE		
CITY: DETROIT		01/30/98
COUNTY: WAYNE		
CITY: PULLMAN		03/31/98
COUNTY: ALLEGAN		
CITY: DETROIT		06/30/98
COUNTY: WAYNE		
OHIO:		
CITY: AKRON	2	11/30/97
COUNTY: SUMMIT		
CITY: YOUNGSTOWN		12/31/97

GRANTEES COMPETING IN FISCAL YEAR 1998 BY FIELD OFFICE AND STATE, 83 GRANTEES TOTAL, DUPLICATE COUNTY SITES WITHIN GRANTEES ARE NOT LISTED—Continued

	Number of grantees	Grant end date
COUNTY: MAHONING		
WISCONSIN:		
CITY: MILWAUKEE	2	12/31/97
COUNTY: MILWAUKEE		
CITY: MILWAUKEE		01/31/98
COUNTY: MILWAUKEE		
FIELD OFFICE 06		
ARKANSAS:		
CITY: CORNING	2	06/30/98
COUNTY: CLAY		
CITY: MARSHALL		06/30/98
COUNTY: CLAY		
LOUISIANA:		
CITY: OPELOUSAS	2	06/30/98
COUNTY: ST. LANDRY		
CITY: GREENSBURG		06/30/98
COUNTY: ST. HELENA		
OKLAHOMA:		
CITY: TULSA	1	03/31/98
COUNTY: TULSA		
TEXAS:		
CITY: HOUSTON	4	12/31/97
COUNTY: HARRIS		
CITY: RIO GRANDE CITY		01/31/98
COUNTY: STARR		
CITY: NEWTON		03/31/98
COUNTY: NEWTON		
CITY: WICHITA FALLS		06/30/98
COUNTY: WICHITA		
FIELD OFFICE 07		
KANSAS:		
CITY: KANSAS CITY	1	06/30/98
COUNTY: WYANDOTEE		
NEBRASKA:		
CITY: OMAHA	2	01/31/98
COUNTY: DOUGLAS		
CITY: LINCOLN		03/31/98
COUNTY: LANCASTER		
FIELD OFFICE 08		
COLORADO:		
CITY: DENVER	1	12/31/97
COUNTY: DENVER		
NORTH DAKOTA:		
CITY: FARGO	1	06/30/98
COUNTY: CASS		
SOUTH DAKOTA:		
CITY: RAPID CITY	1	01/31/98
COUNTY: PENNINGTON		
UTAH:		
CITY: EAST CARBON	1	06/30/98
COUNTY: CARBON		
FIELD OFFICE 09		
ARIZONA:		
CITY: TUCSON	1	12/31/97
COUNTY: PIMA		
CALIFORNIA:		
CITY: LOS ANGELES	4	11/30/97
COUNTY: LOS ANGELES		
CITY: FRESNO		11/30/97
COUNTY: FRESNO		
CITY: LOS ANGELES		01/31/98
COUNTY: LOS ANGELES		
CITY: LOS ANGELES		01/31/98
COUNTY: LOS ANGELES		
NEVADA:		
CITY: LAS VEGAS	1	12/31/97
COUNTY: CLARK		
FIELD OFFICE 10		
OREGON:		
CITY: CHILOQUIN	1	05/31/98

GRANTEES COMPETING IN FISCAL YEAR 1998 BY FIELD OFFICE AND STATE, 83 GRANTEES TOTAL, DUPLICATE COUNTY SITES WITHIN GRANTEES ARE NOT LISTED—Continued

	Number of grantees	Grant end date
COUNTY: KLAMATH		
WASHINGTON:		
CITY: TACOMA	3	05/31/98
COUNTY: PIERCE		
CITY: PASCO		05/31/98
COUNTY: FRANKLIN		
CITY: BREMERTON		06/30/98
COUNTY: KITSAP		

[FR Doc. 97–20873 Filed 8–6–97; 8:45 am]
BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notification of Expiring Project Periods for Health Care for the Homeless Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that a total of 9 Health Care for the Homeless (HCH) grantees will reach the end of their project periods during fiscal year (FY) 1998. Assuming the availability of sufficient appropriated funds in FY 1998, it is the intent of HRSA to continue to support health services to the homeless populations in these areas/locations given the continued need for cost-effective, community-based primary care services for these medically underserved populations within these geographic areas.

This notice provides interested parties the opportunity to gather information and decide whether to pursue Federal funding as an HCH program grantee. During this process, communication with HRSA Field Office staff is essential (see Appendix I).

DUE DATES: Current grant expiration dates vary by grantee throughout FY 1998. Applications for competing continuation grants are normally due 120 days prior to the expiration of the current grant award.

SUPPLEMENTARY INFORMATION: The HCH program is carried out currently under the authority of section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)). The HCH program is designed to increase the homeless population's access to cost-effective, case managed, and integrated primary care and substance abuse services.

The list of areas in which a current homeless project period expires in FY 1998 is set forth in Appendix II. The areas listed include the city. Further information including the census tract, if applicable, can be obtained by contacting the appropriate HRSA Field Office (see Appendix I).

A project period is the total amount of time for which a grant has been programmatically approved. For purposes of this notice, grant awards will be made for a one year budget period and up to a five year project period.

Dated: August 4, 1997.

Claude Earl Fox,

Acting Administrator.

Appendix I—Field Office Staff

Field Office I: Bruce Riegel, Acting Director, Division of Health Services Delivery, DHHS—Field Office I, Rm 1826, JFK Federal Building #1401, Boston, MA 02203

Field Office II: Ron Moss, Director, Division of Health Services Delivery, DHHS—Field Office II, Rm 3337, 26 Federal Plaza, New York, NY 10278

Field Office III: Bruce Riegel, Director, Division of Health Services Delivery, DHHS—Field Office III, Rm 10200, MS 14, 3535 Market Street, Philadelphia, PA 19104

Field Office IV: Marlene Lockwood, Director, Division of Health Services Delivery, DHHS—Field Office IV, 101 Marietta Tower, Atlanta, GA 30323

Field Office V: Martin Bree, Acting Director, Division of Health Services Delivery, DHHS—Field Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603

Field Office VI: Frank Cantu, Director, Division of Health Services Delivery, DHHS—Field Office VI, Rm 1800, 1200 Main Tower Bldg, Dallas, TX 75202

Field Office VII: Hollis Hensley, Acting Director, Division of Health Services Delivery, DHHS—Field Office VII, Federal Office Building, 601 East 12th Street, Kansas City, MO 64106

Field Office VIII: Barbara Bailey, Director, Division of Health Services Delivery, DHHS—Field Office VIII, Federal Office Building, 1961 Stout Street, Denver, CO 80294

Field Office IX: Gordon Soares, Director, Division of Health Services Delivery, DHHS—Field Office IX, 50 United Nations Plaza, San Francisco, CA 94102

Field Office X: Doug Woods, Director, Division of Health Services Delivery, DHHS—Field Office X, Blanchard Plaza, 2201 Sixth Avenue, Seattle, WA 98121

APPENDIX II—LISTING OF HCH GRANTEES SORTED BY STATE

State	City	Project period ending date
FL	Miami	10/31/97
	Total Number of Grantees in the State of FL: 1	
NE	Omaha	01/31/97
	Total Number of Grantees in the State of NE: 1	
NV	Las Vegas	12/31/97
	Total Number of Grantees in the State of NV: 1	
NY	New York	10/31/97
	Total Number of Grantees in the State of NY: 1	
OH	Columbus	05/31/98

APPENDIX II—LISTING OF HCH GRANTEES SORTED BY STATE—Continued

State	City	Project period ending date
	Total Number of Grantees in the State of OH: 1	
OK	Tulsa	03/31/98
	Total Number of Grantees in the State of OK: 1	
SD	Rapid City	01/31/98
	Total number of Grantees in the State of SD: 1	
WA	Seattle	10/31/97
	Total Number of Grantees in the State of WA: 1	
WY	Cheyenne	10/31/97
	Total Number of Grantees in the State of WY: 1	
	Total Number of Grantees: 9	

[FR Doc. 97–20872 Filed 8–6–97; 8:45 am]
BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notification of Expiring Project Periods for Health Resources and Services Administration HIV/AIDS Program—Ryan White Title III Early Intervention Services Programs

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that a total of 97 Ryan White Title III Early Intervention Services (EIS) grantees will reach the end of their project periods during fiscal year (FY) 1998. Assuming the availability of sufficient appropriated funds in FY 1998, it is the intent of HRSA to continue to support health services to the people living with HIV/AIDS and at risk for HIV/AIDS in these areas/ locations assuming the continued need for cost-effective, community-based primary care services for these medically underserved populations. HRSA will open competition for awards under Ryan White Title III to support programs in the areas served by these grants. Any other organization wishing to apply for Ryan White Title III funding for populations in other service areas may also submit an application for consideration should funds become available at a later date.

This notice provides interested parties the opportunity to gather information and decide whether to pursue Federal funding as a Ryan White Title III EIS program grantee.

DUE DATE: Current grant expiration dates vary by grantee throughout FY 1998. Regardless of the FY 1998 expiration date, all applications for competing continuation grants will be due October 10, 1997. Any new organization proposing to serve the populations currently being served by an existing Title III grantee organization or proposing to serve a different population must also submit an application by October 10, 1997. New organizations may obtain a complete package of application materials for this grant by calling the HRSA Grants Application Center at 1–888–300–4772.

FOR FURTHER INFORMATION CONTACT: To obtain further information about this program, please contact Deborah Parham at 301–594–4446.

SUPPLEMENTARY INFORMATION: The Ryan White EIS Program is carried out currently under the authority of Title III of the Ryan White CARE Act, as amended. The Title III EIS program is designed to increase the access of people living with HIV and AIDS to comprehensive and cost-effective primary care and support services provided by existing community-based programs/ providers. The list of areas in which a current Ryan White Title III EIS project period expires in FY 1998 is set forth in the Appendix. The areas listed include the state and city.

A project period is the total amount of time for which a grant has been programmatically approved. For purposes of this notice, grant awards will be made for a one year budget period and up to a three year project period.

Dated: July 31, 1997.

Claude Earl Fox,

Acting Administrator.

APPENDIX—LISTING OF RYAN WHITE TITLE III EIS GRANTEES SORTED BY STATE AND CITY

State and city	Project period ending date
AZ:	
Phoenix	10/31/97
Tucson	12/31/97
Total Number of Grantees in the State of AZ: 2	
AR:	
Pine Bluff	5/31/98
Total Number of Grantees in the State of AR: 1	
AL:	
Mobile	11/30/97
Anniston	12/31/97
Montgomery	12/31/97
Total Number of Grantees in the State of AL: 3	
AK:	
Anchorage	5/31/98
Total Number of Grantees in the State of AK: 1	
CA:	
Santa Cruz	10/31/97

APPENDIX—LISTING OF RYAN WHITE TITLE III EIS GRANTEES SORTED BY STATE AND CITY—Continued

State and city	Project period ending date
San Francisco	10/31/97
Los Angeles	11/30/97
San Fernando	11/30/97
Santa Ana	12/31/97
San Bernardino	12/31/97
San Jose	12/31/97
Los Angeles	12/31/97
Fremont	12/31/97
San Marcos	12/31/97
LaMont	3/31/98
Total Number of Grantees in the State of CA: 11	
CT:	
Bridgeport—2	1/31/98
New Haven	5/31/98
Total Number of Grantees in the State of CT: 3	
DC:	
Washington	12/31/97
Total Number of Grantees in the State of DC: 1	
FL:	
Key West	12/31/97
Miami—2	12/31/97
Pompano Beach	12/31/97
Palm Beach	3/31/98
Immokalee	3/31/98
Total Number of Grantees in the State of FL: 6	
GA:	
Atlanta	10/31/97
Atlanta	12/31/97
Savannah	12/31/97
Waycross	12/31/97
Augusta	12/31/97
Total Number of Grantees in the State of GA: 5	
IA:	
Des Moines	5/31/98
Total Number of Grantees in the State of IA: 1	
IL:	
Chicago	10/31/97
Rockford	11/30/97
Chicago—3	12/31/97
Total Number of Grantees in the State of IL: 5	
IN:	
Indianapolis	12/31/97
Total Number of Grantees in the State of IN: 1	
KS:	
Wichita	12/31/97
Total Number of Grantees in the State of KS: 1	
MA:	
Northampton	12/31/97
Provincetown	1/31/98
Dorchester	3/31/98
Worcester	3/31/98
New Bedford	5/31/98
Boston	6/30/98
Total Number of Grantees in the State of MA: 6	
MI:	
Detroit	12/31/97
Detroit	1/31/98
Total Number of Grantees in the State of MI: 2	
MO:	
Springfield	12/31/97
Kansas City	12/31/97
Total Number of Grantees in the State of MO: 2	
MT:	
Billings	3/31/98
Total Number of Grantees in the State of MT: 1	
NC:	
Asheville	12/31/97
Durham	5/31/98
Total Number of Grantees in the State of NC: 2	
NJ:	
Newark	12/31/97

APPENDIX—LISTING OF RYAN WHITE TITLE III EIS GRANTEES SORTED BY STATE AND CITY—Continued

State and city	Project period ending date
Paterson	12/31/97
New Brunswick	6/30/98
Total Number of Grantees in the State of NJ: 3	
NM:	
Albuquerque	12/31/97
Total Number of Grantees in the State of NM: 1	
NV:	
Reno	12/31/97
Las Vegas	12/31/97
Total Number of Grantees in the State of NV: 2	
NY:	
New York City—2	10/31/97
Bronx	10/31/97
New York City	11/30/97
Brooklyn—2	12/31/97
Rochester	12/31/97
Buffalo	12/31/97
New York City—3	12/31/97
Queens	12/31/97
Peekskill	1/31/98
Bronx	1/31/98
Syracuse	3/31/98
Albany	3/31/98
Total Number of Grantees in the State of NY: 16	
OH:	
Cincinnati	12/31/97
Total Number of Grantees in the State of OH: 1	
OK:	
Tulsa	12/31/97
Total Number of Grantees in the State of OK: 1	
PA:	
Philadelphia—2	12/31/97
Allentown	12/31/97
Pittsburgh	12/31/97
Chester	1/31/98
York	3/31/98
Philadelphia	5/31/98
Total Number of Grantees in the State of PA: 7	
PR:	
Humacao	12/31/97
San Juan	12/31/97
Mayaguez	1/31/98
Lares	3/31/98
Gurabo	6/30/98
Total Number of Grantees in the State of PR: 5	
RI:	
Providence	12/31/97
Total Number of Grantees in the State of RI: 1	
TX:	
Houston	10/31/97
Dallas	12/31/97
Fort Worth	12/31/97
Austin	12/31/97
San Antonio	3/31/98
Total Number of Grantees in the State of TX: 5	
UT:	
Salt Lake City	12/31/97
Total Number of Grantees in the State of UT: 1	
Total Number of Grantees: 97	

[FR Doc. 97–20794 Filed 8–6–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council, Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1997.

Name: National Advisory Council on the National Health Service Corps

Date and Time: September 3–7, 1997 (Times vary).

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The meeting is open to the public.

Agenda: Agenda items include updates on the National Health Service Corps program; meetings with community and clinical groups on their past experiences with the NHSC and future partnership development; academic-community educational linkages; potential roles for the NHSC; and meetings of NHSC workgroups on new environment strategies, health system linkages, and mission coalition building.

The opening meeting will be held on Wednesday, September 3 from 6:00 p.m. to 9:00 p.m. On Thursday, Friday, and Saturday, meetings will begin at 9:00 a.m. and conclude around 5:00 p.m. Sunday's meeting will begin at 8:30 a.m. and adjourn around 11:00 a.m.

The meeting is open to the public. Anyone requiring information regarding the subject Council should contact Ms. Eve Morrow, National Advisory Council on the National Health Service Corps, Health Resources and Services Administration, 8th floor, 4350 East West Highway, Rockville, Maryland 20857, Telephone (301) 594–4144.

Agenda Items are subject to change as priorities dictate.

Dated: August 4, 1997.

James J. Corrigan,

Acting Associate Administrator, Office of Management and Program Support.

[FR Doc. 97–20874 Filed 8–6–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

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: August 14, 1997.

Time: 11 a.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Maureen L. Eister, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meeting will be closed in accordance with the provisions set forth in secs. 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: July 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–20862 Filed 8–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the National Advisory Research Resources Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR). This meeting will be open to the public as indicated below. Attendance by the public will be limited to space available.

This meeting will be closed to the public as indicated below in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. The 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.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5146, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, (301) 435–0888, will provide a summary of the meeting and a roster of the members upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Name of Committee: The National Advisory Research Resources Council.

Place of Meeting: Washington Dulles Hilton Hotel, 13869 Bark Center Road, Conference Rooms Hilton: East and West, Herndon, Va.

Open: September 9, 7 p.m.–7:30 p.m.

Agenda: Report of Center Director and other issues related to Council business.

Closed: September 9, 7:30 p.m.–9:30 p.m.

Open: September 10, 8:30 a.m.–6 p.m. September 11, 8:30 a.m. until adjournment.

Agenda: Updating the NCRR Stategic Plan.

Executive Secretary: Louise Ramm, Ph.D., Deputy Director, National Center for Research Resources, Building 31, Room 3B11, Bethesda, Md 20892, Telephone: (301) 496–6023.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; 93.214 Extramural Research Facilities Construction Projects, National Institutes of Health)

Dated: July 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–20859 Filed 8–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Phase II Clinical Trials of New Chemopreventive Agents.

Date: August 12–13, 1997.

Time: 8 a.m. to 5 p.m.

Place: National Cancer Institute, Executive Plaza North, Conference Room G, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Wilna Woods, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 622B, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, Telephone: 301/496–7903.

Purpose/Agenda: To evaluate and review responses to Request for Proposal.

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.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the 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: July 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institute of Health.

[FR Doc. 97–20857 Filed 8–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Closed Meeting of the National Deafness and Other Communication Disorders Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Council from 1–2 pm on September 11, 1997, in Building 31, Room 3C05, National Institutes of Health, 9000 Rockville Pike, Bethesda MD 20892. The meeting will be held as a telephone conference call.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public. The meeting will include the review, discussion, evaluation of individual grant applications. The 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.

Further information concerning the meeting may be obtained from Dr. Craig A. Jordan, Executive Secretary, National Deafness and Other Communication Disorders Advisory Council National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400C, 6120 Executive Blvd., MSC7180, Bethesda, Maryland 20892–7180, (301) 496–8693. A summary of the meeting and rosters of the members may also be obtained from his office.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: July 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–20858 Filed 8–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following National Heart, Lung, and Blood Institute Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: Clinical Trials in Diabetes and CVD.

Date: September 19, 1997.

Time: 8:00 a.m.

Place: NIH Main Campus, 31 Center Drive, Building 31, 6th Floor, C Wing, Conference Room 7.

Agenda: To consider the need for a clinical trial to determine optimal intervention strategies to prevent or reduce CVD in diabetic patients.

Contact Persons:

Peter Savage, M.D., Deputy Director, DECA, II Rockledge Center, 6701 Rockledge Drive, MSC 7938, Room 8104, Bethesda, Maryland 20892–7938, (301) 435–0422.

George Sopko, M.D., Medical Officer, DHVD, II Rockledge Center, 6701 Rockledge Drive, MSC 7940, Room 9176, Bethesda, MD 20892–7940, (301) 435–0515.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–20864 Filed 8–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following National Heart, Lung, and Blood Institute Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: New Approaches to Complex Biological Problems: Inflammation and Risk Assessment.

Date: September 19, 1997.

Time: 8:00 a.m.

Place: Two Rockledge Center, 6701 Rockledge Drive, Room 7111, Bethesda, Maryland 20892.

Agenda: To consider the approach and need for additional research to improve understanding of the pathogenesis of inflammation in the lung and clinical risk assessment related to it by use of non-linear mathematical techniques.

Contact Person: Hannah H. Peavy, M.D., NHLBI/DLD Lung Biology and Disease Program, Two Rockledge Center, Room 10110, 6701 Rockledge Drive, MSC 7952, Bethesda, Maryland 20892, (301) 435–0222.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 31, 1997.

LaVerne Y. Stringfield,

Committtee Management Officer, NIH.

[FR Doc. 97–20865 Filed 8–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

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: August 11, 1997.

Time: 11 a.m.

Place: Parklawn Building, 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 meeting will be closed in accordance with the provisions set forth in secs. 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: July 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–20863 Filed 8–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; 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 Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: August 19, 1997.

Time: 10 a.m.

Place: NIH, Rockledge 2, Room 4138, Telephone Conference.

Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Name of SEP: Behavioral and Neurosciences.

Date: August 20, 1997.

Time: 2 p.m.

Place: NIH, Rockledge 2, Room 5172, Telephone Conference.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Chemistry and Related Sciences.

Date: November 17–18, 1997.

Time: 8 a.m.

Place: Ana Hotel, Washington, DC.

Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, Maryland 20892, (301) 435–1180.

The meetings will be closed in accordance with the provisions set forth in secs. 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 Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–20860 Filed 8–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; 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 Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 14, 1997.

Time: 8 a.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Behavioral and Neurosciences.

Date: August 29, 1997.

Time: 4 p.m.

Place: NIH, Rockledge 2, Room 5170, Telephone Conference.

Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Behavioral and Neurosciences.

Date: October 15–17, 1997.

Time: 8 a.m.

Place: Hotel Washington, Washington, DC.

Contact Person: Dr. David Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda, Maryland 20892, (301) 435–1278.

Name of SEP: Multidisciplinary Sciences.

Date: November 3–4, 1997.

Time: 8 a.m.

Place: Doubletree Hotel, Rockville, MD.

Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176

Name of SEP: Clinical Sciences.

Date: November 17–19, 1997.

Time: 8 a.m.

Place: Doubletree Hotel, Rockville, MD.

Contact Person: Dr. Gertrude McFarland, Scientific Review Administrator, 6701 Rockledge Drive, Room 4110, Bethesda, Maryland 20892, (301) 435–1784.

The meetings will be closed in accordance with the provisions set forth in secs. 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 Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–20861 Filed 8–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicants have applied for a permit 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–832591

Applicant: Sheri A. Paderewski, University of Virginia, Department of Biology, Charlottesville

The applicant requests authorization to remove and reduce to possession (collect seeds, collect and temporarily retain whole plants) the Roan Mountain bluet, *Hedyotis purpurea* var. *montana*, from Pisgah National Forest, North Carolina for the purpose of enhancement of survival of the species.

PRT–832549

Applicant: Jeffery M. Selby, ENSR, Norcross, Georgia

The applicant requests authorization to take (capture, identify, and release) 20 species of threatened and endangered fishes, freshwater mussels, and aquatic invertebrates, throughout the species ranges in Alabama, Georgia, and Tennessee, 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 September 8, 1997.

Documents and other information submitted with this application 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: July 31, 1997.

H. Dale Hall,

Acting Regional Director

[FR Doc. 97–20782 Filed 8–6–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Issuance of Permits for Marine Mammals

On June 5, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 108, Page 30876, that an application had been filed with the Fish and Wildlife Service by John Kautzman, West Fargo, ND (PRT–828884) for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Notice is hereby given that on July 24, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 5, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 108, Page 30875, that an application had been filed with the Fish and Wildlife Service by Arthur Nienow, East Palatka, FL (PRT–829690) for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Notice is hereby given that on July 28, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 13, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 114, Page 32364, that an application had been filed with the Fish and Wildlife Service by Charles Antcliff, Fenton, MI (PRT–830055) for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Notice is hereby given that on July 24, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 24, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 79, Page 20020, that an application had been filed with the Fish and Wildlife Service by Leonard Guldman, Aurora, CA (PRT–827651) for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Notice is hereby given that on July 10, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service denied the requested permit.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: August 1, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–20855 Filed 8–6–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Le Grand Aquarium de Saint-Malo, Cedex, France, PRT–832098.

Type of Permit: Take for Public Display.

Name and Number of Animals: Northern sea otters (*Enhydra lutris lutris*), up to 24 as described below.

Summary of Activity to be Authorized: The applicant has requested a permit as a co-collector of up to 24 northern sea otters in Alaskan waters for export of 2 animals to the Le Grand Aquarium, France. This collection effort will be conducted concurrently with that planned for the Lisbon Aquarium (PRT–831644). A total of 6 animals will be retained. All others will be immediately released. Four of the animals are proposed for export to the Lisbon Aquarium and two are proposed for export to the Le Grand Aquarium for the purpose of public display.

Source of Marine Mammals for Public Display: Kodiak Islands, AK.

Period of Activity: Five years from issuance date of the permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Thomas VanEvery, Troy, MI, PRT–832642.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Joseph Cafmeyer, Taylor, MI, PRT–832734.

The applicant requests a permit to import a polar bear (*Ursus maritimus*)

sport-hunted from the Baffin Bay polar bear population, Northwest Territories, Canada for personal use.

Applicant: Peter Mansfield, New York, NY, PRT–832731.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: William Shields, Yakima, WA, PRT–830610.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on any of these applications for marine mammal permits should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with all of the applications listed in this notice 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 within 30 days of the date of publication of this notice at the above address.

Dated: August 1, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–20856 Filed 8–6–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection to be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Copies of the proposed collection instrument may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 30 days directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone 703–648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practically utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including he validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: ''The National Atlas of the United States of America''.

OMB approval number: New Collection.

Abstract: Potential customers of electronic national atlas products will be asked questions that provide (1) potential uses of these products; (2) type of personal computer used; (3) current method of acquiring atlas-type information; (4) demographic information; and (5) personal expectations from the products. Survey questionnaires will be distributed by mail in a return postage-paid format. Focus groups will be held at various locations across the United States and could include prototype product testing. Customers information gathered from the questionnaires and focus groups will be used to evaluate ''The National Atlas of the United States of America'' products and to made development adjustments based on customer responses. The proposed collection is limited in scope to the National Atlas products and the capability of the products to meet customer needs. The USGS intends to develop a cooperative research and development agreement with private industry to assist in product development and to provide an additional avenue for product distribution.

Bureau form number: None.

Frequency: An estimated 2–3 surveys and 5–8 focus groups per year to evaluate potential customer segments and reactions.

Description of respondents: Owners of powerful home personal computers, some with Internet access—potentially the general public, libraries, and schools.

Estimated completion time: Varies depending on the mechanism used: approximately 0.25 hour (15 minutes) per survey and 1 hour per focus group session.

Annual responses: Approximately 1,000 survey and 100 focus group responses.

Annual burden hours: 350.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: July 28, 1997.

Richard E. Witmet,

Acting Chief, National Mapping Division.

[FR Doc. 97–20767 Filed 8–6–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Comment on the Proposal to Develop the ''Spatial Data Transfer Standard (SDTS) Part 5: Raster Profile With Basic Image Interchange Format (BIIF) Extension'' as a Federal Geographic Data Committee Standard

ACTION: Notice; request for comments.

SUMMARY: The FGDC is soliciting public comments on the proposal to develop a ''Spatial Data Transfer Standard (SDTS) Part 5: Raster Profile with Basic Image Interchange Format (BIIF) Extension.'' If the proposal is approved, the standard will be developed following the FGDC standards development and approval process. If the standard is adopted by the FGDC, it must be followed by all Federal agencies when appropriate for the transferring of raster data directly or indirectly, through grants, partnerships, or contracts.

In its assigned leadership role for developing the National Spatial Data Infrastructure (NSDI), the FGDC recognizes that the standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review the proposal and comment on the objectives, scope, approach, and usability of the proposed standard; identify existing related standards; and

indicate their interest in participating in the development of the standard.

Project Title: Development of Spatial Data Transfer Standard (SDTS) Part 5: Raster Profile with Basic Image Interchange Format (BIIF) Extension.

Proposal Date: March 24, 1997, Revised June 4, 1997.

Submitting Organization: FGDC Subcommittee on Base Cartographic Data (SBCD).

Point Of Contact: John Crowe, USGS/NMD Raster Data Standards Coordinator, (703)648–5596, jcrowe@usgs.gov.

Objective: The objective of this project is to develop a profile of SDTS, through the convergence of the Draft FIPS Part 5 Raster Profile of SDTS and the ISO/IEC Committee Draft 12087–5 Basic Image Interchange Format (BIIF) raster transmission standards. This Raster Profile with BIIF Extension, will expand the applicability of the SDTS raster profile to broaden the utility of the SDTS transfer format, providing a vehicle to enhance data sharing and to reduce redundant data production.

Scope: The SDTS Part 5 Raster Profile with BIIF Extension contains specifications of a profile for use with geo-referenced two dimensional raster data, and excludes vector data and three dimensional and higher dimension raster data. It is intended to provide a common transfer format to be used for interchange of raster image and raster grid data among all members of the data producer and user community. This profile is intended to replace the existing Draft FIPS SDTS Part 5 Raster Profile. The SDTS Part 5 Raster Profile with BIIF Extension falls into the ''Transfer Standard'' type as defined by the FGDC Standards working Group (SWG) Standards Reference Model.

Justification/benefits: This profile will provide a common transfer format, independent of technology, to enhance data sharing for raster data. The inclusion of a BIIF extension in this SDTS profile provides an extended data format providing a container for raster, symbol, and text, along with a mechanism for including image-related support data. This profile will apply directly to two dimensional digital elevation data (X–Y with Z as an attribute) and digital orthoimagery, two key components of the National Spatial Data Infrastructure framework. It will enhance data useability by providing a foundation for interoperability in the interchange of raster data among diverse applications.

The inclusion of BIIF capabilities in SDTS Part 5 provides the benefit of an extended data format. This satisfies the following requirements:

1. Provides convergence of civil and military raster standards.

2. Provides a means whereby diverse applications can share imagery and associated information.

3. Allows applications to exchange comprehensive information, allowing users to select only those data items that correspond to their needs and capabilities.

4. Minimizes pre and post processing of data.

5. Minimizes formatting overhead, particularly for applications exchanging a small amount of data over bandwidth-limited systems.

6. Provides Transportable File Structure (TFS) as a mechanism to exchange PIKS image and image-related objects.

7. Provides extensibility to accommodate future data, including objects.

Approach: Starting with the existing Draft FIPS Part 5 Raster Profile of SDTS and the most current version of BIIF, build an SDTS profile which provides the best of both standards for transferring two dimensional raster data while maintaining backward compatibility to existing raster profiles. The BIIF extension will be integrated with the existing Draft FIPS Part 5 Raster Profile of SDTS as an optional encoding of image data to include both raster grid and raster image data. The final product will be a profile which maintains the archival capabilities and focus of SDTS with optional extensions to allow inclusion of the imagery transmission focus of the BIIF. The BIIF extension provides a container for raster, symbol and text as well as a mechanism for inclusion of image related support data. The expanded capability of the new SDTS Part 5: Raster Profile with BIIF extension will broaden the applicability of the SDTS. The FGDC will provide the vehicle for wide participation and input from across the raster data user and producer communities.

Related Standards: Related standards which were used as reference in building the new SDTS Part 5: Raster Profile with BIIF Extension include the following. These standards will retain this relationship and may be used as reference, although they will be unaffected by the adoption of the proposed SDTS Part 5: Raster Profile with BIIF Extension.

ISO/IEC 12087–5—Information Technology Computer Graphics and Image Processing, Image Processing and Interchange Functional Specification Part 5: Basic Image Interchange Format. Committee Draft 23 November, 1996 STANAG 7074/AGeoP–3A—Digital Geographic Information Exchange Standard (DIGEST)

DMA Technical Manual 8358.1 Datums, Ellipsoids, Grids, and Grid Reference Systems

FGDC Content Standards for Digital Geospatial Metadata June 1994 GeoTIFF Draft Specification [ftp://mtritter.jpl.nasa.gov/pub/tiff/geotiff/, or ftp://ftpmcmc.cr.usgs.gov/release/geotiff/jpl mirror/]

JIEO/JITC Circular 9008—National Imagery Transmission Format Standards (NITFS) Certification Test and Evaluation Program Plan, 30 June 1993

STANAG 4545—NATO Secondary Imagery Format [Edition Study Draft 0.9]

The following standard, and profile, were used as reference for building the new profile. The SDTS Part 5: Raster Profile with BIIF Extension is intended to replace the current Draft Part 5: Raster Profile of the FIPS 173 SDTS Standards.

FIPS PUB 173—Spatial Data Transfer Standard (SDTS) 28 August 1992

Spatial Data Transfer Standard (SDTS)—Part 5, Raster Profile (Draft)

Both of the following Draft FGDC Standards currently point to the FIPS 173 Draft Part 5: Raster Profile of SDTS. If the proposed SDTS Part 5: Raster Profile with BIIF Extension is adopted, both will be modified to point to the new profile.

FGDC Draft Data Content Standards for Digital Orthoimagery (January 1997)

FGDC Draft Data Content Standards for Digital Elevation Data (January 1997)

Schedule: The SBCD will review the draft SDTS Part 5 with BIIF Extension in June of 1997. The SBCD will then submit the draft to the FGDC Standards Working Group (SWG) in July 1997. It is hoped that the SWG will review the draft, with the goal of determining its suitability for public review, in an expedient fashion. Once approved, the standard will be in public review for a minimum of three months.

Resources: The Raster Convergence Working Group has provided development resources for the preparation of the initial draft standard and will provide resources to assist in the adjudication of comments from the public review and approval process. The SBCD will provide additional resources to promulgate this standard through the FGDC standards development process.

Potential Participants: The primary participants in the development of the profile include NIMA and the USGS.

Other contributors include the Joint Interoperability Test Command (JITC), the BIIF editorship, Geomatics Canada, the National Oceanic and Atmospheric Administration (NOAA), the National Geodetic Data Center (NGDC), and the Digital Geographic Information Working Group, which represents the Digital Geographic Information Exchange Standard (DIGEST) under the auspices of NATO. The membership of the SBCD will provide a broad sponsorship for this standard. The public review and comment period will include an aggressive program of outreach to ensure a broad level of participation from the geospatial data community. Any of the contributing bodies mentioned above may be called on to participate in the adjudication of public review comments and the redrafting of the standard. There is also potential to include representatives of the commercial/private sector, State and local governments, as well as the academic community in the continuing development of this standard.

Target Authorization Body: The FGDC Steering Committee is the initial target authorization body for this standard. Once endorsed by the FGDC the intent is to seek ANSI endorsement of this standard.

DATES: Comments must be received on or before September 1, 1997.

CONTACT AND ADDRESSES: Comments may be submitted via Internet mail or by submitting an electronic copy on diskette. Send comments via Internet to: gdc-raster@www.fgdc.gov. Comments e-mailed as attachments must be in ASCII format

A soft copy version may be submitted on a 3.5 x 3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format, along with one hardcopy version of the comments, to the FGDC Secretariat (attn: Jennifer Fox) at U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192.

Dated: July 29, 1997.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 97–20840 Filed 8–6–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Sedona GeoServices, Inc., Limerick, Pennsylvania. The purpose of the CRADA is to jointly research and develop new algorithms and advanced methods of automatic contour vectorization. Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Acting Chief of Research, U.S. Geological Survey, National Mapping Division, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–4643, facsimile (703) 648–4706; Internet ''ebrunsonusgs.gov''.

FOR FURTHER INFORMATION CONTACT: Ernest B. Brunson, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: July 29, 1997.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 97–20833 Filed 8–6–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Notice for Publication; [AA–9249]; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Calista Corporation for approximately 0.21 acre. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian, Alaska

T. 3 S., R. 95 W.,
Sec. 10.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 8, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 97–20781 Filed 8–6–97; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–1220–00]

Camping Closure on Certain Public Lands Managed by the Bureau of Land Management Within the Red Rock Canyon National Conservation Area (NCA) Las Vegas District, Nevada

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Camping closure on selected public lands within the Red Rock Canyon NCA in Clark County, Nevada.

SUMMARY: The District Manager of the Las Vegas District announces a camping closure at Black Velvet Canyon within the Red Rock Canyon NCA.

The increased popularity of rock climbing in the Black Velvet Canyon area is causing a greater impact than in the past. Overnight camping is contributing to more illegal campfires, littering, and human waste than the resources can handle. Due to the primitive road condition accessing this area, it is not feasible to provide a supplemental toilet facility there, requiring regular service. The destruction of vegetation is the result of a rising number of out-of-bounds campers forced out of the limited area open to vehicles.

The close proximity of Mud Spring to the camping area invites more visitors to bathe there, thus resulting in the contamination of a vital water source for wild horses, desert bighorn sheep, and other wildlife native to the area.

In the fall of 1997 a new 100 space campground along State Route 159 is scheduled for completion, further relieving the impact to the public lands within the Conservation Area. With the exception of Black Velvet Canyon, other camping options currently available to

the public, as allowed by supplementary rule 43 CFR 8365.1–6(3.16)(a), dated May 11, 1993, are areas at elevations 5,000 feet above sea level and higher, and within the Oak Creek Camp Ground along State Route 159. Also available is the temporary overflow camping area provided on public lands adjacent to the Conservation Area boundary at mile post 2 on State Route 159.

This camping closure will have no effect on the current vehicle, hiking, or public access to Black Velvet Canyon.

EFFECTIVE DATE: The closure will be effective September 8, 1997. It will remain in effect indefinitely.

Closure Area

Black Velvet Canyon Camping Area, Red Rock Canyon NCA, located within Township 22 South, Range 58 East, section 14, Mount Diablo Meridian.

Closure Restrictions: Unless otherwise authorized, within the closure area no person shall:

a. Camp or engage in camping.

b. Fail to follow orders or directions of an authorized officer relating to this closure order.

c. Obstruct, resist, or attempt to elude a law enforcement officer, or fail to follow their orders or directions, relating to this closure order.

Definitions

Camp or camping means the erecting of a tent or shelter, preparing a sleeping bag or other bedding material for use, or the parking of a vehicle, motor vehicle, motor home, or trailer for the apparent purpose of sleeping or overnight occupancy.

Maps depicting the area affected by this closure order are available for public inspection at the Las Vegas District Office, Bureau of Land Management.

This closure order is issued under the authority of 43 CFR 8364.1. Violation of any of the terms, conditions, or restrictions contained within this closure order may subject the violator to citation or arrest, with the penalty of fine or imprisonment as specified by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Assistant District Manager, Recreation; or Ruben J. Conde Jr., Law Enforcement Ranger; at the Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, NV 89108, telephone (702) 647–5000.

Dated: July 28, 1997.

Michael F. Dwyer,

District Manager.

[FR Doc. 97–20780 Filed 8–6–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–85–97–6310–00;GP7–0255]

Closure of Roads in Lane County, Oregon

ACTION: Closure of roads in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain roads in Lane County, Oregon, are closed to public vehicular use. The purpose of the closure is to reduce vandalism to communications facilities on Prairie Peak. BLM employees and other individuals operating within the scope of official duties are exempt from this closure.

The effective date of the closure is August 15, 1997. The closure is made under the authority of 43 CFR 8364.1.

The roads affected by this closure are:

Road No.	Location
15–7–7	BLM segment in T. 15 S., R. 7 W., Section 7, W.M., Oregon.
15–7–7.1	BLM segment in T. 15 S., R. 7 W., Section 7, W.M., Oregon.

A locked gate will be installed on Road No. 15–7–7 near it's junction with Road No. 15–7–23.

John Bacho,

Marys Peak Area Manager.

[FR Doc. 97–20834 Filed 8–6–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–4333–02]

Call for the Gila Box Advisory Committee Nominations

AGENCY: Safford Field Office, Bureau of Land Management, Interior.

ACTION: Extension of Call for Nominations for Gila Box Riparian National Conservation Area Advisory Committee.

SUMMARY: The purpose of this notice is to solicit public nominations to fill one position of the Gila Box Riparian National Conservation Area Advisory Committee, pursuant to Title 2, Section 201, of the Arizona Desert Wilderness Act of 1990.

The purpose of the Advisory Committee is to provide informed advice to the Safford Field Office Manager on management of public lands in the Gila Box Riparian National Conservation Area. Members are currently assisting BLM specialists with the preparation of the Final Gila Box Interdisciplinary Activity Plan. The Advisory Committee will meet approximately one time during (FY 97) to assist plan preparation. Members serve without salary, but are reimbursed for travel and per diem expenses at current rates for government employees.

To ensure membership of the Advisory Committee is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas related to the primary purposes for which the Gila Box Riparian National Conservation Area was created. These categories of expertise include wildlife conservation, riparian ecology, archaeology, hydrology, recreation, environmental education, or other related disciplines.

Persons wishing to nominate individuals or those wishing to be considered for appointment to serve on the Advisory Committee should provide names, addresses, professions, biographical data, and category of expertise for qualified nominees. Persons selected to serve on the Committee will serve a three-year term ending on July 31, 2000. Nominations should be submitted to the Safford Field Office Manager at the address below.

DATES: All nominations should be received by September 2, 1997.

ADDRESSES: For further information contact: Elmer Walls, Team Leader, Gila Resource Area, Safford Field Office, 711 14th Ave., Safford, AZ 85546, telephone (520) 348–4400.

Dated: July 27, 1997.

Bill T. Civish,

Field Office Manager.

[FR Doc. 97–20763 Filed 8–6–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on July 22, 1997, a proposed amended consent decree in *United States* v. *Proteccion Tecnica Ecologica, Inc., et. al.,* Civil Action No. 86–1698 (HL), was lodged with the United States District Court for the District of Puerto Rico, pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* The proposed consent decree amends a consent decree the United States entered into with Proteccion Tecnica Ecologica Inc. (''Proteco''), and Compania Ganadera

Del Sur, Inc., which decree was entered by the Court in October, 1987 (''Original Consent Decree''). The proposed amended consent decree also resolves the United States' claims with respect to the United States' Motion to Enforce the Consent Decree and United States' Motion to Amend and Supplement the Complaint.

The proposed amended consent decree requires Proteco to close the hazardous waste units at the facility Proteco operates at Penuelas, Puerto Rico (''Facility'') pursaunt to closure plans approved by the Environmental Protection Agency. In addition, the proposed amended consent decree requires Proteco to deposit $40,000 per month in an escrow account, which monies shall be spent to close the hazardous waste units; Proteco is required to continue to make deposits into the escrow account until it has paid into the account an amount equal to the estimated cost of closure. Further, Proteco's civil penalty obligations under the Original Consent Decree will be modified to provide that the United States will forgive $225,671 of the civil penalty amount that Proteco owed. The United States has already received at least $283,750 in civil penalties under the Original Consent Decree and the United States will receive at least an additional $690,000 after entry of the amended consent decree. Further, if Proteco sells its assets or over 50% of its stock within one year of the public notice of the proposed closure plan for the Facility, Proteco will pay an additional civil penalty in the amount of $225,671.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed amended consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Proteccion Tecnica Ecologica, Inc., et al.,* D.J. Ref. 90–7–1–345a.

The proposed amended consent decree may be examined at the Office of the United States Attorney, Federal Office Building, Carlos E. Chardon Ave., Hato Rey, Puerto Rico 00918, and at the Region II office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed amended consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $9.00 payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–20842 Filed 8–6–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—MOST, Inc.

Notice is hereby given that, on June 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''), Toyota Tsusho America, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to and (2) the nature and objectives of a production venture known as MOST, Inc. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Toyota Tsusho America, Inc., New York, NY (owned by Toyota Tsusho Corporation, Nagoya, Japan); Daiki International Trading Corporation, Torrance, CA (owned by Daiki Alumni Industry Co., Ltd., Osaka, Japan); and Toyota Tsusho Corporation. The general area of planned activity is the buying, selling, smelting and refining of secondary aluminum metals.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–20841 Filed 8–6–97; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David Golden, M.D.; Suspension of Registration

On August 21, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David L. Golden, M.D., of New Orleans, Louisiana, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificates of Registration, BG3086306 and BG3039218, under 21 U.S.C. 824(a)(3), and deny any pending applications for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Louisiana. The order also notified Dr. Golden that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent to both of Dr. Golden's registered locations, as well as to an address where he had applied for a DEA registration. All of these orders were returned to DEA unclaimed. DEA investigators then attempted to personally serve Dr. Golden with the Order to Show Cause. Both of Dr. Golden's registered locations were abandoned buildings. The address indicated on Dr. Golden's application for registration was the location of someone else's office. The investigators went to the address listed on the driver's license of a woman believed to be Dr. Golden's wife and were told that the Goldens had moved the week before. The investigators then went to the address listed on Dr. Golden's driver's license, which is also the last home address that the Louisiana State Board of Medical Examiners had for Dr. Golden. This location appeared to be abandoned. The mailman confirmed that no one was currently living at the address, but that mail was still delivered there and picked up about once a month. The investigators then left a copy of the Order to Show Cause in the mailbox at that location.

DEA ultimately received a letter from Dr. Golden dated June 25, 1997, indicating that he had received the Order to Show Cause, and asking that all correspondence be mailed to a post office box. Dr. Golden did not request a hearing on the issues raised by the Order to Show Cause.

The Acting Deputy Administrator finds that based upon Dr. Golden's June 25, 1997 letter, it is clear that Dr. Golden received the Order to Show Cause, however, he did not request a hearing. Therefore, Dr. Golden is deemed to have waived his right to a hearing. After considering the relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Acting Deputy Administrator finds that by a Decision dated August 25, 1995, the Louisiana State Board of Medical Examiners suspended Dr. Golden's license to practice medicine for two years beginning on September 1,

1995, based upon a finding of medical incompetency and a finding of continuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in the State of Louisiana. The Acting Deputy Administrator finds that in light of the fact that Dr. Golden is not currently licensed to practice medicine in the State of Louisiana, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16193 (1997); *Demetris A. Green, M.D.*, 61 FR 60728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993).

Dr. Golden did not dispute that he is not authorized to handle controlled substances in Louisiana. Therefore, in light of his lack of authorization in Louisiana, Dr. Golden is not entitled to a DEA registration in that state. However, the Acting Deputy Administrator finds that revocation of Dr. Golden's registrations is not appropriate. The suspension of Dr. Golden's state privileges expires on September 1, 1997, and presumably at that time he will be authorized to handle controlled substances in the State of Louisiana. Given that his state suspension was not based upon his handling of controlled substances and that his privileges will be reinstated in approximately one month, the Acting Deputy Administrator concludes that Dr. Golden's DEA registrations should be suspended until such time as his state privileges are reinstated.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration, BG3086306 and BG3039218, previously issued to David Golden, M.D., be, and they hereby are, suspended until his state license to practice medicine in Louisiana is reinstated and he is thereby authorized to handle controlled substances in that state. The suspension shall remain in effect until the DEA office in New Orleans receives notification from Dr. Golden that his state privileges have been reinstated. Regarding any pending applications for registration submitted by David Golden, M.D., the Acting Deputy Administrator orders that these applications shall be granted upon DEA's receipt of notification from Dr. Golden that his state privileges have been reinstated and that he still desires to be registered at the address listed on the application. This order is effective August 7, 1997.

Dated: August 1, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–20786 Filed 8–6–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–45]

Rick's Pharmacy, Inc., Continuation of Registration With Restrictions

On August 29, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rick's Pharmacy, Inc., (Respondent) of Clayton, New Mexico, notifying it of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, BR0924440, under 21 U.S.C. 824 (a)(2) and (a)(4), and deny any pending applications for registration as a retail pharmacy under 21 U.S.C. 823(f), for reason that its owner/pharmacist has been convicted of a controlled substance related felony offense and that its continued registration would be inconsistent with the public interest.

By letter dated September 5, 1996, Respondent, through counsel, filed a timely request for a hearing. In the midst of prehearing proceedings, Respondent's counsel filed a motion to withdraw as counsel, which was granted. Thereafter, Respondent was represented by Rick Balzano, the principal shareholder and pharmacist of Respondent. A hearing was held in Santa Fe, New Mexico on February 5, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses and introduced documentary evidence. After the hearing, Government counsel submitted proposed findings of fact, conclusions of law and argument, and Respondent submitted a letter setting forth its position. On May 16, 1997, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's registration be continued subject to certain conditions. On June 6, 1997, Government counsel filed exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge, and on June 18, 1997, Judge Randall transmitted the record of these proceedings, including the Government's exceptions to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. the Acting Deputy Administrator adopts, except as specifically noted below, the Opinion and Recommended Ruling of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Rick Balzano purchased Respondent pharmacy with his parents in 1987. Mr. Balzano is the president and pharmacist-in-charge of Respondent, his father is the vice president and his mother is the secretary and treasurer. In addition to Respondent pharmacy, there is only one other retail pharmacy and one hospital pharmacy in Clayton, New Mexico, with the next closest pharmacy approximately 82 miles from Clayton. Mr. Balzano is one of only two pharmacists practicing in Clayton.

On October 6 and 7, 1992, New Mexico Board of Pharmacy inspectors went to Respondent pharmacy to conduct a routine inspection and audit of controlled substances. According to Mr. Balzano, by the time the inspectors arrived at the pharmacy at 4:00 p.m. on the first day, he had already consumed approximately 50 controlled substance pills.

The audit covered the period from January 6, 1991 to October 6, 1992, and revealed overages and shortages for all of the audited substances. Significantly, Respondent could not account for 19,394 dosage units of Lortab 7.5 mg.; 8,201 dosage units of phentermine 30 mg.; 2,100 dosage units of ''Darvon Compound-65 generic''; 1,430 dosage units of Halcion 0.25 mg.; 1,121 dosage units of temazepam 30 mg.; 1,546 dosage units of clorazepate 7.5 mg.; 1,244 dosage units of diazepam 10 mg.; 2,800 dosage units of Roxicet; and 1,397 dosage units of Tylox. Significant overages, where Respondent could account for more of a drug than it was accountable for include, 1,521 dosage units of Darvon-N-100; 1,606 Wygesic generic; and 1,994 Tranxene 3.75 mg.

On October 28, 1992, the inspectors went to Respondent pharmacy to return the records used in conducting the audit and to discuss the audit with Mr. Balzano. At that time, Mr. Balzano

admitted that he had a drug abuse problem. Mr. Balzano testified at the hearing in this matter that his tolerance to the drugs built up to the point that he could ingest more than 50 pills per day. He admitted to personally taking a number of the missing controlled substances, including lorazepam, Ativan, Dalmane, flurazepam, Fastin, phentermine, Halcion, Restoril, temazepam, Valium, diazepam, Xanax, Lorcet, Lortab, Vicodin, Dexedrine, Percodan, Roxiprin, Percocet, Roxicet, and Tylox. However, Mr. Balzano denied taking the remaining substances that were unaccounted for during the audit period. He suggested at the hearing that had he been given an opportunity to explain the audit discrepancies, the overages and shortages may have balanced each other out based upon the dispensing of a generic substance when a brand name substance had been prescribed or based upon the potential labeling or mislabeling of the substances.

During the investigation, the New Mexico Board of Pharmacy inspectors discovered several prescriptions apparently issued by a local dentist for Mr. Balzano and other patients. The dentist denied writing any of the prescriptions for Mr. Balzano, and Mr. Balzano ultimately admitted that he had forged several of the dentist's prescriptions. Mr. Balzano also admitted filling prescriptions that had been issued by the dentist for individuals for the stimulant drugs, phentermine and Fastin. In addition, the inspectors discovered 16 prescriptions for Fastin for an individual that were allegedly written by a local physician. The physician denied writing these prescriptions, and Mr. Balzano admitted at the hearing in this matter to improperly dispensing the drugs. Finally, the investigation revealed several prescriptions for family members allegedly authorized by Mr. Balzano's brother who is a dentist. Dr. Balzano indicated to the inspectors that he had not authorized some of these prescriptions, and Mr. Balzano testified that he now understands that he should not have dispensed these controlled substances.

Mr. Balzano testified that after the inspectors were at Respondent pharmacy in early October 1992, he began his recovery efforts from drug addiction, and has not improperly taken any controlled substances since October 28, 1992. Which he began his recovery efforts on his own, in March 1993, he entered a local treatment center where he stayed for three weeks, during which time he closed Respondent pharmacy and informed the community of his drug abuse problem.[1] Following his in-patient treatment, Mr. Balzano signed a two-year voluntary contract with the Pharmacists' Recovery Network Committee of New Mexico (PRN) which required at least 12 random urine screens a year, attendance at 3 to 4 Alcoholics Anonymous or Narcotics Anonymous meetings per week, and attendance at monthly PRN meetings in Albuquerque, New Mexico. During the term, of the contract, Mr. Balzano underwent 22 random urine screens, and all were negative. According the PRN, Mr. Balzano complied with all the requirements of the contract. Following the expiration of the contract in March 1995, Mr. Balzano remained an active member of the PRN.

As a result of the investigation, information was filed in the United States District Court for the District of New Mexico, charging that Mr. Balzano knowingly and intentionally acquired 60 Lortab 7.5 mg. tablets, a Schedule III controlled substance, by forging the local dentist's name to a prescription in violation of 21 U.S.C. 843(a)(3). Thereafter, in March 1994, following Mr. Balzano's entering a plea of guilty, he was convicted of the felony offense of acquiring or obtaining a controlled substance by forgery, deception or subterfuge in violation of 21 U.S.C. 843(a)(3). Mr. Balzano was sentenced to two years probation, and on August 31, 1995, he was granted early termination of probation due to satisfactory behavior.

In August 1996, New Mexico Board of Pharmacy inspectors conducted another inspection at Respondent pharmacy. The inspector who testified at the hearing in this matter indicated that the following violations were revealed: (1) A required reference book, and the New Mexico Pharmacy Laws and Regulations were not on the premises; (2) a required ''Purchaser's Statement'' was missing from the exempt narcotic book; (3) the time of day was not properly recorded on the 1996 inventory; and (4) the practitioner's DEA registration number was not recorded on several prescription forms. The inspectors did not conduct an audit of controlled substances during this inspection. According to the inspector, the noted violations were corrected and Respondent pharmacy has been in compliance with these requirements since the August 1996 inspection.

Following a formal hearing on January 28, 1997, the New Mexico Board of Pharmacy (Board) issued a decision on February 24, 1997, regarding Mr. Balzano's pharmacist license. The Board found *inter alia,* that Mr. Balzano was the pharmacist-in-charge of Respondent; that the 1992 inspection revealed shortages of Schedule II, III and IV controlled substances; that Mr. Balzano was convicted in March 9, 1994 in the United States District Court of the District of New Mexico of one count of acquiring or obtaining a controlled substance by forgery, deception or subterfuge, and was sentenced to two years probation with conditions; that Mr. Balzano completed his probation and program with the PRN; and that Mr. Balzano admitted that he had a substance abuse problem and had the drugs for his own use. As a result, the Board placed Mr. Balzano on probation for two years, and his pharmacist's license was suspended for two years with all but 28 days held in abeyance pending successful completion of the probationary period. In addition, the Board ordered Mr. Balzano to sign a new five year contract with the PRN; to not dispense any controlled substances to himself or to his immediate family members; an to notify the Board of any personal controlled substance prescription ''with a copy of the prescription attached and a note from the prescribing authority that the prescription is medically indicated.'' Finally, the Board noted that, ''[i]f it comes to the attention of the Board that [Mr. Balzano] was violated the terms and conditions of probation, [Mr. Balzano's] license to practice will be immediately suspended pending a hearing before the Board.''

Respondent entered into evidence affidavits from the administrator of the local hospital, the president of a local bank, the chairman of the PRN, the assistant director of the PRN, several physicans, including the local dentist whose name Mr. Balzano had forged on the prescription for Lortab, and others. These individuals attested to Mr. Balzano's professional integrity and to the community's need for the continued operation of Respondent pharmacy.

The Deputy Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. § 824(a), upon a finding that the registrant:

* * * * *

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

* * * * *

(4) Has committed such acts as would render his registration under section 823 of

[1] In her opinion and Recommended Ruling, the Administrative Law Judge indicated that Respondent pharmacy remained closed for three months, however, Mr. Balzano testified that the pharmacy was closed for three weeks.

this title inconsistent with the public interest as determined under such section;

* * * * *

It is undisputed that Mr. Balzano was convicted on March 9, 1994, of a felony violation of 21 U.S.C. 843(a)(3). It is well settled that a pharmacy operates under the control of owners, stockholders, pharmacists or other employees, and if any such person is convicted of a felony offense related to controlled substances, grounds exist to revoke the pharmacy's registration under 21 U.S.C. 824(a)(2). *See Maxicare Pharmacy,* 61 FR 27,368 (1996); *Big-T Pharmacy, Inc.,* 47 FR 51,830 (1982). Therefore, the Acting Deputy Administrator concurs with Judge Randall's conclusion that the Government has proven by a preponderance of the evidence that grounds exist to revoke Respondent's registration under 21 U.S.C. 824(a)(2), based upon the controlled substance related felony conviction of its owner/pharmacist, Mr. Balzano.

Pursuant to 21 U.S.C. §§ 823(f) and 824(a)(4), the Deputy Administrator may also revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See *Henry J. Schwarz, Jr., M.D.,* Docket No. 88–42, 54 FR 16,422 (1989). In this case, all five factors are relevant.

As to factor one, it is undisputed that on February 24, 1997, the New Mexico Board of Pharmacy issued a decision placing Mr. Balzano on probation for two years and suspending his pharmacist license for two years with all but 28 days held in abeyance pending successful completion of the probationary period. As terms of his probation, the Board ordered Mr. Balzano to sign a five year contract with the PRN, prohibiting him from dispensing controlled substances to himself or to immediate family members, and required him to notify the Board if he obtained any personal controlled substance prescriptions.

Factors two and four, respondent's experience in dispensing controlled substances and compliance with state, Federal or local laws relating to controlled substances, are relevant in determining the public interest. The 1992 audit results which revealed significant overages and shortages of Schedule II–IV controlled substances indicated at the very least a failure to maintain complete and accurate records as required by 21 U.S.C. 827. However, Mr. Balzano admitted to diverting many of the missing drugs for his personal use in violation of under 21 U.S.C. 843(a)(3). Although Mr. Balzano admitted to having a drug abuse problem, he denied taking a significant number of the unaccounted for controlled substances. The Acting Deputy Administrator concurs with Judge Randall's finding that Mr. Balzano ''failed to provide a persuasive explanation for these shortages.''

Mr. Balzano admitted to other instances of improper dispensing of controlled substances. He admitted to forging several prescriptions for his personal use with the name of the local dentist in violation of 21 U.S.C. 829 and 843(a)(3). He admitted to filling prescriptions for Fastin/phentermine issued by a dentist not in the usual course of professional practice in violation of 21 U.S.C. 829 and 21 CFR 1306.04. Finally, he admitted to dispensing controlled substances to family members and to another individual without the appropriate authorization from a practitioner in violation of 21 U.S.C. 829 and 841.

The subsequent state audit conducted in 1996 revealed the following state regulatory violations: a required reference book and the New Mexico Pharmacy Laws and Regulations were not on the premises; a statement was missing in the exempt narcotic book; the time of day was not recorded on the 1996 inventory, and the practitioner's DEA registration number was not on several prescription forms.[2] Failure to record the time of the day on the inventory was also a violation of 21 CFR 1304.11, and failure to place the practitioner's DEA registration on prescriptions was also a violation of 21 CFR 1306.05. The Acting Deputy Administrator disagrees with Judge Randall's finding that ''although the 1996 Board inspection found administrative discrepancies, none of these errors involved the handling of controlled substances.'' Failure to note the time on a controlled substance inventory and failure to place a practitioner's DEA registration on prescriptions clearly are violations that relate to the handling of controlled substances. However, the Acting Deputy Administrator notes that since the 1996 inspection, Respondent has been in compliance with these requirements.

As to factor three, it is undisputed that Mr. Balzano, Respondent's owner/pharmacist was convicted in March 1994 of one count of acquiring or obtaining controlled substances by misrepresentation, fraud, forgery, deception, or subterfuge in violation of 21 U.S.C. 843(a)(3), as a result of his forging a local dentist's name to a prescription for Lortab in order to obtain controlled substances for his own use. As discussed previously, a pharmacy's registration may be revoked on the basis of the owner/pharmacist's felony conviction relating to controlled substances.

Regarding factor five, Mr. Balzano admitted that he had a substance abuse problem for a number of years. Further, he admitted that he diverted a significant amount of controlled substances from the pharmacy for his own use. A number of the missing drugs however, remain unaccounted for following the 1992 audit. The Acting Deputy Administrator agrees with Judge Randall and the Government, ''that the public health and safety was placed at risk by Mr. Balzano's lack of judgment and concern for the precision needed by a pharmacist to properly fill prescriptions for patients relying on his professionalism.''

The Government has proven by a preponderance of the evidence that grounds exist to revoke Respondent pharmacy's DEA registration under 21 U.S.C. 824(a)(4). However, like Judge Randall, the Acting Deputy Administrator finds that while ''Respondent's evidence in mitigation does not justify or excuses the misconduct of Mr. Balzano, [it is] significant and credible that he admitted to the extensive scope of his previous drug addiction and to his misconduct that flowed from his illness, to include the forging of prescriptions.'' Mr. Balzano last improperly used controlled

[2] The Government asserts that the inspection also revealed that Respondent failed to have controlled substance invoices readily retrievable. However, the testimony of the inspector at the hearing in this matter did not specifically address Respondent's failure to comply with this requirement of the state regulations.

substances in October 1992. He has undergone extensive rehabilitation treatment which will now continue until the year 2002 in light of the Board's recent decision requiring him to enter into a five year contract with the PRN.

It is significant that beyond diverting drugs from the pharmacy for his own use, Mr. Balzano forged prescriptions, and improperly dispensed controlled substances to his family members and others. In addition, the other shortages and overages revealed by the 1992 audit have yet to be explained. However, Mr. Balzano testified at the hearing in this matter that, ''I did some things when I was on drugs that I just cannot believe that I did them. You're a different person when you're on these drugs. I can't explain some of the things I did or why I did them.''

As noted above, Mr. Balzano has been free from drugs since October 1992, and Respondent has continued in operation since 1992 with no allegations of improper handling of controlled substances other than the several violations found during the August 1996 inspection which have since been corrected. Previously, DEA has held that while a lapse in time since the wrongdoing is not dispositive, it is a factor to be considered. *See Norman Alpert, M.D.,* 58 FR 67,420 (1993). In this case, it is significant that since the 1992 inspection, Mr. Balzano has undergone extensive treatment for his drug addiction, has remained drug-free, has accepted responsibility for his past misconduct, and has essentially remained in compliance with the laws and regulations relating to controlled substances. In addition, as Judge Randall noted that should Respondent's DEA registration be revoked, ''the residents of Clayton, New Mexico will be left with only one retail pharmacy * * * [and] will either have to use this pharmacy or travel 82 miles to the next closest pharmacy.''

Judge Randall concluded ''that the public interest will best be served by allowing the Respondent to continue with its Certificate of Registration with certain conditions'' beyond those required by the Board's decision. Judge Randall recommended that Respondent shall comply with the following terms for three years from the effective date of the final order:

(1) submit to the local DEA office a copy of the Respondent's state-required annual inventory;

(2) submit to the local DEA office the results of any audit or inspection conducted upon the Respondent by the Board; and

(3) notify the local DEA office within 5 work days in the event the New Mexico Pharmacy Board reinstates the suspension of Mr. Balzano's license. Judge Randall further recommended that ''[i]n the event Mr. Balzano ceases to work as the Respondent's pharmacist, the Respondent may apply to DEA to have these conditions removed from its Certificate of Registration.''

The Government filed exceptions to the Administrative Law Judge's Opinion and Recommended Ruling, arguing that the Administrative Law Judge failed to ''make a finding with respect to unexplained controlled substance shortages which were not alleged to have been consumed by Respondent's pharmacist,'' The Government argued that ''at a minimum, Respondent and pharmacist Balzano failed to keep complete and accurate records. * * *'' The Government further contended that the ''evidence of Mr. Balzano's activity with regard to unlawful distribution of controlled substances by falsified prescriptions * * * could support an inference that other missing controlled substances were also diverted.'' The Acting Deputy Administrator finds that the Administrative Law Judge, in considering factors two, four and five, did in fact find that Mr. Balzano did not provide a persuasive explanation for the missing drugs other than those he admitted to consuming. The Acting Deputy Administrator agrees with the Government's contention, that at a minimum, these shortages represent faulty recordkeeping. However, the Acting Deputy Administrator rejects the Government's argument that the evidence presented supports an inference that the missing drugs were diverted. While Mr. Balzano admitted that several forged prescriptions were filled and that controlled substances were improperly dispensed on several occasions, there was no evidence presented at the hearing which would warrant a finding that the unexplained shortages were the result of diversion.

The Government also argued in its exceptions that Judge Randall's ''recommended action in this matter is a departure from prior agency practice and policy.'' In support of its argument, the Government cited to several cases where a pharmacy's DEA registration was revoked based upon the improper dispensing of controlled substances and the conviction of the pharmacist for a felony offense relating to controlled substances. *See Farmacia Ortiz,* 61 FR 726 (1996)*; Dellmar Pharmacy #4,* 59 FR 46,066 (1994); and *Nasir Gore, T/A All Drugs Pharmacy, Inc.,* 59 FR 60,661 (1994). The Acting Deputy Administrator recognizes that the DEA registrations of these pharmacies were in fact revoked, however these cases can be distinguished from the instant proceeding. In this case, Respondent's owner/pharmacist admitted to a serious drug abuse problem which caused his misconduct. Mr. Balzano has accepted responsibility for his past behavior and has undergone extensive rehabilitation. He has been drug-free since October 1992, and will continue to be monitored by the PRN for a number of years. In addition, Respondent pharmacy has continued in operation since 1992 with no evidence of violations of a similar nature to those revealed by the 1992 inspection. Therefore, the Acting Deputy Administrator does not find that the Administrative Law Judge's recommendation to continue Respondent's registration subject to certain restrictions is a departure from prior agency practice. The Acting Deputy Administrator concludes that it is in the public interest to continue Respondent's registration in light of the foregoing, as well as the need for Respondent pharmacy in the community.

Nevertheless, the Acting Deputy Administrator does concur with the Government's contention that if Respondent's registration is to be continued, the restrictions imposed on its registration should more directly address the nature of Respondent's misconduct, than those restrictions recommended by Judge Randall. Mr. Balzano suffered from a serious drug abuse problem causing him to divert controlled substances from the pharmacy for his own use, to improperly dispense controlled substances to others, and at the very least, to fail to maintain complete and accurate records of controlled substances. Consequently, the Acting Deputy Administrator concludes that Respondent's registration shall be subject to the following conditions:

(1) If Mr. Balzano's contract with the PRN is terminated before the expiration of the five year term, Mr. Balzano shall continue to undergo random urinalysis at his own expense no less than one time per month for the original term of the contract. Results of these urine screens shall be submitted to the DEA office in Albuquerque, New Mexico.

(2) If Mr. Balzano's contract with the PRN is terminated before the expiration of the five year term, Mr. Balzano shall be prohibited from dispensing controlled substances to himself or members of his immediate family for the original term of the contract.

(3) For three years from the effective date of this final order, Respondent shall undergo an annual audit of

controlled substances conducted by an independent auditor hired by Respondent. Results of these audits shall be forwarded to the DEA office in Albuquerque, New Mexico.

(4) Respondent shall notify the local DEA office in Albuquerque, New Mexico within 5 work days in the event the New Mexico Pharmacy Board reinstates the suspension of Mr. Balzano's pharmacist license.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BR0924440, issued to Rick's Pharmacy, Inc., be continued, and any pending applications for renewal be granted, subject to the above described restrictions. This order is effective September 8, 1997.

Dated: July 31, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–20787 Filed 8–6–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Extension of an existing collection: Application for action on an approved application or petition.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 6, 1997.

Written comments and suggestions from the public and affected agencies concerning the collection of information 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–824. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to request a duplicate approval notice, to notify the U.S. Consulate that a person has been adjusted to permanent resident status so family member can apply for derivative immigrant visa and to request another U.S. Consulate be notified that a petition has been approved.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 43,772 respondents at 25 minutes (.416) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 18,209 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 24, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20880 Filed 8–6–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Extension of an existing collection. Application for Replacement Naturalization/Citizenship Document.

The Department of Justice Immigration and Naturalization Service has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 6, 1997. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–565. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to apply for a replacement of a Declaration of Intention, Naturalization Certificate, Certificate of Citizenship or Repatriation Certificate, or to apply for a special certificate of naturalization recognized by a foreign country.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 18,000 respondents at 55 minutes (.916) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,488 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 4, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20881 Filed 8–6–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Existing Collection; Comments Requested

ACTION: Extension of an existing collection: Application for issuance or replacement of Northern Mariana Card.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 6, 1997. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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, 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 of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application for Issuance or Replacement of Northern Mariana Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–777. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Applicants may apply for a Northern Mariana identification card if they received United States citizenship pursuant to Public Law 94–241 (Covenant to Establish a Commonwealth of the Northern Mariana Island).

(5) *As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 respondents at 30 minutes (.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 4, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20882 Filed 8–6–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Extension of an Existing Collection, Application to File Declaration of Intention.

The Department of Justice, Immigration and Naturalization Service has submitted the following collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 6, 1997.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application to File Declaration of Intention.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–300. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This collection is used by the Service to determine eligibility for a declaration of intention to become a citizen of the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,015 respondents at 45 minutes (.75) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 761 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 4, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20883 Filed 8–6–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Existing Collection: Comments Requested

ACTION: Extension of an Existing Collection. Petition to Remove the Conditions on Residence.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 6, 1997. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Petition to Remove the Conditions of Residence.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–751. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Aliens granted conditional residence through marriage to a United States citizen or permanent resident use this information collection to petition for the removal of those conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 128,889 respondents at 80 minutes (1.33) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 172,422 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 4, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20884 Filed 8–6–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Extension of an Existing Collection. Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 6, 1997. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information

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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–102. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The form is used by an alien temporarily residing in the United States whose evidence of registration has been lost, mutilated or destroyed. This form will be used by an alien to request a replacement of his or her arrival evidence; and by the Immigration and Naturalization Service to verify status and to determine eligibility of an applicant for said replacement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 respondents at 25 minutes (.416) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,320 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: August 4, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20885 Filed 8–6–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Extension of an existing collection, application for travel document.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted until October 6, 1997. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–131. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by permanent or conditional residents, refugees or asyles and aliens abroad seeking to apply for a travel document to lawfully reenter the United States or be paroled for humanitarian purposes into the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 335,000 respondents at 55 minutes (.90) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 301,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 4, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20886 Filed 8–6–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Extension of an existing collection; request for certification of military or naval services.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 6, 1997.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Certificate of Military or Naval Services.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–426. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by certain aliens applying to become United States citizens on the basis of honorable service in the U.S. Armed Services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 45,000 respondents at 10 minutes (.166) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 7,470 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 4, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20887 Filed 8–6–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Extension of an existing collection; petition for Amerasian, widow(er), or special immigrant.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICR) to the Office of Management and Budget for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted until October 6, 1997. Request 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for Amerasian, Widow(er), or Special Immigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–360. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. As provided in 8 CFR 204 of the Immigration and Nationality Act, this information collection is used to classify an alien as an Amerasian, widow or widower, battered or abused spouse or child and special immigrant, including religious worker, juvenile court dependent and armed forces member. The petition is used to determine eligibility for the benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,397 respondents at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,794 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection, instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department

of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 4, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20888 Filed 8–6–97; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 97–103]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). This information is required to evaluate bids and proposals submitted to NASA for the award of contracts of value more than $500k for goods and services in support of NASA's mission, and in response to contractual requirements.

DATES: All comments should be submitted on or before October 6, 1997.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA acquisition process, bids and proposals for contracts with an estimated value more than $500,000.

OMB Number: 2700–0085.

Type of review: Extension.

Need and Uses: Information collection is required to evaluate bids and proposals from offerors in order to award contracts for required goods and services in support of NASA's mission.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 590.

Responses Per Respondent: 1.

Annual Responses: 590.

Hours Per Request: 1,220.

Annual Burden Hours: 719,800.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–20893 Filed 8–6–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 97–104]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). This information is required to evaluate bids and process invoices submitted to NASA for the award of purchase orders or for bank card actions for goods and services for purchases $100k or less in support of NASA's mission.

DATES: All comments should be submitted on or before October 6, 1997.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA simplified acquisition for goods and services with a value of $100,000 or less.

OMB Number: 2700–0086.

Type of review: Extension.

Need and Uses: Information collection is required to evaluate bids and proposals from offerors in order to award purchase orders and to use bank cards for required goods and services in support of NASA's mission.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 177,013.

Responses Per Respondent: 2.

Annual Responses: 216,265.

Hours Per Request: 30 min.

Annual Burden Hours: 108,132.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–20894 Filed 8–6–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97 105]

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). This information is required to evaluate bids and proposals submitted to NASA for the award of contracts of value less than $500k for goods and services in support of NASA's mission, and in response to contractual requirements.

DATES: All comments should be submitted on or before October 6, 1997.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA acquisition process, bids and proposals for contracts with an estimated value less than $500,000.

OMB Number: 2700–0087.

Type of review: Extension.

Need and Uses: Information collection is required to evaluate bids and proposals from offerors in order to award contracts for required goods and services in support of NASA's mission.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 15,317.

Responses Per Respondent: 1.

Annual Responses: 15,317.

Hours Per Request: 200.

Annual Burden Hours: 3,361,160.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–20895 Filed 8–6–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–106]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). This information is required to monitor contract compliance in support of NASA's mission and in response to contractual requirements.

DATES: All comments should be submitted on or before October 6, 1997.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA acquisition process, reports required for contracts with an estimated value more than $500,000.

OMB Number: 2700–0089.

Type of Review: Extension.

Need and Uses: Information collection is required to effectively manage and administer contracts that furnish goods and services in support of NASA's mission.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondent: 176.

Responses Per Respondent: 60.

Annual Responses: 10,560.

Hours Per Request: 30.

Annual Burden Hours: 316,800.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations) Office of the Administrator.

[FR Doc. 97–20896 Filed 8–6–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–102]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Microgravity Research Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Microgravity Research Advisory Subcommittee.

DATES: September 10, 1997, 9:30 a.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–7, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley M. Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202–358–0813.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Program Status Report
—Status of the Microgravity Research Advisory Subcommittee Recommendations
—Program Planning Activities
—Structure and Function of the Microgravity Research Division Working Groups
—Informal Discussion

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 30, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–20892 Filed 8–6–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION ON THE COST OF HIGHER EDUCATION

Meeting

AGENCY: National Commission on the Cost of Higher Education.

ACTION: Notice of Public Meeting.

TIME AND DATE: Monday, August 11, 1997; 10 a.m. to 3:00 p.m.

PLACE: The meeting site will be 490 L'Enfant Plaza, SW, in room 3208, Washington, DC 20407.

STATUS: The meeting will be open to the public from 10 a.m. to 3 p.m.

NOTICE: At its inaugural public meeting, the National Commission on the Cost of Higher Education established by Public Law 105–18, dated June 12, 1997, will consider general administrative matters and substantive agenda items.

CONTACT PERSON: For further information, contact Bill Hansen at (202) 466–8621 or write to 1155 15th Street, Suite 801, Washington, DC 20005. Please note: The address and telephone number listed for the Commission are temporary. Information concerning the new address and telephone should be available at the meeting.

William D. Hansen,

Chairperson (Interim).

[FR Doc. 97–20762 Filed 8–5–97; 10:17 am]

BILLING CODE 6820–DR–P

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

Agency: National Gambling Impact Study Commission.

Time and Date: Tuesday, August 19, 1997; 9:00 a.m. to 4:30 p.m. and Wednesday, August 20, 1997; 9:00 a.m. to 3:30 p.m.

Place: The meeting site will be: The Watergate Hotel, Continental Room, 2650 Virginia Avenue, NW., Washington, D.C. 20037.

Status: The meeting will be open to the public from 9:00 a.m. to 4:30 p.m. on August 19, 1997 and from 9:00 a.m. to 3:30 p.m. on August 20, 1997. The meeting may be closed to the public from 11:30 a.m. to noon on August 19, 1997 for the purposes of personnel discussion..

Notice: At its second public meeting, the National Gambling Impact Study Commission, established under Pub. L. 104–169, dated August 3, 1996, will hear presentations from Senator Richard Bryan and other invited speakers; will hear contract proposals from the National Research Council and the Advisory Commission on Intergovernmental Relations; discuss the scope and nature of the research to be conducted by these groups and others; review the proposed rules and statement of principles; review the research

questions submitted by Commissioners; and, discuss the revised workplan. An open forum for public participation will be held from 1:30 p.m. to 3:30 p.m. on August 20, 1997.

SUPPLEMENTARY INFORMATION: There will be an open forum session of approximately two hours for the public to speak to the Commission on items relevant to the Commission's work. Anyone wishing to make an oral presentation at the meeting should contact Tim Bidwill at (202) 523–8217 no later than 5:00 p.m., August 18, 1997. Open forum participants are asked to provide name, organization (if applicable), address, and phone number. Oral presentations will be limited to three minutes per speaker. If this is not enough time to complete comments, please restrict the three minutes to a summary of your comments and bring a typed copy of full comments to file with the Commission. Persons speaking at the open forum are requested, but not required, to supply twenty (20) copies of their written statements prior to their presentations at the registration desk at the meeting.

Contact Persons: For further information, contact Tim Bidwill at (202) 523–8217 or write to 800 North Capitol Street, N.W., Suite 450, Washington D.C. 20004.

Kay C. James,

Chair.

[FR Doc. 97–20759 Filed 8–6–97; 8:45 am]

BILLING CODE 6820–P–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture and Industrial Innovation, Small Business Innovation Research (SBIR); Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period of August 26–September 25, 1997, the Special Emphasis Panel in Design, Manufacture & Industrial Innovation, (1194) will be holding panel meetings to review and evaluate Small Business Innovation Research proposals. The dates, types of proposals, contact person and room numbers are as follows:

September 2, 3, 4, 5

- Topic 1 Physics
  Dr. Rolf Sinclair, Topic Program Officer, Dr. G. Patrick Johnson, SBIR Program Manager, Rooms, 320, 340, 330, 320

September 4

- Topic 6 Atmospheric Sciences
  Dr. Pamela Stephens, Topic Program Officer, Mr. Ritchie Coryell, SBIR Program Manager, Room 340

September 9

- Topic 3 Materials Research, Liquid Crystals
  Dr. Lise Schioler, Topic Program Officer, Mr. Darryl Gorman, SBIR Program Manager, Room 320

September 15

- Topic 16 Computer and Computation Research
  Dr. Abdali, Topic Program Officer, Dr. Sara Nerlove, SBIR Program Manager, Room 340

September 19

- Topic 27 Microelectronics Manufacturing (2 panels)
  Dr. K. Baheti, Topic Program Officer, Mr. Tony Centodocati, SBIR Program Manager, Room 320, 330

September 22

- Topic 26 Next Generation Vehicles
  Dr. Paul Werbos, Topic Program Officer, Ms. Cheryl Albus, SBIR Program Manager, Room 320

September 23

- Topic 4 Mathematical Sciences
  Dr. Al Thaler, Topic Program Officer, Dr. G. Patrick Johnson, SBIR Program Manager, Room 370

September 26, 29

- Topic 24a Bioengineering & Environmental Systems
  Dr. Gil Devey, Topic Program Officer, Dr. Bruce Hamilton, SBIR Program Manager, Room 320

Times: 8:30 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, Va.

Type of Meetings: Closed.

SBIR Program Contact Person: Cheryl Albus, Program Analyst, DMII, Room 590, National Science Foundation, 4201 Wilson Blvd., Arlington, Va 22230, Telephone: (703) 306–1390.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Small Business Innovation Research (SBIR) Program (Solicitation No. 97–64) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: August 4, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–20852 Filed 8–6–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture and Industrial Innovation, Small Business Innovation Research (SBIR); Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period of August 26–September 25, 1997, the Special Emphasis Panel in Design, Manufacture & Industrial Innovation (1194) will be holding panel meetings to review and evaluate Small Business Innovation Research proposals. The dates, types of proposals, contact person and room numbers are as follows:

August 26, 1997

- Topic 8, Ocean Sciences, Aquaculture
  Dr. Rodger Baier, Topic Program Officer, Mr. Ritchie Coryell, SBIR Program Manager, Room 310

September 8, 1997

- Topic 3, Material Research, Magnetic Materials and Metals
  Dr. Lise Schioler, Topic Program Officer, Mr. Darryl Gorman, SBIR Program Manager, Rooms 320 and 360
- Topic 24, Bioengineering and Environmental Systems, Boron
  Dr. Norm Caplan, Topic Program Officer, Dr. Bruce Hamilton, SBIR Program Manager, Room 340

September 9, 1997

- Topic 24, Bioengineering and Environmental Systems, Boron
  Dr. Norm Caplan, Topic Program Officer, Dr. Bruce Hamilton, SBIR Program Manager, Room 340

September 10, 1997

- Topic 5, Astronomy
  Dr. Seth Tuttle, Topic Program Officer, Dr. G. Patrick Johnson, SBIR Program Manager, Room 320
- Topic 24, Bioengineering and Environmental Systems, Boron
  Dr. Norm Caplan, Topic Program Officer, Dr. Bruce Hamilton, SBIR Program Manager, Room 330

September 15, 1997

- Topic 10, Biological Sciences
  Dr. Barbara Zain, Topic Program Officer, Dr. Bruce Hamilton, SBIR Program Manager, Room 680

September 25, 1997

- Topic 3, Materials Research, Diamon Carbon-Based Materials, Phosphors, and Nanomaterials Synthesis
  Dr. Lise Schioler, Topic Program Officer, Mr. Darryl Gorman, SBIR Program Manager, Rooms: 330, 365, and 370

Times: 8:30 a.m. to 5:00 p.m. each day.
Place: National Science Foundation 4201 Wilson Boulevard Arlington, Va (unless noted).
Type of Meetings: Closed.
SBIR Program Contact Person: Cheryl Albus, Program Analyst, DMII, Room 590, National Science Foundation, 4201 Wilson Blvd., Arlington, Va 22230, Telephone: (703) 306–1390.
Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals submitted to the Small Business Innovation Research (SBIR) Program (Solicitation No. 97–64) as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 4, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–20853 Filed 8–6–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Infrastructure, Methods, and Science Studies; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following three meetings.

Name: Advisory Panel for Infrastructure, Methods, and Science Studies (#1758).
Date & Time: August 18–19, 1997; 8:30 a.m.–5:00 p.m.
Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 360, Arlington, Va 22230.
Contact Person: Bonney H. Sheahan, Program Manager for Professional Opportunities for Women in Research and Education (POWRE), National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, Va 22230. Telephone: (703) 306–1733.
Agenda: To review and evaluate Professional Opportunities for Women in Research and Education (POWRE) proposals as part of the selection process for awards.
Type of Meeting: Closed.
Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the National Science Foundation for financial support.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.
Reason for Late Notice: Delay due to coordinating activity.

Dated: August 4, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–20854 Filed 8–6–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new revision, or extension:* Revision.
2. *The title of the information collection:* Proposed Rule—Licensed Operator Examination Requirements.
3. *The form number if applicable:* Not applicable.
4. *How often the collection is required:* As needed per power reactor facility licensee; generally once or less per year.
5. *Who will be required or asked to report:* Those power reactor facility licensees that require additional employees to be licensed as reactor operators or senior reactor operators at the facility.
6. *An estimate of the number of responses:* 60.
7. *The estimated number of annual respondents:* 60 power reactor facility licensees per year.
8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 28,520 hours.
9. *An indication of whether Section 3570(d), Pub. L. 104–13 applies:* Applicable.
10. *Abstract:* In lieu of the NRC preparing the initial operator licensing examinations using reference materials provided by the facility licensees, the NRC is now proposing to revise 10 CFR Part 55 to require power reactor facility licensees to prepare the written examinations and operating tests and submit them to the NRC for review. The NRC would review the examinations and tests, direct changes as necessary to maintain acceptable levels of quality, difficulty, and consistency, and authorize the facility licensee to administer and grade the written examinations. The NRC would continue to independently administer and grade the operating tests, review the written examination grading, and make the licensing decisions. The NRC would also retain the authority to prepare the examinations, as necessary, to maintain the proficiency of its staff or the quality of the examinations.

Submit, by September 8, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by September 8, 1997: Edward Michlovich,

Office of Information and Regulatory Affairs (3150–0101), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be submitted by telephone at 202–395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 30th day of July 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–20877 Filed 8–6–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License To Export Nuclear Material

Pursuant to 10 CFR 110.70 (b) ''Public notice of receipt of an application'', please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of the applications for licenses to export nuclear grade graphite and heavy water as defined in 10 CFR Part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application No.	Description of Items to be exported	Country of destination
Cambridge Isotope Labs, 07/14/97, 07/16/97, XMAT0395	Heavy Water to Canada for upgrading and return to U.S.	Canada

For the Nuclear Regulatory Commission.

Dated this first day of August 1997 at Rockville, Maryland.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 97–20891 Filed 8–6–97; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

In the Matter of Duke Power Company; (McGuire Nuclear Station, Units 1 and 2); Exemption

I

The Duke Power Company (the licensee) is the holder of Facility Operating License Nos. NPF–9 and NPF–17, for the McGuire Nuclear Station, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized water reactors located at the licensee's site in Mecklenburg County, North Carolina.

II

Title 10 of the *Code of Federal Regulations* (10 CFR) at subsection (a) of 10 CFR 70.24, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material shall maintain in each area where such material is handled, used, or stored, a criticality accident monitoring system ''using gamma-or neutron-sensitive radiation detectors which will energize clearly audible alarm signals if accidental criticality occurs.'' Subsection (a)(1) and (a)(2) of 10 CFR 70.24 specify the detection, sensitivity, and coverage capabilities of the monitors required by 10 CFR 70.24(a). Subsection (a)(3) of 10 CFR 70.24 requires that the licensee shall maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) requires licensees to have a means to quickly identify personnel who have received a dose of 10 rads or more. Subsection (b)(2) requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Subsection (c) exempts Part 50 licensees (such as McGuire) from the requirements of paragraph (b). Subsection (d) states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

By letter dated February 4, 1997, as supplemented March 19, 1997, Duke Power Company requested an exemption for all its nuclear plants from the requirements of 10 CFR 70.24. The staff has reviewed the licensee's submittal, and documented its detailed review in a Safety Evaluation. The staff found that existing procedures and design features make an inadvertent criticality in special nuclear materials handling or storage at McGuire unlikely. The licensee has thus met the intent of 10 CFR 70.24(d) by the low probability of an inadvertent criticality in areas where fresh fuel could be present, by the licensee's adherence to General Design Criterion 63 regarding radiation monitoring, and by provisions for personnel training and evacuation.

III

Section 70.14 of 10 CFR, ''Specific exemptions,'' states that

The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common

defense and security and are otherwise in the public interest.

Section 70.24(d) of 10 CFR states that

Any licensee who believes that good cause exists why he should be granted an exemption in whole or in part from the requirements of this section may apply to the Commission for such exemption.

Accordingly, the Commission has determined that good cause is present as defined in 10 CFR 70.24(d). The Commission has further determined that, pursuant to 10 CFR 70.14, the exemption is authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. Therefore, the Commission hereby grants Duke Power Company an exemption from the requirement of 10 CFR 70.24(a)(1), (2), and (3) for McGuire, Units 1 and 2, on the bases as stated in Section II above.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (62 FR 41101).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of July 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–20878 Filed 8–6–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company, Atlantic City Electric Company, Salem Nuclear Generating Station, Units 1 and 2 and Public Service Electric and Gas Company, Atlantic City Electric Company, Hope Creek Generating Station; Exemption

[Docket Nos. 50–272 and 50–311; Docket No. 50–354]

I.

The Public Service Electric and Gas Company, et al. (PSE&G, the licensee), is the holder of Facility Operating License Nos. DPR–70, DPR–75 and NPF–57, which authorize operation of the Salem Nuclear Generating Station, Units 1 and 2, and Hope Creek Generating Station (Salem/Hope Creek). The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The facilities consist of two pressurized water reactors, Salem Units 1 and 2, and a boiling water reactor, Hope Creek, located at the licensee's site in Salem County, New Jersey.

II.

It is stated in 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (a), ''General performance objective and requirements,'' that ''The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

It is specified in 10 CFR 73.55(d), ''Access Requirements,'' paragraph (1), that ''The licensee shall control all points of personnel and vehicle access into a protected area.'' It is specified in 10 CFR 73.55(d)(5) that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort. . . .'' It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area. . .''

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated January 17, 1997, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide measures for protection against radiological sabotage provided the licensee demonstrates that the measures have ''the same high assurance objective'' and meet ''the general performance requirements'' of the regulation, and ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

At the Salem/Hope Creek site, unescorted access into protected areas is controlled through the use of a photograph on a combination badge and keycard. (Hereafter, these are referred to as a ''badge''). The security officers at the entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at the entrance/exit location and are returned upon exit. The badges are stored and are retrievable at the entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plant's physical security plan, neither licensee employee nor contractors are allowed to take badges offsite.

Under the proposed system, each individual who is authorized for unescorted access into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template in the access control system to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badges with them when they depart the site and thus eliminate the process to issue, retrieve and store badges at the entrance stations to the plant. Badges do not carry any information other than a unique identification number.

All other access processes, including search function capability, would remain the same. This system would not be used for persons requiring escorted access, i.e., visitors.

Based on a Sandia report entitled, ''A Performance Evaluation of Biometric Identification Devices'' (SAND91—0276

UC—906 Unlimited Release, Printed June 1991), and on the licensee's experience with the current photo-identification system, the licensee stated that the hand geometry system performance is comparable to, or superior to, that of the current system. The biometric system has been in use for a number of years at several sensitive Department of Energy facilities. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan for Salem/Hope Creek will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The licensee will control all points of personnel access into a protected area under the observation of security personnel through the use of a badge and verification of hand geometry. A numbered picture badge identification system will continue to be used for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected area.

Since both the badges and hand geometry would be necessary for access into the protected areas, the proposed system would provide for a positive verification process and the potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet ''the same high assurance objective,'' and ''the general performance requirements'' of the regulation and that ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, may take their picture badges offsite. This exemption is granted on the condition that the licensee implements a process for testing the proposed system and revises the security plan for each site as discussed in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (62 FR 40551).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of July 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–20876 Filed 8–6–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

Extensions:

Rule 11a–3, SEC File No. 270–321, OMB Control No. 3235–0358

Rule 17g–1, SEC File No. 270–208, OMB Control No. 3235–0213

Rule 206(4)–3, SEC File No. 270–218, OMB Control No. 3235–0242

Rule 206(4)–4, SEC File No. 270–304, OMB Control No. 3235–0345

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 11a–3 under the Investment Company Act of 1940 is an exemptive rule that permits open-end investment companies (''funds''), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things, (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on an exchange transaction, (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, and (iii) give the fund's shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

It is estimated that approximately 2,500 funds may choose to rely on the rule, and each fund may spend one hour annually complying with the recordkeeping requirement and another hour annually complying with the notice requirement. The total annual burden associated with the rule is estimated to be 5,000 hours. The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds.

Rule 17g–1 under the Investment Company Act of 1940 governs the fidelity bonding of officers and employees of registered management investment companies (''funds''). Rule 17g–1 requires, among other things, that:

(i) *Fidelity Bond Content Requirements.* The fidelity bond must provide that it shall not be cancelled, terminated or modified except upon a 60-day written notice by the acting party to the affected party. In the case of a ''joint bond'' covering several funds or certain other parties, the notice also must be given to each fund and to the Commission. In addition, a joint bond must provide that a copy of the bond, any amendments to the bond, any formal filing of a claim on the bond, and notification of the terms of any settlement on such claim, will be furnished to each fund promptly after the execution.

(ii) *Independent Directors' Approval Requirements.* At least annually, the independent directors of a fund must approve the form and amount of the fidelity bond. The amount of any premium paid for any joint bond also must be approved by the independent directors of a fund.

(iii) *Joint Bond Agreement Requirement.* A fund that is insured by a joint bond must enter into an agreement with all other parties

insured by the joint bond regarding recovery under the joint bond.

(iv) *Required Filings with the Commission.* Upon execution of a fidelity bond or any amendment thereto, a fund must file with the Commission a copy of: (i) The executed fidelity bond; (ii) the resolution of the fund's directors approving the fidelity bond; and (iii) a statement as to the period for which the fidelity bond premiums have been paid. In the case of a joint bond, a fund also must file a copy of: (i) A statement showing the amount of a single insured bond the fund would have maintained under the rule had it not been named under a joint bond; and (ii) each agreement between the fund and all other insured parties. A fund also must notify the Commission in writing within 5 days of any claim and settlement on a claim made under a fidelity bond.

(v) *Required Notices to Directors.* A fund must notify by registered mail each member of its board of directors (i) of any cancellation, termination or modification of the fidelity bond at least 45 days prior to the effective date; and (ii) of the filing or settlement of any claim under the fidelity bond when the notification is filed with the Commission.

The fidelity bond content requirements, the joint bond agreement requirement, the independent directors' annual review requirement and the required notices to directors are designed to ensure the safety of fund assets against losses due to the conduct of persons who may obtain access to those assets, and facilitate oversight of a fund's fidelity bond. The rule's required filings with the Commission are designed to assist the Commission in monitoring funds' compliance with the fidelity bond requirements.

The Commission estimates that approximately 3,200 funds are subject to the requirements of rule 17g–1, and that on average a fund spends approximately one hour per year on complying with the rule's paperwork requirements. The total annual burden of the rule's paperwork requirements thus is estimated to be 3,200 hours.

Rule 206(4)–3, entitled ''Cash Payments for Client Solicitations'' provides restrictions on cash payments for client solicitations. The rule imposes two sets of information collection requirements. Where only impersonal advisory services are to be provided or an affiliation between the solicitor and adviser exists, the rule requires that the fee be paid pursuant to a written agreement and that the prospective client be advised of any affiliation between the adviser and the solicitor. Where individualized services are to be provided, the solicitor must furnish the prospective client with a copy of the adviser's brochure and a disclosure document containing specified information. The information collection and disclosure requirements in rule 206(4)–3 permit the Commission's inspection staff to monitor the activities of investment advisers and protect investors. Rule 206(4)–3 is applicable to all registered investment advisers.

The Commission believes that approximately 4,577 of these advisers have cash referral fee arrangements. Under the recently enacted National Securities Markets Improvement Act of 1996 (the ''1996 Act''), however, only about 1,281 advisers are subject to the rule after the legislation became effective on July 8, 1997. The rule requires approximately 7.04 burden hours per year per adviser and would result in a total of approximately 9,018 total burden hours (7.04×1281) for all advisers.

Rule 206(4)–4, entitled ''Financial and Disciplinary Information that Investment Advisers Must Disclose to Clients,'' requires advisers to disclose certain financial and disciplinary information to clients. The disclosure requirements in rule 206(4)–4 are designed so that a client will have information about an adviser's financial condition and disciplinary events that may be material to a client's evaluation of the adviser's integrity or ability to meet contractual commitments to clients. The Commission does not use the information disclosed to clients.

It is estimated that approximately 3,222 advisers were subject to this rule, but that after the 1996 Act became effective only 902 advisers are subject to the rule. The rule requires approximately 7.5 burden hours per year per adviser and would amount to approximately 6,765 total burden hours (7.5×902) for all advisers.

Rule 206(4)–3 does not specify a retention period for its recordkeeping requirements. The disclosure and recordkeeping requirements of rule 206(4)–3 and the disclosure requirements of rule 206(4)–4 are mandatory. Information subject to the recordkeeping and disclosure requirements of rules 206(4)–3 and –4 is not submitted to the Commission, so confidentiality is not an issue.

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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 28, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20748 Filed 8–6–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22776; 811–5774]

ABD American Capital Markets Funds, Inc.; Notice of Application

August 1, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under section 8(f) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant ABD American Capital Markets Fund, Inc. requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on April 4, 1997, and amended on June 19, 1997 and July 21, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 26, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 75 Wall Street, New York, N.Y. 10005–2889.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is an open-end, diversified, series management investment company organized as a Maryland corporation. On February 27, 1989, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act. On the same day, applicant filed a registration statement on Form N–1A to register an indefinite number of shares of common stock under section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on September 6, 1989, and the initial public offering commenced on June 26, 1990. Applicant consists of three series: ABD Money Market Fund, ABD Fixed Income Fund, and ABD Common Stock Fund.[1]

2. On December 16, 1996, applicant's board of directors (the ''Board'') approved a plan of liquidaton and dissolution (''Liquidation Plan''),[2] which provided for the liquidation of applicant and the distribution of applicant's remaining assets to applicant's sole shareholder. On December 18, 1996, applicant's sole shareholder approved the Liquidation Plan by written consent. On December 26, 1996, applicant distributed $188,956.46 (representing its remaining asset, the balance of cash on deposit in a non-interest-bearing account at State Street Bank and Trust Company) to its sole shareholder.

3. As of December 26, 1996, there were 80,000 shares of common stock of ABD Money Market Fund, and 1,000 shares each of common stock of ABD Fixed Income Fund and ABD Common Stock Fund, having an aggregate net asset value of $113,835.59, $38,640.47, and $36,480.40, respectively, and a per share net asset value of $1.42, $38.64, and $36.48, respectively.

4. Certain expenses were incurred in connection with the liquidation, consisting primarily of legal expenses and miscellaneous accounting and administrative expenses. These expenses are expected to total approximately $20,000 and have been or will be paid by applicant's sole shareholder.

5. As of the date of the application, applicant had no shareholders, debts, liabilities, or assets and was not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

6. On January 17, 1997, applicant filed Articles of Dissolution with the Maryland Department of Assessments and Taxation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20830 Filed 8–6–97; 8;45 am]

BILLING CODE 8010–01–M

[1] In late 1990, applicant commenced a voluntary redemption of all of its publicly-held shares. To accomplish the voluntary redemption, applicant received no-action assurance from the SEC's Division of Investment Management. *See* ABD American Capital Markets Funds, Inc. (pub. avail. Nov. 16, 1990). Following the voluntary redemption, ABD Securities Corporation, applicant's investment adviser and manager, retained a minimum number of shares as applicant's sole shareholder.

[2] Although the Board considered whether to liquidate applicant in 1990, it undertook the voluntary redemption so as to retain the ability to take prompt advantage of a change in the German investment climate for U.S. securities. However, since a beneficial investment climate for applicant's shares has not developed, the Board found that it was in the best interests of applicant to deregister under the Act.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26752]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 1, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 26, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central Ohio Coal Company, et al. (70–8611)

Central Ohio Coal Company, Southern Ohio Coal Company (''SOCCO'') and Windsor Coal Company, each located at 1 Riverside Plaza, Columbus, Ohio 25327 and each a wholly owned nonutility subsidiary of Ohio Power Company (''Ohio Power''), a public utility subsidiary of American Electric Power Company, Inc., a registered holding company, have filed a post-effective amendment under section 12(c) of the Act and rules 46 and 54 under the Act pursuant to an application-declaration filed under sections 6(a), 7, and 12(c) of the Act and rule 46 under the Act.

By order dated September 13, 1996 (HCAR No. 26573), SOCCO was authorized to return excess capital to Ohio Power through the payment on or before December 31, 1998 of one or more dividends on its common stock in the amount of $68 million. This amount was expected to be comprised of approximately $50 million in proceeds from the sale and leaseback of certain SOCCO assets and $18 million in internally generated funds. SOCCO now requests authority to increase the amount of dividends it can pay out of capital surplus from $68 million to $83,806,814, an increase of $15,806,814.

In accordance with an order of the Commission dated December 10, 1982 (HCAR No. 22770), Ohio Power may earn up to a specified rate of return on its capital contributions to SOCCO. Applicants state that, if the Commission authorizes SOCCO to pay the requested dividends, Ohio Power's total capital investment in SOCCO will be reduced by the amount of such payments. This reduction in Ohio Power's capital surplus investment will remove from Ohio Power's cost of coal the return associated with the portion of its capital investment repaid.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20829 Filed 8–6–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38885; File No. SR–NASD–97–48]

Self-Regulatory Organizations; Notice of Filing of and Order Granting Accelerated Approval to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Adjustment of Open Orders

July 30, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 8, 1997, the NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments from interested persons to grant accelerated approval to the proposal rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing is amend Rule 3220 of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') to permit members to adjust the price of open orders as a result of dividends, payments, or distributions in a manner consistent with their ability to quote prices generally. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Rule 3220. Adjustment of Open Orders

(a) A member holding an open order from a customer or another broker/dealer shall, prior to executing or permitting the order to be executed, reduce, increase or adjust the price and/or number of shares of such order by an amount equal to the dividend, payment or distribution, on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest, except where a cash dividend or distribution is less than one cent ($.01), as follows:

(1) In the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower [⅛ of a dollar] *minimum quotation variation used in the primary market, provided that if there is more than one minimum quotation variation in the primary market, then the greater of the variations shall be used (e.g., if a market has minimum quotation variations of 1/16 or 1/32 of a dollar, depending on the price of the security, then the adjustment to open orders shall be in increments of 1/16 of a dollar*);

(2) In the case of a stock dividend or split, the price of the order shall be reduced by rounding the dollar value of the stock dividend or split to the next higher [⅛ of a dollar] *minimum quotation variation used in the primary market as specified in paragraph (a)(1)* and subtracting that amount from the price of the order; provided further, that the size of the order shall be increased by (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, (B) dividing the result by the denominator of the ratio of the dividend or split, and (C) rounding the result to the next lower round lot; and

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is a technical amendment to NASD Rule 3220 of the Conduct Rules of the NASD that is necessary to permit members to adjust the price of open orders as a result of dividends, payments, or distributions by a consistent, minimum quotation variation. Current NASD Rule 3320 permits adjustments to the price of open orders in ⅛ of a dollar increments only. Recently, The Nasdaq Stock Market (''Nasdaq''), the American Stock Exchange (''Amex''), and the New York Stock Exchange (''NYSE'') reduced the minimum quotation variation to 1/16 of a dollar or less. The proposed rule change is necessary to permit greater consistency between the prices at which securities may be quoted and the price adjustments that may be made to open orders. Moreover, in light of the fact that Nasdaq recently requested comment concerning the effects of decimal pricing and the NYSE recently announced that it would commence quoting listed securities in decimals by the year 2000, NASD Regulation's proposed amendment to NASD Rule 3220 anticipates even smaller quotation variations. Specifically, the proposed rule change specifies that adjustments to the price of open orders may be made to the next lower (or higher) *minimum quotation variation* used in the primary market for the security. The term ''primary market'' for purposes of Rule 3220 would be The Nasdaq Stock Market for Nasdaq-listed securities, the NYSE for NYSE-listed securities, the Amex for Amex-listed securities, and for securities listed solely on other markets, the market on which the majority of trading takes place. The proposed rule change also provides that in situations where there is more than one minimum quotation variation used in a primary market, the greater minimum quotation variation should be used. NASD Regulation believes that having only one minimum variation by which to adjust all open orders provides members with a greater ease of administration than a system in which open orders on the same primary market may be adjusted by different variations. For example, Nasdaq securities whose bid is $10 or more are quoted with minimum variations of 1/16 of a dollar, whereas securities whose bid is below $10 may be quoted with minimum variations of 1/32 of a dollar. Rather than have members adjust the price of open orders by 1/16 or 1/32 of a dollar depending on the bid price of the security, the proposed rule change would have members adjust all open orders by increments of 1/16 of a dollar.

2. Statutory Basis

NASD Regulation believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.[2]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation believes the proposed rule change will impose no

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. § 78*o*-3.

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NASD Regulation has neither solicited nor received written comments.

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–48 and should be submitted by August 28, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the proposed rule change satisfies the requirements of Section 15A of the Act.[3]

Recently, there has been a movement within the securities industry to reduce the minimum trading and quotation increments imposed by the various self-regulatory organizations. As noted previously, the Amex, Nasdaq, and the NYSE have recently reduced their minimum increments.[4] The proposed rule change modifies the NASD's rule regarding the adjustment of open orders so that it can accommodate this transition to finer increments. This should promote greater consistency between the prices at which securities may be quoted and the price adjustments made to open orders in securities quoted ''ex-.''

The Commission notes, however, that the NASD's proposed use of the greatest minimum variation for adjusting open orders, rather than the minimum variation applicable to the particular security, is inconsistent with the practices employed by other markets.[5] This disparity could result in orders for the same security at the same price in different markets being rounded differently and, thus, could shift the priority among orders that were formerly on parity.[6]

Nevertheless, the method chosen by NASD Regulation comports with the Act. By permitting NASD members to apply the same increment to all open orders for securities quoted ''ex-,'' the proposal should facilitate the ability of NASD members to quickly adjust such orders.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. NASD members have already begun quoting stocks in increments finer than an eighth. The proposed rule change facilitates the NASD's transition to finer increments. Requiring NASD members to utilize eighths when adjusting open orders for securities quoted ''ex-'' until the full statutory review period has elapsed would unnecessarily inhibit the NASD's transition to finer increments. Therefore, the Commission believes it is consistent with Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.[7]

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–97–48) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20750 Filed 8–6–97; 8:45 am]

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[3] 15 U.S.C. § 78*o*–3. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id. § 78c(f).*

[4] Securities Exchange Act Release Nos. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (approving an Amex proposal to reduce the minimum trading increment from ⅛ to 1/16); 38678 (May 27, 1997), 62 FR 30363 (June 6, 1997) (approving a proposed rule change by the NASD to reduce the minimum quotation increment from ⅛ to 1/16); 38744 (June 18, 1997), 62 FR 34334 (June 25, 1997) (approving an NYSE proposal to reduce the minimum trading increment from ⅛ to 1/16).

[5] For example, both the NYSE and the Chicago Stock Exchange (''CHX'') require their specialists to utilize the increment in which bids (offers) are made when adjusting open orders for securities quoted ''ex-.'' *See* CHX Article XX, Rule 35 and NYSE Rule 118.21.

[6] For example, two parties may enter orders to buy the same security for $9, but one order is placed with a CHX specialist and the other is placed with a Nasdaq market maker. Assume further that the issuer declares a $0.15 dividend. The CHX order would be rounded down by 5/32 to $8 27/32 ($8,84375, the closest applicable minimum trading variation) whereas the Nasdaq market maker would round its $9 order down by 3/16 to 8 13/16 ($8.8125, the closest applicable variation based on Nasdaq's largest variation, notwithstanding that Nasdaq allows securities under $10 to be quoted in 1/32s). The end result is that the CHX order will obtain price priority over an order that it was on parity with before the security was quoted ''ex-.'' Moreover, this shift in priority is not the result of a conscience decision by a customer to relinquish priority but rather is attributable to the fact that the adjustment technique utilized by Nasdaq is inconsistent with other markets.

[7] 15 U.S.C. § 78s(b)(2).

[8] *id*

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38890) ; File No. SR–Philadep–97–03]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change to Appoint the Canadian Depository for Securities Limited as a Correspondent Depository

July 30, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 18, 1997, the Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission (''Commission'') and on April 24, 1997, filed an amendment to the proposed rule change as described in Items I and II below, which Items have been prepared primarily by Philadep. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through October 31, 1997.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend temporary approval of the appointment of The Canadian

[1] 15 U.S.C. 78s (b)(1).

Depository for Securities Limited (''CDS'') as Philadep's nonexclusive agent and custodian in receiving securities deposited by CDS-sponsored participants for delivery to Philadep and to eliminate the family of accounts subaccounting designed for and pertaining to the individual participants of CDS.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

Effective November 1, 1996, CDS became a Philadep participant and has served as a non-exclusive agent and custodian for Philadep in receiving securities deposited by certain CDS-sponsored participants for credit to their respective subaccounts in CDS's account at Philadep. Pursuant to Philadep's proposed rule change, the operational arrangements will remain intact as represented in previous filings submitted to the Commission;[4] however, Philadep will no longer use its subaccount feature for the CDS account. Philadep will now administer CDS like other Philadep participants.[5]

Philadep believes the proposed rule change is consistent with the requirements of Section 17A of Act and the rules and regulations thereunder because the rule proposal fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transaction and further assures the safeguarding of securities and funds which are in the custody or control of Philadep or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change. Philadep will notify the Commission of any written comments received by Philadep.

III. Date of Effectiveness of the Proposed Rule Change and Timining for Commission Action

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency by designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that Philadep's designation of CDS as Philadep's non-exclusive agent and custodian in receiving securities deposited by CDS-sponsored participants for delivery to Philadep is consistent with Philadep's obligations under Section 17A(b)(3)(F) because the proposed rule change should help foster cooperation and coordination between the U.S. and Canada clearance and settlement systems.

On January 26, 1996, the Commission granted approval to Philadep's proposal that it be allowed to appoint WCDTC as its nonexclusive agent and custodian in receiving certain securities deposits.[7] On November 1, 1966, the Commission granted temporary approval to Philadep's proposed rule change to allow Philadep to appoint CDS as its nonexclusive agent and custodian because CDS had purchased WCDTC and would continue the correspondent depository activities of WCDTC.[8] In connection with this proposed rule change, Philadep has requested that the Commission grant Philadep the latitude to modify the extra financial protections that are currently being applied to the CDS account (*i.e.*, $1 million participants fund deposit and $5 million (Canadian) letter of credit). Philadep contends that a decrease in the financial protections Philadep receives from CDS is justified given (1) Philadep's belief that the short selling activity in the CDS account may decrease; (2) that SCCP has filed a proposed rule change with the Commission to modify the participant's fund formula to account for short selling activity; (3) Philadep's belief that CDS has comprehensive and formalized risk management controls. However, Philadep has not provided the Commission with any supporting documentation regarding these assertions regarding CDS. Therefore, it is the Commission's position that the extra financial protections that are currently being applied to the CDS account (*i.e.*, $1 million participants fund deposit and $5 million (Canadian) letter of credit) should remain in place at the same levels.

On November 1, 1996, the Commission extended the temporary approval of Philadep's custodial arrangement with CDS so that Philadep and the Commission could further monitor, review, and analyze this custodial arrangement. The Commission is again granting temporary approval of the proposed rule change through October 31, 1997, so that CDS can continue to act as Philadep's non-exclusive agent and custodian and can continue its correspondence depository activities until similar arrangements can be implemented between CDS and The Depository Trust Company in connection with Philadep's ceasing to provide depository services. During this temporary approval period, Philadep should continue to monitor the nonexclusive agent and custodian arrangement between Philadep and CDS to ensure that proper risk management procedures are in place. In this regard, the Commission requests that Philadep continue to file monthly reports analyzing activity in CDS's omnibus account and subaccounts.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because accelerated approval will allow Philadep to extend CDS's appointment as its non-exclusive agent and custodian thus allowing CDS to continue its correspondent depository activities. The staff of the Board of Governors of the Federal Reserve System concurred with

[2] Letter from J. Keith Kessel, Compliance Officer, Philadep (April 24, 1997).

[3] The Commission has modified the text of the summaries prepared by Philadep.

[4] Securities Exchange Act Release No. 36782 (January 26, 1996), 61 FR 3956 (File No. SR–Philadep–96–01) (order granting accelerated approval on a temporary basis of a proposed rule change to appoint the WCDTC as a correspondent depository); Securities Exchange Act Release No. 37383, (June 28, 1996), 61 FR 35292 (File No. SR–Philadep–96–09) (order granting accelerated approval on a temporary basis through December 31, 1996 of a proposed rule change seeking permanent approval of the designation of the WCDTC as a correspondent depository).

[5] Philadep will eliminate the family of accounts subaccounting function for the CDS account, and CDS activity will be processed in an omnibus account.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] *Supra* note 4.

[8] Securities Exchange Act Release No. 37918 (November 1, 1996), 61 FR 57938 (File No. SR-Philadep-96–17) (order granting accelerated approval on a temporary basis of a proposed rule change to appoint The Canadian Depository for Securities Limited as a correspondent depository).

the Commission's granting of accelerated approval.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to file number SR–Philadep–96–17 and should be submitted by August 28, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–Philadep–97–03) be, and hereby is, approved through October 31, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20749 Filed 8–6–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34—38891; File No. SR–Phlx–97–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending the FCO Selective Quoting Facility

July 31, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 25, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx pursuant to Rule 19b–4 of the Act,[3] proposes to amend the foreign currency option (''FCO'') Selective Quoting Facility (''SQF''), embodied in Rule 1012, Commentary .04 and Floor Procedure Advice (''Advice'') F–18, FCO Expiration Months and Strike Prices—Selective Quoting Facility, to re-designate some series that maintain open interest, but have not traded within the previous five trade days, as update strikes in certain situations. Currently, these strikes are considered non-update strikes under the provisions of Advice F–18 an Rule 1012.04. The proposal would permit the Foreign Currency Options Committee to designate these non-update strikes as update strikes, after notification to the trading community and with a quarterly review by the Committee. The SQF is a feature of the Exchange's Auto-Quote System. The complete text of the proposed rule change is available at the places specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Implemented in 1994,[4] the SQF was intended to reduce the number of strike prices being continuously updated and disseminated, thus resulting in more timely and accurate FCO quote displays. The SQF establishes criteria to determine whether the bid/ask quotation for each FCO series is eligible for transmission to the Options Price Reporting Authority (''OPRA'') for off-floor dissemination to securities data vendors. Currently, the SQF, a feature of the Exchange's Auto-Quote system, categories certain FCO strikes as ''non update'' or ''inactive'' strikes, which are disseminated with the OPRA indicator ''I'' and zeroes (*e.g.*, 000–000), in lieu of market. When a series is inactive, those bids and offers are no longer updated in the Exchange's Auto-Quote system for dissemination. However, if interest is then voiced in any such series, it can be activated immediately upon establishment of a quote in that series. Inactive strikes with open interest (that have not traded in the previous five days) are quoted once at the close of trading in the previous five days) are quoted once at the close of trading each day for purposes of mark-to-market valuation.

In contrast, ''update'' or ''active'' strikes include, at minimum: (1) Two in-the-money and six out-of-the-money, and (2) strikes with open interest that have traded within the previous five days. Because Rule 1012.04 establishes the *minimum* strikes to be activated, active strikes may also be added at the initiative of the Exchange or in response to a request by the Specialist or an FCO Floor Official.

Designating as inactive those series that are away-from-the money or not recently traded (meaning have the least investor interest) eliminates quote changes in those series, thus reducing the dissemination delays caused by thousands of quote changes in volatile trading periods. Because inactive series are not continuously updated and disseminated, quotation processing times are reduced such that quotes respecting active strikes are updated and disseminated to customers much more quickly.

At this time, the Exchange proposes that the SQF feature of Auto-Quote

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[9] Telephone conversation with John Rudolph, Supervisory Trust Analyst, Board of Governors of the Federal Reserve Board.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] The proposal was filed originally by the Phlx on July 25, 1997, and clarified on July 29, 1997. The Phlx clarified the text of the rule and the advice to state that the purpose of quarterly review by the foreign Currency Options Committee is to determine if series receiving designation as update strikes should continue to receive such designation. *See* Letter from Philip H. Becker, Senior Vice President and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC (July 28, 1997). *See also* Securities Exchange Act Release No. 35123 (Dec. 20, 1994), 59 FR 66692, at 12 (permitting the staff discretion to accept editorial changes to a proposed rule filing without triggering a new 30 day comment period).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 33067 (October 19, 1993), 58 FR 57658.

activate certain other strikes as update strikes. Specifically, the FCO Committee could re-designate some series that maintain open interest, but have not traded within the previous five trade days, as update strikes. Thus, the purpose of the proposal is to effect this systems change to disseminate additional strikes as active, upon FCO Committee approval.

The Exchange believes that the flexibility to activate additional strikes is necessary to ensure that SQF dissemination includes truly active strikes. The Exchange also believes that allowing the Committee to determine which strikes are truly active is appropriate and reasonable. The definition of active strike has evolved since the beginning of the SQF.[5] The Rule and Advice, in recognition of the need for flexibility, currently permit the Exchange to activate strikes intra-day. Consistent with this ability, the proposal would allow the Committee to activate strikes with open interest that have *not* traded within the previous five days, regardless of a qualifying request, in order to respond more promptly to the needs of the FCO investment community. Any such action by the Committee would involve notification to the FCO trading floor by Exchange memorandum. Any strikes activated by the Committee would be reviewed by the Committee quarterly [6] to ensure that they warrant active status and do not remain indefinitely activated.[7]

In addition, in establishing in the Rule and Advice last year that the defined active strikes are a minimum, the Exchange codified the ability to activate other strikes. In this regard, all expiration months (Except long-term) as opposed to the nearest three months, as well as around-the-money European style options (as opposed to only European style options with open interest and trading) were activated. Thus, at this time, the Exchange proposes to correct the text of the Rule and Advice to reflect two in-the-money strikes and six out-of-the-money strikes for both puts and calls around the underlying price for American and European style options for all expiration dates (except long-term). The Exchange also notes that the aspect of the proposal granting the FCO Committee discretion to activate certain strikes is consistent with the previously-added ''at minimum'' language, and, in fact, bolsters the current provisions to reflect that certain strikes will be activated beyond the ''minimum'' definition.

The Exchange believes the proposal balances the need to prevent excessive quote disseminations with preserving meaningful dissemination of FCO quotes. The proposal is also designed to facilitate orderly quote dissemination to and coordination between the Exchange, the Options Clearing Corporation (''OCC''), OPRA and securities information vendors. A quote will always be disseminated when a trade occurs in a previously-inactive series and quotes in inactive series can always be requested from the trading crowd, consistent with the protection of investors and the public interest. In sum, the Phlx believes that the proposed change to the SQF feature should facilitate the specialists' ability to focus on active series, which should, in turn, result in tighter, more liquid markets, consistent with Section 6(b)(5).[8]

For these reasons, the proposed rule change is consistent with Section 6 [9] of the Act in general, and in particular, with Section 6(b)(5),[10] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from July 25, 1997, the date on which it was filed, or such shorter time that may be designated, it has become effective pursuant to Section 19(b)(3)(A) [11] of the Act and rule 19b-4(e)(6).[12] Specifically, the Exchange believes that the proposal is appropriate for the procedure applicable to non-controversial filings, because it deals with the operational details of an existing Commission-approved system. Further, the proposal does not significantly affect the protection of investors or the public interest: the proposed SQF amendments do not affect the price or time of the FCO executions, as only quoting is affected; the proposal is intended to activate more series, where needed. Third, the Exchange has requested that the proposal become effective seven days after the filing of of proposed rule change, noting that this shorter time period for effectiveness is consistent with the protection of investors and the public interest.[13] The Exchange provided written notice of its intent to file the proposed rule change on July 16, 1997.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

[5] In 1995, The Exchange amended the SQF to reduce the number of strikes considered active by: (1) eliminating series with open interest that have not traded within the previous five trading days; (2) ''de-activating'' strikes intra-day; and (3) redefining around-the-money active strikes as the five options with an approximate 10, 20, 30, 40 and 50 delta, instead of those four above and four below the spot price. Securities Exchange Act Release No. 36636 (December 26, 1995), 61 FR 209, (File No. SR–Phlx–95–62). In 1996, the SQF was amended to redefine around-the-money strikes as two in and six out-of-the-money strikes. Securities Exchange Act Release No. 37883 (October 29, 1996), 61 FR 56991, (File No. SR–Phlx–96–39).

[6] *See supra* note 2.

[7] The Phlx should closely monitor the Committee's use of discretion to ensure that series are not designated as update strikes in an overly broad manner, materially impacting on the intended benefit of the SQF—to reduce the number of strike prices being continuously updated and disseminated in order to have more time and accurate FCO quote displays. Use of Committee discretion to this extent would require a Section 19(b) filing by the Phlx.

[8] 15 U.S.C. § 78f(b)(5).

[9] 15 U.S.C. § 78f.

[10] 15 U.S.C. § 78f(b)(5).

[11] 15 U.S.C. § 78s(b)(3)(A).

[12] 17 CFR 240.19b-4(e)(6).

[13] For the reasons submitted by the Exchange, the Commission finds that shortening the time period for effectiveness to seven days is consistent with the protection of investors and the public interest. *See* Securities Exchange Act Release No. 35123, *supra* note 2, at 21.

Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-97–34 and should be submitted by August 28, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20751 Filed 8–6–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38898; File No. SR–Phlx–97–11]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3: Thereto by the Philadelphia Stock Exchange, Inc., Relating to PACE Execution Guarantees

August 1, 1997.

On March 3, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 229 (''Rule''), Philadelphia Stock Exchange Automated Communication and Execution System (''PACE''). On April 4, 1997, the Phlx filed Amendment No. 1 to the proposal.[3] On April 22, 1997, the Exchange filed Amendment No. 2 to the proposed rule change.[4]

Notice of the proposal and Amendment Nos. 1 and 2 was published for comment and appeared in the **Federal Register** on May 5, 1997.[5] No Comment letters were received on the proposal. On June 16, 1997, the Phlx filed Amendment No. 3 to the proposed rule change.[6] This order approves the Phlx's proposal, as amended.

I. Description of the Proposal

A. History of PACE

The PACE System has served as the Exchange's automatic order routing and execution system for securities on the equity trading floor, providing certain execution guarantees. Initially, the PACE System was created to provide an efficient mechanism for the delivery of small customer orders (up to 599 shares) to the specialist for manual execution. Thereafter, PACE order size eligibility increased, automatic execution became a feature of PACE, and the professional execution standard for PACE orders greater than 600 shares was codified.[7] Pursuant to Supplementary Material .02 of the Rule, only agency orders are currently executed through PACE.[8] PACE orders are only eligible for execution after the primary market has opened.[9]

B. Proposed Changes

The Phlx proposes to amend Rule 229 to revise the: (1) Execution guarantee applicable to PACE market and marketable limit orders[10] over 599 shares; (2) out-of-range protection provisions; (3) execution price for partial round lots; and (4) organizational and miscellaneous provisions.

(i) Execution Guarantees

The Exchange proposes to amend the execution guarantee applicable to market and marketable limit orders greater than 599 shares.[11] Currently, pursuant to the first paragraph of Rule 229.05, market orders up to 599 shares are stopped at the PACE Quote at the time of entry of such orders into the system (''Stop Price''), regardless of the size of the PACE Quote, and are subject to a delay of up to 15 seconds in order to receive an opportunity for price improvement. This feature is known as the ''Public Order Exposure System'' or ''POES.'' If such market order is not executed at an improved price within the 15 second window, the order will be automatically executed at the Stop Price.[12] Moreover, the second paragraph of Rule 229.05 provides that, subject to these procedures (*i.e.*, the procedures outlined in the first paragraph of Rule 229.05), the specialist may voluntarily

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 makes several clarifying revisions to the proposal and corrects a typographical error. *See* Letter from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, to James T. McHale, Special Counsel, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated April 3, 1997 (''Amendment No. 1'').

[4] Amendment No. 2 clarifies the operation of the proposed rule change by revising the fourth example in Section I, B ''Proposed Changes,'' *infra*. *See* letter from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, to James T. McHale, Special Counsel, OMS, Division, Commission, dated April 17, 1997 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 38544 (April 24, 1997), 62 FR 24525 (May 5, 1997).

[6] Amendment No. 3 provides that specialists may change their applicable execution guarantee from the First Guarantee to the Second Guarantee (defined herein) and vice versa, upon one day's notice. In addition Amendment No. 3 revises Supplementary Materials .05 and .10(a)(i) to Rule 229 to clarify that where the customer order is greater than the size of the PACE Quote (defined herein), such order will receive an execution under the First Guarantee, unless the specialist agrees to the Second Guarantee. *See* Letter from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, OMS, Division, Commission, dated May 23, 1997 (''Amendment No. 3'').

[7] *See* Securities Exchange Act Release Nos. 23630 (September 16, 1986) (SR–Phlx–86–30); and 25716 (May 19, 1988) (SR–Phlx–87–30).

[8] *See* Securities Exchange Act Release Nos. 26968 (June 23, 1989) (SR–Phlx–89–13 defining agency orders); and 36442 (October 31, 1995) (SR–Phlx–95–32 permitting broker-dealer orders on PACE). Although approval for the delivery of broker-dealer orders through PACE was received, this feature is not currently utilized by broker-dealers. *See* Amendment No. 1, *supra* note 3.

[9] *See* Securities Exchange Act Release No. 27596 (January 8, 1990) (SR–Phlx–89–15 at n.6). *See also* Chicago Stock Exchange, Incorporated (''CHX'') Rules, Article XX, Rule 37(a)(4).

[10] Market orders are defined as orders to buy or sell a stated amount of a security at the best price obtainable after the order is represented on the Exchange. Marketable limit orders are defined by the Exchange as orders to buy or sell a stated amount of a security at a specified price, which is received at a time when the market is trading at or better than the specified price. *See* letter from Philip H. Becker, Senior Vice President and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, OMS, Division, Commission, dated July 25, 1997 (''Second Phlx Letter'').

[11] The Exchange is not amending the automatic execution guarantee applicable to orders fro 599 shares or less. Therefore, as currently provided in Supplementary Materials .05 and .10(a) of Rule 229, if an order is for 599 shares or less, it will continue to be automatically executable at the PACE Quote, regardless of the size of the PACE Quote. The PACE Quote is defined as the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, or Philadelphia Stock Exchanges, or the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES'') quote, as appropriate.

[12] If the PACE Quote at the time of order entry into the system reflects a ⅛ point spread between the best bid and offer, that order will be executed immediately without the 15 second delay. In a separate rule filing, the Exchange has proposed to modify POES, increasing the execution delay from 15 to 30 seconds.*See* Securities Exchange Act Release No. 38864 (July 23, 1997) (SR–Phlx–97–32).

agree to execute market orders greater than 599 shares. Thus, market orders over 599 shares that a specialist voluntarily agrees to accept for automatic execution are currently entitled to the same execution at the PACE Quote, regardless of the size of the PACE Quote. These orders are also subject to POES.

Limit orders are governed by separate provisions in Rule 229, namely Supplementary Materials .09 and .10. Currently, round-lot limit orders up to 599 shares and the round-lot portion of partial round-lot (''PRL'') orders up to 599 shares which are entered at the PACE Quote are executed at the PACE Quote. This automatic execution guarantee for marketable limit orders up to 599 shares is unaffected by this proposal, apart from being reorganized into new sub-paragraph (i) of Rule 229.10(a). In addition, like market orders, currently specialists may voluntarily agree to automatically execute marketable limit orders greater than 599 shares, and such orders are entitled to the same execution at the PACE Quote, regardless of the size of the PACE Quote.[13]

The Exchange is now proposing to adopt new standards (reflected in Rules 229.05 and 229.10(a)(i)) governing the automatic execution of market and marketable limit orders over 599 shares by specialists. Specifically, where a specialist voluntarily agrees to automatically execute market or marketable limit orders greater than 599 shares, an order will be automatically executable at the PACE Quote, if it is: (a) Greater than 599 shares; (b) less than or equal to the size of the specialist's maximum automatic execution guarantee; and (c) less than or equal to the size of the PACE Quote. Orders greater than the size of the PACE Quote will be guaranteed a manual execution at the PACE Quote price up to the size of the PACE Quote, with the balance of the order receiving a professional execution,[14] in accordance with Rule 229.10(b) (''the First Guarantee''). In addition, for orders greater than the size of the PACE Quote, the specialist may guarantee an automatic execution at the PACE Quote, up to the size of the order (provided that it is less than or equal to the specialist's maximum automatic execution guarantee size), regardless of the size of the PACE Quote (''the Second Guarantee''). The First and Second execution guarantees are proposed to be added to Rule 229.05 for market orders and Rule 229.10(a)(i) for marketable limit orders. Both guarantees can voluntarily be elected by the Phlx specialist.

Rule 229.07(b) will continue to apply to market orders greater than 599 shares where the specialist has not agreed to provide automatic executions. The proposal would amend Rule 229.07(b), however, to provide that where the specialist has not agreed to automatically execute market orders greater than 599 shares, an order greater than 599 shares is manually executed, and entitled to a professional execution pursuant to Rule 229.10(b) and other applicable rules of the Exchange.[15] While these PACE-delivered orders are not subject to the execution parameters set forth in Supplementary Material .05 to the Rule, the rule change would make clear that they are subject to the professional execution standard set forth in Rule 229.10(b).[16]

The following is an example of how the proposal would operate, assuming the specialist has voluntarily agreed to provide an automatic execution guarantee for orders greater than 599 shares and thus would be required to provide at least the minimum guarantee (the First Guarantee). In this example, the PACE Quote bid is composed of 1,000 shares (Pacific Exchange ''PCX''), 500 shares (New York Stock Exchange ''NYSE''), and 500 shares (CHX), for an aggregate total size[17] of 2,000 shares and the specialist's maximum automatic execution guarantee is 2,500 shares.

(1) The specialist receives a market order to sell 1,000 shares. This order is equal to the size of the PACE Quote (single market PCX) bid (1,000 shares) and less than the specialist's maximum automatic execution guarantee size of 2,500 shares, thus, is automatically executable.

(2) The specialist receives a market order to sell 1,100 shares. The order is greater than the PACE Quote bid size (PCX for 1,000 shares), and thus would revert to manual status, with the specialist obligated to fill 1,000 shares at the PACE Quote, and the remaining 100 shares entitled to a professional execution.

(3) The specialist receives a market order to sell 2,200 shares. Same result: the entire order would revert to manual status with the specialist obligated to fill 1,000 shares at the PACE Quote, and the balance of 1,200 shares receiving a professional execution.

(4) The specialist receives a market order to sell 3,000 shares. The order reverts to manual, because it exceeds the specialist's maximum automatic execution guarantee, and the entire 3,000 share order receives a professional execution.[18] The fact that the aggregate size of the best bid is for 2,000 shares does not determine or affect the execution.

Assuming the specialist has voluntarily agreed to provide an automatic execution guarantee for orders greater than 599 shares, the specialist may also determine to provide more than the minimum guarantee by guaranteeing an automatic execution at the PACE Quote to all orders within the specialist's maximum guarantee size, regardless of the size of the PACE Quote (*i.e.* the Second Guarantee). For instance, where the specialist's maximum automatic execution guarantee is 2,500 shares and the PACE Quote bid is composed of 1,000 shares (PCX), 500 shares (NYSE), and 500 shares (CHX), for an aggregate total size of 2,000 shares, a market order to sell 2,200 shares is received. This order is automatically executed at the PACE Quote, because it is less than the specialist's maximum size guarantee for automatic execution, despite the PACE Quote size being 1,000 shares.

The Exchange believes that in light of significant changes to the marketplace as well as the competitive environment, one purpose of this proposal is to update the PACE automatic execution guarantees. For instance, new SEC Rule 11Ac1–4 (''Display Rule'')[19] requires specialists and market makers to, under normal market conditions, display within 30 seconds the price and full size of customer limit orders better than or, where the specialist's quote is the PACE Quote, that enhance the size of the specialist's quote.[20] Other changes in

[13] *See* Second Phlx Letter, *supra* note 10.

[14] Currently, a professional execution is described in Rule 229.10(b), listing specific circumstances and standards that apply. The Exchange is proposing to add the general standards that all orders subject to Supplementary Material .10(b) be executed consistent with prevailing market conditions, fair and orderly markets and other applicable rules of the Exchange. For instance, the rules of priority, parity and precedence apply to PACE orders, as do many other important trading rules.

[15] Limit orders greater than 599 shares, where the specialist has not agreed to automatically execute orders over 599 shares, also will receive a professional execution pursuant to Rule 229.10(b). Telephone Conversation on July 16, 1997, between Edith Hallahan, Director and Special Counsel, Regulatory Services, Phlx, and James T. McHale, Special Counsel, OMS, Division, Commission.

[16] *See also* Section I, B, iv, *infra.*

[17] The aggregate total size is provided for purposes of providing a complete example and does not affect the outcome, because only the size of the PACE Quote is relevant to the proposed execution guarantee. *See* Amendment No. 1, *supra* note.

[18] There is no guarantee up to the PACE Quote size, because the customer order size is greater than the specialist's maximum automatic execution guarantee. *See* Amendment No. 2, *supra* note 4.

[19] 17 CFR 240.11Ac1–4

[20] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Rule 11Ac1–4 Adopting

Continued

the marketplace include the increase in third market trading, internalization, payment for order flow practices and the use of technology, as cited by the Commission both in the Rule 11Ac1–4 Adopting Release, as well as in the Market 2000 Study.[21]

With respect to the current competitive environment, the Exchange notes that other regional exchange automated order delivery and execution systems provide various types of execution guarantees. For market orders, other regional exchange rules permit conditioning automatic execution at the PACE Quote on the displayed size of the PACE Quote. For instance, the Chicago Stock Exchange MAX System limits automatic execution to orders less than or equal to the size of the displayed ITS/BBO or NBBO, as the case may be.[22] Thus, the effect of the Exchange's proposal is to similarly consider the PACE quote size for certain order sizes, consistent with other systems.

(ii) Out-of-Range Protection

The Exchange also is proposing to amend the Rule's provisions respecting out-of-range executions. Currently, pursuant to Supplementary Material .07(a) of the Rule, member organizations which enter market orders (up to 599 shares) after the opening may elect to have such orders executed (i) in accordance with the procedures set forth in Rule 229.05, or (ii) if such execution price would be outside the NYSE high-low range for the day, manually at or within the NYSE high-low range of the day. Thus, market orders that would result in an out-of-range execution may be handled manually by the specialist, instead of receiving an automatic execution, if so elected by the PACE order entry firm. This is referred to as out-of-range protection, a long-standing feature of the PACE System.[23]

Under the proposal, the limitation to orders less than 599 shares in Supplementary Material .07(a) respecting market orders will be deleted. In addition, the Exchange is proposing to adopt an out-of-range protection provision for limit orders not currently covered by such a provision, namely orders less than 600 shares.[24] As discussed above, the Exchange believes that out-of-range protection is an important PACE System feature and should be properly codified into the Rule as applicable to all order types. The Exchange notes that out-of-range protection is common to regional exchange systems.[25]

(iii) Execution of Partial Round-Lot Orders

The Exchange also proposes to amend the Rule's provisions respecting the execution guarantee applicable to PRL orders. Currently, Supplementary Material .07(b) of the Rule states that the odd-lot portion of PRLs of 601 or more shares shall be executed at the same price as the round-lot portion. In addition, Rule 229.07(b) provides that, in the case of a PRL order, the round-lot portion(s) of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the last round-lot portion is executed. A similar provision appears in Supplementary Materials .09 and .10(c) to Rule 229. These provisions are proposed to be amended, such that, in the case of a PRL order, the round-lot portion(s) of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the first 100 shares (round-lot), not the last round-lot portion, as the provisions currently state. The Exchange believes that the proposed execution procedure should, in most situations, result in a better execution price for the customer, because later round-lots are generally executed at inferior prices, as the market responds to the prior execution.[26]

(iv) Organizational and Miscellaneous Provisions

Lastly, the Exchange is also proposing to reorganize Rule 229 by separating marketable limit orders[27] and otherwise clarifying Supplementary Material .10(a). Further, Supplementary Material .07(b) is proposed to be amended to reflect that orders exceeding a specialist's automatic execution guarantee may nevertheless be delivered through the PACE System. Currently, this provision states that market orders (round-lots of 600 to 1000 shares or such greater size which the specialist agrees to accept and partial round-lots of 601 to 1099 shares or such greater size which the specialist agrees to accept) which are entered after the opening shall not be subject to the execution parameters set forth in Rule 229 and shall be executed in accordance with other applicable rules of the Exchange. The proposal would clarify that this provision applies to orders which the specialist has not agreed to accept for automatic execution and are, instead, only delivered through the PACE System. The proposal would also codify that such orders are executable in accordance with Supplementary Material .10(b).

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[28] Specifically, the Commission believes that the proposed rule change is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[29]

The proposed rule change would amend Rule 229.05 and Rule 229.10(b)(i), respectively, to provide that where a specialist voluntarily agrees to automatically execute market or marketable limit orders greater than 599 shares, an order is automatically executable at the PACE Quote, if it is: (a) Greater than 599 shares; (b) within the specialist's maximum automatic execution guarantee; and (c) less than or

Release''). *See also* Securities Exchange Act Release Nos. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997) (revising effective date until January 13, 1997); and 38139 (January 8, 1997), 62 FR 1385 (January 10, 1997) (revising effective date to January 20, 1997).

[21] *See* Rule 11Ac1–4 Adopting Release at 8 and note 12, *supra* note 20.

[22] *See* CHX, Article XX, Rule 37(b)(11), which states that notwithstanding anything contrary in Rule 37, no market or marketable limit order is automatically executed if it is greater than he size of the ITS/BBO (equivalent to the PACE Quote) or NBBO (the national best bid or offer disseminated pursuant to Rule 11Ac1–1 under the Exchange Act), as the case may be. In addition, much like the First Guarantee, if a customer order routed through the MAX system exceeds the size of the ITS/BBO or NBBO, the specialist will execute the order manually at the price of the ITS/BBO or NBBO up to the size of the ITS/BBO or NBBO, with the balance of the order remaining as an ''open order'' for execution. Telephone conversation on July 9, 1997, between J. Craig Long, Esq., Foley & Larder, and James T. McHale, Special Counsel, OMS, Division, Commission.

[23] *See e.g.*, Securities Exchange Act Release No. 28629 (November 20, 1990) (SR–Phlx–90–19).

[24] Limit orders for 600 shares or more are covered by the out-of-range protection provision in Rule 229.10(b)(4).

[25] *See e.g.*, CHX, Article XX, Rule 37(a)(6), (b)(11) and (e)(6), which provide for stopping such orders.

[26] *See* Letter from Edith Hallahan, Director and Special Counsel, Regulatory Services, Phlx, to Michael Walinskas, Senior Special Counsel, OMS, Division, Commission, dated June 25, 1997 (''First Phlx Letter'').

[27] The provisions respecting non-marketable limit orders would be reorganized as sub-paragraph (ii) but otherwise remain unchanged.

[28] 15 U.S.C. 78f(b)(5).

[29] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

equal to the size of the PACE Quote.[30] Under this First Guarantee, orders greater than the size of the PACE Quote would be guaranteed a manual execution at the PACE Quote price up to the size of the PACE Quote, with the balance of the order receiving a professional execution in accordance with Rule 229.10(b). In addition, for orders greater than the size of the PACE Quote, the specialist may guarantee an automatic execution at the PACE Quote price, up to the size of the order (provided it is less than or equal to the specialist's maximum automatic execution guarantee), regardless of the size of the PACE Quote (the Second Guarantee).

The Commission believes that limiting the automatic execution guarantee applicable to PACE market and marketable limit orders over 599 shares to the size of the PACE Quote (unless the specialist agrees to the second Guarantee) is reasonable and consistent with the Act. The Commission recognizes that to the extent a customer order exceeds the size of the PACE Quote, Phlx specialists must execute the order as principal, thus taking on additional risk. A specialist may reasonably determine that orders that are greater in size than reflected in the PACE Quote justify separate pricing. The First Guarantee will provide the specialist with the flexibility of electing such a limited guarantee. This increased flexibility should help to encourage specialist participation in providing at least a limited guarantee for orders over 599 shares. The First Guarantee also serves to ensure that customers receive the best price that is available in the intermarket system in the stock, up to the size of the PACE Quote. The Second Guarantee serves to provide the specialist with the discretion to accept the increased risk associated with guaranteeing execution of orders at the PACE Quote when such orders exceed the size that the PACE Quote is based upon. The Commission also notes that conditioning automatic execution at the PACE Quote price on the displayed size of the PACE Quote is consistent with the rules of other regional markets.[31] Finally, the Commission finds that permitting specialists to change from the First Guarantee to the Second Guarantee and vice versa with one day's notice to PACE users is reasonable.[32]

The Commission believes that the amendment to the out-of-range guarantee for market and marketable limit orders also is consistent with the Act.[33] Specifically, providing that all market orders are subject to out-of-range protection, as opposed to only those market orders up to 599 shares as is currently the case, provides member organizations with more flexibility by allowing them to elect out-of-range protection for all market orders within the parameters of the specialists guarantee. This, in turn, should benefit investors by providing out-of-range protection to larger orders and should help the Exchange compete for order flow. Moreover, the Commission believes that adopting an out-of-range protection provision for limit orders not currently covered by such a provision (*i.e.*, orders less than 600 shares) is reasonable and consistent with the Act. Finally, the Commission notes that while neither specialists nor member organizations are required under the federal securities laws to provide out-of-range protection, allowing out-of-range protection to all orders is consistent with the Act.

The Commission finds the change in execution of partial round-lot orders to be consistent with the Act. Specifically, the proposal amends Rules 229.07(b), 229.09, and 229.10(c) to provide that in the case of a PRL order, the round-lot portion of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the first 100 shares, not the last 100 shares, as the rules currently provide. The Commission believes that this approach should generally provide superior PRL order executions. For example, if the market for XYZ stock is initially 20×20⅛, and a PACE market order to buy 650 shares is received, the specialist intending to execute the first 300 shares at 20⅛, would generally execute 350 shares at that price, including the 50 share odd-lot in the first execution.[34] Thereafter, if the market were to become 20⅛×2¼, the specialist would execute the remaining 300 shares at 20¼. The Rule does not require that the odd-lot portion be executed with the first round-lot, but encourages it by requiring that the odd-lot portion receive the same price as the first round-lot. Accordingly, these odd-lots should receive a more prompt execution, and in most situations a better price, because later round lots are generally executed at inferior prices, as the market responds to the prior execution.[35]

Finally, the Commission believes that the organizational changes made to Rule 229, separating marketable limit orders and clarifying Supplementary Material .10(a), should help clarify operation of the Rule. Moreover, the amendment to Rule 229.07(b), providing that market orders which the specialist has not agreed to accept for automatic execution may nevertheless be delivered through the PACE system, clarifies that such orders are to be executed in accordance with Rule 229.10(b),[36] as well as other applicable rules of the Exchange. The Commission believes that this should further encourage the delivery of customer orders through the PACE system, and, as such, is consistent with Section 11A of the Act,[37] and paragraph (a)(1) thereunder, which encourages the use of new data processing and communications techniques that create the opportunity for more efficient and effective market operations. Accordingly, the Commission finds that this change is appropriate and consistent with the Act.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 3 states that specialists, after their initial determination to provide a manual or automatic guarantee (*i.e.* the First or Second Guarantee), may change from

[30] Consistent with the existing provisions of Rules 229.05 and 229.10(a), if an order is for 599 shares or less, it will continue to be automatically executable at the PACE Quote, regardless of the size of the PACE Quote, as the Exchange is not amending the automatic execution guarantee applicable to orders for 599 shares or less.

[31] For example, the Chicago Stock Exchange MAX system limits automatic execution to orders less than the size of the ITS/BBO. *See supra* note 22.

[32] *See* Amendment No. 3, *supra* note 6.

[33] Out-of-range protection allows members organizations entering orders after the opening to elect to have such orders executed automatically at the PACE Quote, or if such execution price would be outside the NYSE high-low range for the day, manually at or within the NYSE high-low range of the day.

[34] This example assumes that the specialist has not agreed to automatically execute market or marketable limit orders greater than 599 shares. If the incoming order is for 599 shares or less, it is executable in full at the PACE quote, such that generally it would not be executed at more than one price and thus would not trigger this provision. *See* First Phlx Letter, *supra* note 26.

[35] *Id.* The Commission notes that intervening market events could cause the market to move in the opposite direction (*i.e.* in the customer's favor). In the above example, after the first execution at 20⅛, the market could become 19⅞×20, such that the remainder of the order would be executed at 20, a better price. Under the new procedure, executing the odd-lot portion at the first price is less favorable to the customer. The Commission believes, however, that basing the odd-lot execution price on the execution price for the first 100 shares generally will provide a more favorable execution for customer orders.

[36] The Commission also finds that the addition of general standards (*i.e.* that all orders subject to Rule 229.10(b) be executed ''consistent with prevailing market conditions, fair and orderly markets and other applicable Exchange rules'') strengthens the language of the Rule. The additional language clarifies, for example, that the rules of priority, parity and precedence apply to PACE orders.

[37] 15 U.S.C. 78k–1

one guarantee to the other, effective the next day. The Commission finds that this is a reasonable approach and strikes an appropriate balance between the needs of specialists to change their guarantee in a moving market, and the needs of member organizations to know which guarantee applies. Amendment No. 3 also amends the text of Rules 229.05 and 229.10(a)(i), respectively, to clarify that where the specialist has voluntarily agreed to automatically execute market and marketable limit orders greater than 599 shares and the order size is greater than the size of the PACE Quote, the order shall manually receive an execution at the PACE Quote up to the size of the PACE Quote, with the balance of the order receiving a professional execution (the First Guarantee), provided that the specialist may guarantee an automatic execution at the PACE Quote up to the entire size of the specialist's automatic execution guarantee (the Second Guarantee). The Commission finds this language strengthens the proposals by clarifying that unless the specialist specifically elects to provide the Second Guarantee, the First Guarantee will be in effect. The Commission also notes that no comments were received on the original Phlx proposal, which was subject to the full 21-day comment period. Therefore, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–11 and should be submitted by August 28, 1997.

For the foregoing reasons, the Commission finds that the Phlx's proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the amended proposed rule change (SR–Phlx–97–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20838 Filed 8–6–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2577]

Shipping Coordinating Committee; Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on Tuesday, September 9, 1997, at 9:30 a.m. in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the fortieth session of the Marine Environment Protection Committee (MEPC 40) and the agenda items of the Conference on the Prevention of air pollution from ships (the Conference) of the International Maritime Organization (IMO). MEPO 40 and the Conference will be held in conjunction with each other from September 15–26, 1997. Proposed U.S. positions on the agenda items for MEPC 40 and the Conference will be discussed.

The major items for discussion for MEPC 40 will begin at 9:30 a.m. and include the following:

a. Bulk liquids and gases;

b. Flag State implementation;

c. Identification and protection of Special Areas and Particularly Sensitive Sea Areas;

d. Adoption of amendments to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), Annex I (regulation 10 to make the North West European waters a special area under Annex I and regulation 25A on intact stability of double hull tankers);

e. Harmful aquatic organisms in ballast water;

f. Harmful effects of the use of anti-fouling paints for ships;

g. Implemenation of the Oil Pollution Preparedness Response and Cooperation (OPRC) Convention and resolutions; and

h. Irradiated Nuclear Fuel Code related matters.

The major items for discussion for the Conference will begin at 11:00 a.m. and include the following;

a. Consideration and adoption of the Protocol of 1997 to amend MARPOL 73/78 by adding a new Annex VI on controlling air pollution from ships; and

b. Consideration of adopting resolutions banning the use of perflourocarbons on ships and other related matters.

Members of the public may attend these meetings up to the seating capacity of the room. For further information or documentation pertaining to the SPMP meeting, contact Lieutenant Commander Ray Perry, U.S. Coast Guard Headquarters (G–MSO–4), 2100 Second Street, SW, Washington, DC 20593–0001; Telephone (202) 267–2714.

Dated: July 28, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–20832 Filed 8–6–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice 2676]

Director General of the Foreign Service and Director of Personnel; State Department Performance Review Board Members (At Large Board)

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following individuals to the State Department Performance Review Board (At Large Board) register.

Robert B. Dickson, Executive Director, Bureau of Administration, Department of State

Linda Jacobson, Assistant Legal Adviser for Diplomatic Law and Litigation, Office of the Legal Adviser, Department of State

Katherine Lee, Special Assistant to the Associate Director for Management, United States Information Agency

James P. Timbie, Senior Advisor, Office of the Under Secretary for Arms Control and International Security Affairs, Department of State

Ruth A.Whiteside, Deputy Director, Foreign Service Institute, Department of State

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

Dated: July 17, 1997.

Jennifer C. Ward,

Acting Director General of the Foreign Service and Director of Personnel.

[FR Doc. 97–20778 Filed 8–6–97; 8:45 am]

BILLING CODE 4710–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Modesto City-County Harry Sham Field Airport, Modesto, California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to use revenue from a PFC at Modesto City-County Harry Sham Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508) and 14 CFR Part 158).

DATES: Comments must be received on or before September 8, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the Following address: Airports Division, P.O. 92007, Worldway Postal Center, Los Angeles, CA 90009 or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlington, CA. 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Howard Cook, Airport Manager of the Modesto City-County Airport at the following address: 617 Airport Way, Modesto, California 95354. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Modesto under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Specialist, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303, Telephone: (415) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Modesto City-County Harry Sham Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158)). On May 21, 1997, the FAA determined that the application to use the revenue from a PFC submitted by the city of Modesto was not substantially complete with the requirements of section 158.25 of Part 158. The following items were required to complete the application: Block 7 of FAA Form 5500–1 needed to be filled in, project objective of Attachment B needed additional information and the application was submitted prior to the end of the 30 day comment period from the date of written notice to the carriers. On June 17, 1997, the city of Modesto supplemented their application providing the necessary information. On July 17, 1997, the FAA determined that the application is 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 October 17, 1997.

The following is a brief overview of the use application number 97–04–U–00–MOD:

Level of proposed PFC: $3.00.

Actual charge effective date: August 1, 1994.

Proposed charge expiration date: August 1, 2000.

Total estimated PFC revenue to be used on these use projects: $44,400.

Brief description of the use projects: Relocate Runway 10R/28L Edge Lights and Runway 10L/28R Payment Overlay.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi Operators.

These projects were previously approved as impose only projects contained within an overall PFC package which was approved on May 23, 1994. Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Modesto, CA.

Issued in Hawthorne, California, on July 21, 1997.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 97–20866 Filed 8–6–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Outagamie County Airport, Appleton, Wisconsin

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 Outagamie County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 8, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address.

Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Debra Giuffre, Airport Manager of the Outagamie County Airport at the following address: W6390 Challenger Drive, Suite 201, Appleton, WI 54915.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Outagamie under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4363. 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 Outagamie County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 31, 1997 the FAA determined that the application to impose and use the revenue from a PFC submitted by County of Outagamie 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 November 28, 1997.

The following is a brief overview of the application.

PFC application number: 97–02–C–00–ATW.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1997.

Proposed charge expiration date: January 1, 1999.

Total estimated PFC revenue: $656,250.

Brief description of proposed project(s): Baggage Claim Expansion.

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 Outagamie County Airport W6390 Challenger Drive, Suite 201, Appleton, WI 54915.

Issued in DesPlaines, IL on July 31, 1997.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–20867 Filed 8–6–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA) (62 FR 6837, February 13, 1997)

AGENCY: Maritime Administration, DOT.

ACTION: Notice of Meeting with Tug/Barge Operators and Charter Carriers.

Introduction

On June 25, 1997, the Maritime Administration (MARAD) and the United States Transportation Command (USTRANSCOM), co-hosted a public meeting focused primarily on the U.S.-flag tug/barge and charter carriers to provide background information and discuss the advantages of becoming a participant in the Voluntary Intermodal Sealift Agreement (VISA) Program.

The VISA program was established pursuant to section 708 of the Defense Production Act of 1950, as amended, which provides for voluntary agreements for preparedness programs. After review of a one-year prototype, VISA was approved January 30, 1997 and published in the **Federal Register** on February 13, 1997.

The mission of VISA is to make intermodal shipping services/systems, including ships, ships' space, intermodal equipment and related management services available to the Department of Defense (DoD) as required to support the emergency deployment and sustainment of U.S. military forces.

Subsequent to publication in the **Federal Register**, MARAD and DoD centered attention on enrolling carriers in the U.S. liner trades in the VISA program. Currently, 18 U.S. carriers have enrolled in the program.

MARAD and DoD have expanded their focus to the tug/barge operators and charter carriers. Tug/barge operators are targeted because they can play an important role in executing contingency plans. Tug/barge operators can provide capacity for intertheater logistics and domestic trade backfill. Charter carriers are important because they provide capacity for sealift, prepositioning and other DoD charters.

The June 25 meeting was attended by 11 representatives, including brokers, of the tug/barge and charter industry, MARAD and various DoD agencies to include USTRANSCOM and Military Sealift Command.

Purpose of the meeting

The purpose of the meeting was to establish contact with and inform the U.S.-flag tug/barge and charter industry about the objectives and benefits of the VISA program. The U.S. Government's objectives include: assured access to capacity when needed; contractual commitment and prenegotiated rates; and, planned partnership with commercial sector. The benefits to the industry include: knowledge of DoD sealift requirements; fair compensation for risk incurred; protection of market share; and, flexibility to provide a full range of sealift services not just specific ships.

Advantages of participation during peacetime

Because enrollment of carriers in the VISA provides assured access to sealift services based on a level of commitment as well as a mechanism for joint planning, DoD will prioritize the award of peacetime cargo to VISA participants. This will apply to liner trades and charter contracts alike.

The joint DoD/Department of Transportation/Industry planning authority provided under VISA is a significant step forward in fostering a partnership between industry and Government. The forum allows the Government and industry to learn about their respective needs and capabilities, and will facilitate better coordination of combined resources during contingencies.

Participants

Any U.S.-flag vessel operator willing to commit sealift assets and assume the related consequential risks, may be eligible to participate in the VISA program.

While vessel brokers and agents play an important role as a conduit to locate and secure appropriate vessel tonnage for the carriage of DoD cargo, they may not become participants in the VISA program. However, the carriers they represent should be encouraged to join the program.

Commitment

A carrier desiring to participate in DoD peacetime contracts/traffic must commit no less than 50 percent of its total U.S.-flag capacity in Stage III of the VISA program. Under Stages I and II, DoD will annually develop and publish minimum commitment requirements. To minimize domestic commercial disruption, a participant exclusively operating vessel capacity in the domestic Jones Act trade is not required to commit vessel capacity to VISA Stages I and II. Commitment requirements are based on annual enrollment.

In order to protect a carrier's market share during activation, VISA allows participants to join with other carriers in Carrier Coordination Agreements to satisfy its commercial or DoD contingency requirements. VISA provides a defense against antitrust laws in accordance with section 708 of the Defense Production Act of 1950.

Compensation

In addition to receiving priority in the award of DoD peacetime cargo, compensation during activation is revenue based on a rate methodology which is commensurate with risk and service provided. The rate methodology determination for liners and charters continues to undergo development.

Enrollment

In order to participate in the VISA program a carrier should submit duplicate originals of the VISA Agreement to Participate to MARAD. Once MARAD has reviewed, approved and countersigned the VISA agreement, the participant will execute a VISA Enrollment Contract with the Military Traffic Management Command/Joint Traffic Management Command which specifies its Stage III commitment and codifies the terms and conditions.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Raymond Barberesi, Director, Office of Sealift Support (202) 366–2323; fax (202) 493–2180.

By Order of the Maritime Administrator.

Dated: August 4, 1997.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 97–20839 Filed 8–6–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 27590 (Sub–No.2)]

TTX Company, et al.—Application for Approval of the Pooling of Car Service With Respect to Flat Cars

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision.

SUMMARY: In this proceeding, the Interstate Commerce Commission (ICC) provided for the monitoring of TTX Company (TTX) during the 10-year term of its pooling extension. The Board reopened this proceeding to take comments from interested parties on whether any of TTX's activities require any action or particular oversight on the Board's part at this time. No comments were filed, and the Board is taking no further action at this time.

EFFECTIVE DATE: This decision will be effective on its date of service.

FOR FURTHER INFORMATION CONTACT: Melvin F. Clemens, Jr., (202) 565–1573. [TDD for the hearing impaired: (202) 565–1695.

SUPPLEMENTARY INFORMATION: In a 1994 decision approving a 10-year extension of TTX's pooling authority,[1] the ICC required its Office of Compliance and Enforcement (OCE) to monitor TTX's operations and to report on any problems at the end of the third and seventh years. Pursuant to the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995) (ICCTA), effective January 1, 1996, the ICC was abolished; a number of its functions were eliminated; and its remaining rail and certain non-rail functions were transferred to the Surface Transportation Board (Board), newly established under the ICCTA.

Because the authority over TTX's pooling arrangement was transferred to the Board under the ICCTA, the Board is now responsible for monitoring TTX's activities. To carry out that responsibility, on March 7, 1997, the Board requested comments on whether any of TTX's activities require any action or particular oversight on the Board's part at this time. No comments were filed by any party wishing to express a concern about TTX's activities. Therefore, the Board does not believe that any further monitoring action is necessary or appropriate at this time.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. No further action by the Board to monitor TTX's activities is required at this time.

2. This decision is being served on all parties appearing on the service list in Finance Docket No. 27590 (Sub-No.2).

3. This decision is effective on the service date.

Decided: July 29, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–20843 Filed 8–6–97; 8:45 am]

BILLING CODE 4915–00–P

[1] This pooling authority was approved in Finance Docket No. 27590 (Sub-No.2), *TTX Company, et.al.— Application For Approval of the Pooling of Car Service With Respect to Flat Cars,* served August 31, 1994.

DEPARTMENT OF THE TREASURY

Senior Executive Service; Combined Performance Review Board (PRB)

AGENCY: Treasury Department.

ACTION: Notice of members of combined Performance Review Board (PBR).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Combined PRB for the Bureau of Engraving and Printing, the Financial Management Service, the U.S. Mint and the Bureau of the Public Debt. The Board reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the four bureaus, except for executives below the Assistant Commissioner level in the Financial Management Service. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

COMPOSITION OF COMBINED PRB: The Board shall consist of at least three voting members. In case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the Combined PRB members are as follows:

PRIMARY MEMBERS: Gregory D. Carper, Associate Director (Chief Financial Officer), E&P Constance E. Craig, Assistant Commissioner, Information Resources, FMS Andrew Cosgarea, Jr., Associate Director for Operations, Mint Kenneth R. Papaj, Director, Government Securities Regulations Staff, PD.

ALTERNATE MEMBERS: Carla F. Kidwell, Associate Director (Chief Operating Officer), E&P, Larry D. Stout, Assistant Commissioner, Federal Finance, FMS, Jay M. Weinstein, Associate Director for Policy and Management & CFO, Mint, Thomas W. Harrison, Assistant Commissioner (Administration), PD.

DATES: Membership is effective August 7, 1997.

FOR FURTHER INFORMATION CONTACT: Gregory D. Carper, Bureau of Engraving and Printing, Associate Director (Chief Financial Officer), Room 113, 14th & C Streets, S.W., Washington, D.C. 20228, (202) 874–2020.

This notice does not meet the Department's criteria for significant regulations.

Dated: July 28, 1997.

Gregory D. Carper,

Associate Director (Chief Financial Officer), Bureau of Engraving and Printing.

[FR Doc. 97–20779 Filed 8–6–97; 8:45 am]

BILLING CODE 4840–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0544]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Reinstatement

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to

obtaining written consent of patients to release information pertaining to treatment for drug or alcohol abuse, sickle cell anemia, and infection with human immunodeficiency virus (HIV).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 6, 1997.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (161A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0544'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) way to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Written Consent to Release Medical Records Protected by Section 7332, Title 38, United States Code (Section 1.475(a), Title 38 Code of Federal Regulations).

OMB Control Number: 2900–0544.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Section 7332, Title 38, United States Code requires the VA to obtain prior written consent from a patient before information concerning treatment for alcoholism or alcohol abuse, drug abuse, sickle cell anemia, or infection with the human immunodeficiency virus (HIV) can be disclosed from a patient medical record. This special consent must indicate the name of the facility permitted to make the disclosure, the name of the individual or organization to whom the information is being released, specify the particular records or information to be released, be under the signature of the veteran and dated, it must reflect the purpose for which the information is to be used, and include a statement that the consent is subject to revocation and the date, event or condition upon which the consent will expire if not revoked before. Section 1.475(a), Title 38 Code of Federal Regulations describes the required elements that must be included in a written consent. The Privacy Act of 1974 and VA confidentiality statute, Section 5701, Title 38, United States Code also requires a written patient consent.

The written consent is obtained from the patient. Without the written consent, the VA would not be permitted to disclose this type of patient medical record information to third parties as requested by the patients. The information is used by third parties for such purposes as medical follow-up and treatment and determinations on employment applications and insurance claims. If the information collection were not conducted, the VA would not be able to be responsive to the needs of patients for the disclosure of information pertaining to their medical care.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,720 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,640.

Dated: July 18, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–20744 Filed 8–6–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0222]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery System (NCS), Department of Veterans Affairs is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the application for standard Government headstones or markers for unmarked graves of eligible veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 6, 1997.

ADDRESSES: Submit written comments on the collection of information to Sonja McCombs, National Cemetery System (402D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0222'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Sonja McCombs at (202) 273–5183.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCS invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCS's functions, including whether the information will have practical utility; (2) the accuracy of NCS's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Application for Standard Government Headstone or Marker for Installation in a Private or State Veterans' Cemetery, VA Form 40–1330.

OMB Control Number: 2900–0222.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the public to apply for the benefit of Government-provided headstones or markers for unmarked graves of eligible veterans in accordance with Tittle 38, U.S.C., Section 906. It is the source of

information used to evaluate the applicant's claim for the benefit.

Affected Public: Individuals or households; State, Local or Tribal Government.

Estimated Annual Burden: 85,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 340,000.

Dated: July 23, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–20745 Filed 8–6–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0559]

Agency Information Collection Activities Under OMB Review

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the National Cemetery System (NCS), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 8, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0559.''

SUPPLEMENTARY INFORMATION:

Title and Form Number: State Cemetery Data, VA Form 40–0241.

OMB Control Number: 2900–0559.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 40–0241 is used to collect information regarding the number of interments conducted at state veteran's cemeteries each year. This information is necessary for budget and oversight purposes. In addition, NCS's State Cemetery Grants Service uses the information to answer questions which arise during the course of the year to respond to Congressional correspondence and to project and predict the need for burial space and the demand for state grants. Burial information provides the usage rates and helps in the prediction of when a cemetery needs to develop additional acreage (request a grant to expand) or is going to close. The amount of acreage used helps the State Cemetery Grants Service and National Cemetery System anticipate closing and the requirement for additional cemeteries (either state or national). Lower burial rates may indicate problems such as ineffective outreach or poor maintenance that should be investigated. The information is used in conjunction with the information gained from the national cemeteries to consider where to place national or state cemeteries. Title 38 CFR, Section 39.3, points out that ''the Secretary and any authorized representative (in this case the State Cemetery Grants Service) will have access to and the right to examine all records, books, papers or documents related to the grant.'' Title 38 CFR, Section 39.5, discusses follow-up procedures once a cemetery is established and points out the need for audits.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on April 8, 1997 at page 16890.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 52 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Annually.

Estimated Annual Responses: 52.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0559'' in any correspondence.

Dated: July 18, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–20746 Filed 8–6–97; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday
August 7, 1997

Part II

Department of Agriculture

Agricultural Research Service

Government Owned Inventions Available for Licensing; Notice

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Government Owned Inventions Available for Licensing

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government as represented by the Department of Agriculture, and are available for Licensing in accordance with 35 U.S.C. 207 and 37 CFR 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to June Blalock, Technology Licensing Coordinator, USDA, ARS, Office of Technology Transfer, Room 415, Bldg. 005, BARC–W, Beltsville, Maryland 20705–2350; telephone: 301–504–5989 or fax 301–504–5060. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

08/624,867, ''Single-Kernel Vitreous Wheat Discriminator''

08/666,769, ''System and Method for Measuring Stickiness of Materials Such As Cotton''

08/668,269, ''Syrup-Like Composites from Fats and Saccharides''

08/674,475, ''Porcine Reproductive and Respiratory Syndrome Vaccine''

08/679,368, ''Monoglyceride Production via Enzymatic Glycerolysis of Oils in Super-critical CO_2''

08/682,894, ''Composition and Article for Control of the Plum Curculio''

08/691,757, ''Novel Glucose and Cellobiose Tolerant Beta-Glucosidase from *Candida peltata*''

08/692,565, ''Culture Medium for Parasitic and Predaceous Insects''

08/699,815, ''Artificial Media for Rearing Entomophages''

08/704,207, ''Species Specific Method for the PCR Detection of *Phytophthora*''

08/706,391, ''Altering Dough Viscoelasticity with Modified Glutenins''

08/722,824, ''Horizontal Cross Flow Filtration and Rinsing of Ice From Saline Slurries''

08/722,959, ''In Ovo Immunization of Avian Embryos with Oil-Emulsion Vaccines''

08/729,113, ''Livestock Mucosal Competitive Exclusion Culture to Reduce Enteropathogenic Bacteria''

08/749,604, ''Localized Notch Reinforcement of Wooden Beams''

08/756,301, ''A Baculovirus for the Control of Insect Pests''

08/757,701, ''Plant Volatile Elicitor from Insects''

08/758,026, ''Air Assisted Wiping Device''

08/758,028, ''Composition and Use of Polymerizable Oil for Leather Fatliquor''

08/769,021, ''Apparatus and Method for the Measurement of Forest Duff Moisture Content''

08/772,961, ''Development of a PCR-Based Method for Identification of Tilletia Indica, Causal Agent of Karnal Bunt of Wheat''

08/773,739, ''Isolation of a Species-Specific Mitochondrial DNA Sequence for Identification of Tilletia Indica, the Karnal Bunt of Wheat Fungus''

08/779,066, ''Whitefly Trap''

08/785,635, ''A Method for the Control of Weeds with Weakly Virulent or Non-Virulent Plant Pathogens''

08/814,674, ''12, 13, 17-Trihydroxy-9(z)-Octadecenoic Acid and Derivatives and Microbial Isolate for Production of the Acid''

08/818,187, ''Novel Hemicellulose and Cellulose Fractions Isolated from Corn Fiber And Bran''

08/834,051, ''Granular Activated Carbons From Low Density Agricultural Waste''

08/873,001, ''Transformation of Wheat with the Cyanamide Hydratase Gene''

June Blalock,

Technology Licensing Coordinator.

[FR Doc. 97–20819 Filed 8–6–97; 8:45 am]

BILLING CODE 3410–03–P

Federal Register

Thursday
August 7, 1997

Part III

Department of Housing and Urban Development

Regulatory Waiver Requests Granted; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4250–N–01]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the Granting of Regulatory Waivers from January 1, 1997 through March 31, 1997.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), HUD is required to make public all approval actions taken on waivers of regulations. This notice is the twenty-fifth 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 or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service 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 HUD. 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 HUD 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-fifth notice of its kind to be published under Section 106. This notice updates HUD's waiver-grant activity from January 1, 1997 through March 31, 1997.

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 51.102 (involving the waiver of a provision in 24 CFR part 51) would come early in the sequence, while waivers of 24 CFR part 982 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 § 51.1 and § 51.102(a)(3) would appear sequentially in the listing under § 51.1.) Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD 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 April 1, 1997 through June 30, 1997.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: July 31, 1997.

Andrew Cuomo,

Secretary.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development January 1, 1997 through March 31, 1997

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 Item 1, Waiver Granted For 24 CFR Part 266, Contact: Linda Cheatham, Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6134, Washington, DC 20410–7000; telephone (202) 708–3000 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

1. Regulation: 24 CFR 266.200(g).

Nature of Requirement: Defines ''elderly projects'' as those designed for use and occupancy by ''elderly families.'' An elderly family is defined as a household where the head or spouse is 62 years of age or older or a single person who is 62 years of age or older.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 24, 1997.

Reasons Waived: To facilitate development of an independent senior housing complex to be occupied, generally, by persons 55 years of age or older.

For Item 2 Through 13, Waivers Granted for 24 CFR Parts 51, 91, 92, 511, 574, 576, and 583, Contact: Debbie Ann Wills, Field Management Officer, Department of Housing and Urban Development, Office of Community Planning and Development, 451 7th Street, SW, Room 7152, Washington, DC 20410–7000; telephone: (202) 708–2565 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

2. Regulation: 24 CFR 51.102(a)(3).

Project/Activity: The City of Portland, Oregon, requested, on behalf of the developers, a waiver of the Environmental Impact Statement (EIS) requirement for a project exposed to unacceptable noise levels.

Nature of Requirement: 24 CFR 51.102(a)(3) of HUD's environmental regulations requires that an EIS be prepared when a proposed project would be exposed to unacceptable noise levels.

Granted By: Howard Glaser, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: January 28, 1997.

Reasons Waived: The waiver of 24 CFR 51.102(a)(3) will enable the project to proceed because it was determined that noise was the only environmental issue, and no outdoor noise sensitive use would take place.

3. Regulation: 24 CFR 91.402(a) and (b).

Project/Activity: Cook County, Illinois, requested a waiver of the consolidated plan regulations, to allow the Village of Oak Park to maintain a program year that is separate from the program year of its other consortia members.

Nature of Requirement: 24 CFR 91.402(a) and (b), of the consolidated plan regulations, requires that units of local government that are members of a consortium have the same program year for the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships (HOME) program, the Emergency Shelter Grants (ESG) program, and the Housing Opportunities for Persons with AIDS (HOPWA) program.

Granted By: Howard Glaser, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: January 15, 1997.

Reasons Waived: The Assistant Secretary determined that compliance with the requirement would constitute a hardship on the Village of Oak Park; therefore, the waiver was granted.

4. Regulation: 24 CFR 92.205(a)(4) and 24 CFR 92.209(j)(5).

Project/Activity: The State of North Dakota requested a waiver of the HOME program regulations (24 CFR part 92) to allow the State to have a security deposit program for a mobile home park.

Nature of Requirement: The HOME regulations at 24 CFR 92.205(a)(4) provide that when HOME funds are used to assist a new owner with the acquisition of a manufactured housing unit which is placed on a rented lot, the owner must have a lease for a period equal to the applicable period of affordability. The regulation at 24 CFR 92.209(j)(5) provides that the general requirements of the HOME program regulations at 24 CFR 92.209 are also applicable to HOME program funds provided as a security deposit.

Granted By: Jacquie M. Lawing, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 4, 1997.

Reasons Waived: The Assistant Secretary deemed that imposition of the regulatory requirements would adversely affect the purposes of the HOME program, because they would place an undue administrative burden on the State of North Dakota.

5. Regulation: 24 CFR 92.214(a)(8).

Project/Activity: Clark County, Washington, requested a waiver of 24 CFR 92.214(a)(8) to allow for the acquisition of two county-owned houses to provide non-profit sponsored housing for persons with disabilities.

Nature of Requirement: The HOME program regulations at 24 CFR 92.214(a)(8) prohibit the use of HOME funds to pay for the acquisition of property owned by the participating jurisdiction.

Granted By: Jacquie M. Lawing, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 4, 1997.

Reasons Waived: The Assistant Secretary found good cause to grant a waiver of the regulation because the County did not have clear title to the properties. Specifically, the County is obligated to reimburse the funding source upon sale of the properties. The primary purpose of the HOME funds was to enable the non-profit organizations to purchase properties which they are currently renting.

6. Regulation: 24 CFR 92.251, 24 CFR 92.253(e), and 24 CFR 92.303.

Project/Activity: The State of California requested a waiver of certain HOME program regulations applicable to HOME funds designated to address flood damage in a Presidentially-declared disaster area.

Nature of Requirement: The HOME program regulations are located in 24 CFR part 92. Three provisions of the HOME regulations were affected by this waiver: (1) 24 CFR 92.251, which establishes the maximum per-unit subsidy for disaster-damaged properties; (2) 24 CFR 92.253(e), which establishes the criteria for written tenant selection rules; and (3) 24 CFR 92.303, which outlines the tenant participation plan for Community Housing Development Organization projects.

Granted By: Jacquie M. Lawing, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 27, 1997.

Reasons Waived: The three cited regulatory provisions were waived by the Assistant Secretary, so that HOME funds could be tailored to address damage in Federally declared disaster areas.

7. Regulation: 24 CFR 511.76(h)(1).

Project/Activity: The State of Wisconsin requested a waiver to permit Rental Rehabilitation recipients that have committed and disbursed 100 percent of their Rental Rehabilitation funds to use their accumulated program income.

Nature of the Requirement: HUD's regulation at 24 CFR 511.76(h)(1) states that program income must be used for any eligible Rental Rehabilitation activity (except administrative costs and rental assistance) until program closeout occurs. Program closeout occurs when all grant funds for all program years have been expended and the annual performance report covering the last program year has been submitted to HUD.

Granted By: Howard Glaser, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: January 8, 1997.

Reasons Waived: The waiver was granted because: (1) most of the State's recipients had committed and disbursed 100 percent of their Rental Rehabilitation grant funds; (2) the State's performance was good in implementing the program; and (3) the State's recipients were working to diligently complete all activities. Further, the waiver allowed the recipients to use program income for HOPE, HOME, and CDBG program activities.

8. Regulation: 24 CFR 574.320(a)(2).

Project/Activity: The City of Key West, Florida requested a waiver to increase the Fair Market Rent (FMR) in its Housing for Person with AIDS (HOPWA) rental assistance program.

Nature of Requirement: HUD's regulation at 24 CFR 574.320(a)(2) provides that providers of rental housing assisted with HOPWA funds cannot charge rents that exceed the current Section 8 FMR.

Granted By: Howard Glaser, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: January 28, 1997.

Reasons Waived: The waiver was granted because the City documented that the rents presently received for efficiency and one bedroom units in the private market were significantly higher than the published FMRs.

9. Regulation: 24 CFR 576.21.

Project/Activity: The City of Fort Wayne, Indiana requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21.

Nature of Requirement: The City requested a waiver of the ESG expenditure limitation on essential services.

Granted By: Jacquie M. Lawing, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 4, 1997.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, as 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. Accordingly, it was determined that the waiver was appropriate.

10. Regulation: 24 CFR 576.21.

Project/Activity: The City of Mount Vernon, New York requested a waiver of the Emergency Shelter Grants (ESG) regulations at 24 CFR 576.21.

Nature of Requirement: The City requested a waiver of the ESG expenditure limitation on essential services.

Granted By: Jacquie M. Lawing, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 4, 1997.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, as 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. Accordingly, it was determined that the waiver was appropriate.

11. Regulation: 24 CFR 576.21.

Project/Activity: The City of Binghamton, New York requested a waiver of the Emergency Shelter Grants (ESG) regulations at 24 CFR 576.21.

Nature of Requirement: The City requested a waiver of the ESG expenditure limitation on essential services.

Granted By: Jacquie M. Lawing, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 4, 1997.

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. Accordingly, it was determined that the waiver was appropriate.

12. Regulation: 24 CFR 576.21.

Project/Activity: Lancaster County, Pennsylvania requested a waiver of the Emergency Shelter Grants (ESG) regulations at 24 CFR 576.21.

Nature of Requirement: The County requested a waiver of the ESG expenditure limitation on essential services.

Granted By: Jacquie M. Lawing, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 4, 1997.

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. Accordingly, it was determined that the waiver was appropriate.

13. Regulation: 24 CFR 583.150(b).

Project/Activity: The 1260 Housing Development Corporation of Philadelphia, Pennsylvania requested a waiver of 24 CFR 583.150(b) of the Supportive Housing Program regulations.

Nature of Requirement: Section 583.150(b) of the Supportive Housing regulations precluded a resident of a supportive housing project from receiving Section 8 assistance during the HUD grant period.

Granted By: Howard Glaser, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: January 28, 1997.

Reasons Waived: This regulatory restriction provision was later removed from HUD's Supportive Housing regulations (and is therefore inapplicable to subsequent rounds of this competitive program). The waiver was granted because the recipient did not plan to use the funds for operations, and the Section 8 certificates would be sought only after the resident entered the program.

For Items 14 Through 18, Waivers Granted for 24 CFR Part 761, Contact: Gloria Cousar, Deputy Assistant Secretary for Community Relations and Involvement, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4126, Washington, DC 20410; telephone (202) 619–8201 (this is not a toll-free number). Hearing or speech-impaired persons may access this number by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

14. Regulation: 24 CFR 761.30(b)

Project/Activity: Public Housing Drug Elimination Program (PHDEP); Grant # NY06DEP0440195.

Nature of Requirement: Waiver of 24 CFR 761.30(b) in order to extend a FY 1995 PHDEP grant for a period of 6 months.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: February 11, 1997.

Reason Waived: The Housing Authority of Geneva (Geneva, NY) requested the 6 month waiver in order to complete contractual agreements regarding PHDEP law enforcement activities.

15. Regulation: 24 CFR 761.30(b)

Project/Activity: Public Housing Drug Elimination Grant Program (PHDEP); Grant # NY06DEP0250194.

Nature of Requirement: Waiver of 24 CFR 761.30(b) in order to extend a FY 1994 PHDEP grant for a period of 6 months.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: February 11, 1997.

Reason Waived: The waiver was necessary in order to permit the Watervliet Housing Authority (Watervliet, NY) to complete contractual agreements related to PHDEP resident activities.

16. Regulation: 24 CFR 761.30(b)

Project/Activity: Public Housing Youth Sports Program; Grant # PA26YSP0380194.

Nature of Requirement: Waiver of 24 CFR 761.30(b) to extend a 1994 Youth Sports Program grant for the Lackawanna County Housing Authority.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: March 12, 1997.

Reason Waived: The Lackawanna County Housing Authority was unable to complete the winter sports component of its grant due to unseasonably warm weather. The waiver was necessary in order for the housing authority to continue its youth sports activities.

17. Regulation: 24 CFR 761.30(b)

Project/Activity: Public Housing Youth Sports Program; Grant No. #NH36YSP0010194.

Nature Of Requirement: Waiver of 24 CFR 761.30(b) to extend a 1994 Youth Sports Program Grant for the Manchester Housing and Redevelopment Authority.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: March 18, 1997.

Reason Waived: There was a clerical error on the HUD Form-1044 causing a delay in the ability of the Manchester Housing and Redevelopment Authority to expend obligated funds.

18. Regulation: 24 CFR 761.30(b)

Project/Activity: Public Housing Drug Elimination Grant Program (PHDEP).

Nature Of Requirement: Waiver of 24 CFR 761.30(b) to extend a FY 1994 PHDEP grant for a period of 8 months.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: March 20, 1997.

Reason Waived: The Boston Housing Authority required an 8 month waiver, in order to complete contractual agreements relative to PHDEP law enforcement and physical improvements.

For Items 19 Through 31, Waivers Granted For 24 CFR Parts 913 and 982, Contact: Madeline Hastings, Deputy Director, Office of Public and Assisted Housing Operations, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4204, Washington, DC 20410; telephone (202) 708–1380 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

19. Regulation: 24 CFR 913.107(a)

Project/Activity: A request was made by the Chicago Housing Authority (CHA), of Chicago, IL, to permit the establishment of ceiling rents for its entire low-rent inventory.

Nature Of Requirement: The total tenant payment a public housing agency (PHA) must charge shall be the highest of the following: (1) 30 percent of the family's monthly adjusted income; (2) 10 percent of the family's monthly income; (3) if the family receives welfare assistance which is subject to adjustment in accordance with actual housing costs, the portion of that welfare assistance specifically designated for housing costs; or (4) the minimum rent set by the PHA.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: February 25, 1997.

Reason Waived: The establishment of ceiling rents will ease the rent burden on working families residing in public housing and will permit CHA to attract wage-earning, low-income applicants.

20. Regulation: 24 CFR 913.107(a)

Project/Activity: A request was made by the Stevens Point Housing Authority (SPHA) of Stevens Point, WI, to permit the establishment of ceiling rents for certain of its hard-to-rent units.

Nature Of Requirement: The total tenant payment a public housing agency (PHA) must charge shall be the highest of the following: (1) 30 percent of the family's monthly adjusted income; (2) 10 percent of the family's monthly income; (3) if the family receives welfare assistance which is subject to adjustment in accordance with actual housing costs, the portion of that welfare assistance specifically designated for housing costs; or (4) the minimum rent set by the PHA.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: March 14, 1997.

Reason Waived: The establishment of ceiling rents will permit SPHA to reduce their vacancy rate, and attract a wider range of low-income families.

21. Regulation: 24 CFR 982.303(b)

Project/Activity: Housing Authority and Urban Renewal Agency of Lane County, Oregon; Section 8 Rental Voucher Program.

Nature Of Requirement: The regulation provides for a maximum voucher term of 120 days during which a voucher holder may seek housing to be leased under the program.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: January 23, 1997.

Reason Waived: Approval of the waiver prevented hardship and compensated the

voucher holder for search time lost as a result of a natural disaster. The area where the voucher holder was seeking housing became inaccessible as a result of severe flooding.

22. Regulation: 24 CFR 982.303(b)

Project/Activity: Josephine Housing and Community Development Council, Oregon; Section 8 Rental Certificate Program.

Nature Of Requirement: The regulation provides for a maximum certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: January 23, 1997.

Reason Waived: Approval of the waiver prevented hardship for the certificate holder (a quadriplegic with two young children) who had been unable to seek housing while recuperating after surgery.

23. Regulation: 24 CFR 982.303(b)

Project/Activity: Idaho Housing and Finance Association; Section 8 Rental Certificate Program.

Nature Of Requirement: The regulation provides for a maximum certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: January 28, 1997.

Reason Waived: Approval of the waiver prevented hardship to the disabled certificate holder and his family. The family's housing search in a rural area with few large units was hampered by the poor health of the household head and by the unavailability of reliable transportation.

24. Regulation: 24 CFR 982.303(b)

Project/Activity: King County Housing Authority, Washington; Section 8 Rental Certificate Program.

Nature Of Requirement: The regulation provides for a maximum certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: January 28, 1997.

Reason Waived: Approval of the waiver prevented hardship to the certificate holder, whose housing search was hampered by severe injuries received during a criminal assault.

25. Regulation: 24 CFR 982.303(b)

Project/Activity: Quincy Housing Authority, Massachusetts; Section 8 Rental Certificate Program.

Nature Of Requirement: The regulation provides for a maximum certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: February 18, 1997.

Reason Waived: Approval of the waiver made it possible for the disabled certificate holder to be united with her three minor children.

26. Regulation: 24 CFR 982.303(b)

Project/Activity: Boston Housing Authority, Massachusetts; Section 8 Rental Certificate Program.

Nature Of Requirement: The regulation provides for a maximum certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: February 18, 1997.

Reason Waived: Approval of the waiver prevented hardship for the disabled certificate holder whose housing choices were limited due to his progressive arthritic condition.

27. Regulation: 24 CFR 982.303(b)

Project/Activity: Housing Authority and Urban Renewal Agency of Lane County, Oregon; Section 8 Rental Voucher Program.

Nature Of Requirement: The regulation provides for a maximum voucher term of 120 days during which a voucher holder may seek housing to be leased under the program.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing

Date Granted: February 25, 1997.

Reason Waived: Approval of the waiver prevented hardship to the disabled voucher holder whose housing search had been impeded by frequent and severe anxiety attacks which were subsequently controlled by medication.

28. Regulation: 24 CFR 982.303(b)

Project/Activity: San Francisco Housing Authority, California; Section 8 Rental Certificate Program

Nature of Requirement: The regulation provides for a maximum certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: March 4, 1997.

Reason Waived: Approval of the waiver prevented hardship for an elderly couple trying to relocate to an area where family members would be available to assist them with shopping and visits to doctors.

29. Regulation: 24 CFR 982.303(b)

Project/Activity: Santa Clara County Housing Authority, California; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: March 20, 1997.

Reason Waived: Approval of the waivers was necessary to prevent hardship for two disabled elderly women suffering from severe medical problems.

30. Regulation: 24 CFR 982.303(b)

Project/Activity: Franklin County Regional Housing Authority, Massachusetts; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: March 27, 1997.

Reason Waived: Approval of the waiver prevented hardship to the certificate holder whose housing search was hampered by physical and psychological disabilities.

31. Regulation: 24 CFR 982.303(b)

Project/Activity: Arlington Housing Authority, Massachusetts; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: March 27, 1997.

Reason Waived: Approval of the waiver prevented hardship to a family that needed to locate housing near the medical facilities where their son was receiving treatment.

For Item 32, Waiver Granted For 24 CFR Part 950, Contact: Karen Garner-Wing, Office of Native American Programs, 1999 Broadway, Suite 3390, Denver, Colorado 80202; telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

32. Regulation: 24 CFR 950.325

Project/Activity: A request was made by the Fallon Paiute Shoshone Housing Authority (FPSHA), to establish ceiling rents for the low-rent inventory under its jurisdiction.

Nature of Requirement: The regulation requires that the total tenant payment be calculated at 30 percent of monthly adjusted income or 10 percent of monthly income, whichever is higher. Section 102(a) of the Housing and Community Development Act of 1987 amended section 3(a)(2) of the U.S. Housing Act of 1937 to permit the housing authority to establish, with HUD approval, ceiling rents in Indian housing developments.

Granted By: Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing.

Date Granted: February 28, 1997.

Reason Waived: The FPSHA wishes to establish permanent ceiling rents so that industrious people motivated to better their standards of living will not be discouraged by consequent increases in calculated rent payments. Also, making the homes more attractive to higher income families will contribute to the accomplishment of the FPSHA goal of establishing mixed income neighborhoods.

[FR Doc. 97–20889 Filed 8–6–97; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Thursday
August 7, 1997

Part IV

Environmental Protection Agency

40 CFR Parts 90 and 91

Control of Air Pollution; Amendments to Emission Requirements Applicable to New Nonroad Spark Ignition Engines at or below 19 Kilowatts and New Marine Spark Ignition Engines: Provisions for Replacement Engines and the Use of Two Stroke Engines on Certain Nonhandheld Equipment; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 90 and 91

[FRL–5871–1]

Control of Air Pollution; Amendments to Emission Requirements Applicable to New Nonroad Spark Ignition Engines At or Below 19 Kilowatts and New Marine Spark Ignition Engines: Provisions for Replacement Engines and the Use of Two Stroke Engines on Certain Nonhandheld Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final rule amends the regulations applicable to spark-ignition nonroad engines at or below 19 kilowatts (kW) and spark-ignition marine engines to address situations that have arisen regarding the implementation of regulations applicable to these nonroad engines. No significant air quality impact is expected from these amendments.

These amendments will allow engine manufacturers to provide uncertified engines to replace older engines when major engine failures occur and no suitable certified engine is available that will fit in the nonroad equipment or marine outboard or personal watercraft. These amendments will also broaden a provision in the existing regulations which permits the use of two stroke engines to power lawnmowers, subject to a phase-out schedule described in the regulations. The amendments will extend this provision to other types of nonhandheld equipment subject to appropriate constraints.

DATES: This final rule is effective October 6, 1997 unless adverse or critical comments are received by September 8, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: EPA Air Docket (LE–131), Attention: Docket Number A–97–25, room M–1500, 401 M Street, SW., Washington, DC 20460 (telephone 202–260–7548, fax 202–260–4400). Please contact the individual listed below before submitting comments. Materials relevant to this rulemaking are contained in the docket listed above and may be reviewed at that location from 8:00 a.m. until 5:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: John Guy, Office of Mobile Sources, Engine Programs and Compliance Division (6403J), 401 M Street SW., Washington, DC 20460, 202–233–9276.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by this action are those which manufacture and use spark-ignition marine outboard or personal watercraft (including jetboat) engines and spark-ignition small nonroad engines of 19 kW or less. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers and users of spark ignition engines of 19 kW or less. Manufacturers and users of marine spark ignition outboard or personal watercraft engines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in §§ 90.1 and 91.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Obtaining Copies of the Regulatory Language

Electronic Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this rulemaking are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). Users can find Nonroad Engines and Vehicles information and documents through the following path once they have accessed the OMS Home Page: ''Nonroad Engines and Vehicles,'' ''Equipment'' or ''Marine''. Electronic copies of the preamble and the regulatory text of this rulemaking are also available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTN BBS). Users are able to access and download TTN BBS files on their first call. After logging onto TTN BBS, to navigate through the BBS to the files of interest, the user must enter the appropriate command at each of a series of menus. The steps required to access information on this rulemaking are listed below. The service is free, except for the cost of the phone call. TTN BBS: 919–541–5742 (1,200–14,400 bps, no parity, eight data bits, one stop bit). Voice help: 919–541–5384; Internet address: TELNET ttnbbs.rtpnc.epa.gov; Off-line: Mondays from 8:00–12:00 Noon ET.

1. Technology Transfer Network Top Menu: Gateway to TTN Technical Areas (Bulletin Boards)

2. TTN Technical Information Areas: OMS—Mobile Sources Information

3. OMS BBS===Main Menu File Transfers: Rulemaking & Reporting

4. Rulemaking Packages: Nonroad

5. Nonroad Rulemaking Area: File Area #2 . . . Nonroad Engines

6. Nonroad engines

At this stage, the system will list all available nonroad engine files. To download a file, select a transfer protocol which will match the terminal software on your computer, then set your own software to receive the file using that same protocol. If unfamiliar with handling compressed (i.e., ZIP'd) files, go to the TTN topmenu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit TTN BBS with the <G>oodbye command.

III. Table of Contents

IV. Statutory Authority and Background

A. Statutory Authority

Authority for the actions in this notice is granted to EPA by sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

B. Background

(1) Replacement Engines

EPA promulgated final regulations applicable to spark-ignition nonroad engines at or below 19kW (Small SI engines) on July 3, 1995 (60 FR 34582, codified at 40 CFR part 90) and final regulations applicable to spark-ignition marine outboard and personal watercraft (including jetboat) engines (Marine SI engines) on October 4, 1996 (61 FR 52088, codified at 40 CFR part 91)[1]. The Small SI regulations take effect with model year 1997 for the majority of covered engines but not until the 1998 model year for certain higher displacement handheld engines. The Marine SI rule takes effect with 1998 or 1999 engines, depending upon their usage, and involves a corporate average standard which tightens each year through 2006. Both rules prohibit engine manufacturers from introducing into commerce any engine not covered by a certificate of conformity issued by EPA under the regulations (40 CFR 90.1003(a)(1)(i); 40 CFR 91.1103(a)(1)(i)). The rules also prohibit equipment and vessel manufacturers from introducing new nonroad equipment and vessels into commerce unless the engine in the equipment or vessel is certified to comply with the applicable nonroad emission requirements (40 CFR 90.1003(a)(5); 40 CFR 91.1103(a)(5))[2].

These prohibitions have caused or will cause engine manufacturers to be unable, in the event of a major engine failure, to provide uncertified replacement engines to repower pre-regulation nonroad equipment and outboards and personal watercraft (including jetboats), as well as outboards and personal watercraft (including jetboats) certified to an earlier standard[3]. Equipment and engine manufacturers have indicated that for many items of older equipment, older outboards and older personal watercraft (PWCs), no certified engine is, or will be, available that will fit. Amendments in this package will alleviate this unintended side effect of the current regulations for users of Marine SI and Small SI engines.

While this rulemaking addresses the needs of both the Marine SI and Small SI engine manufacturers for a replacement engine provision together, there are differences in the products and structure of the industries that should be noted here. The majority of the engines subject to the Marine SI rule are outboard engines where the engine manufacturer produces the complete outboard engine containing both the powerhead (engine) and the drive unit (the lower part of an outboard engine which contains the drive shaft and exhaust system and holds the propeller). Outboard engines are sold to consumers and vessel manufacturers who affix them to the outside rear of boats. With respect to replacement engine provisions for Marine SI engines in this rulemaking, the term ''engine'' refers to the powerhead of an outboard engine or the analogous power unit of a personal watercraft or jet boat.

Small SI engines can be split into two factions. Nonhandheld engines are produced by engine manufacturers and sold to equipment manufacturers that produce lawnmowers, tillers, garden tractors, commercial mowing, farm and construction equipment, small generators and other such equipment. Some of this equipment can be extremely expensive relative to the cost of a new engine. When engine failures occur, equipment operators may desire to replace the engine. Handheld engines are generally produced by companies that make chainsaws, string trimmers, hedge trimmers, backpack blowers and cut off saws. The handheld industries are generally integrated, producing the entire consumer product, while the nonhandheld industries are not. For handheld products, the engine comprises a substantial portion of the value of the equipment, and most equipment is of low value relative to engine repair or replacement costs. Consequently, handheld engine replacement is expected to be extremely rare even in high end, professional usage products.

(2) Use of Two Stroke Engines in Nonhandheld Equipment

The Small SI final rule provides for separate categories for handheld and nonhandheld engines. Within each category are different displacement classes with different emission standards. Handheld engines use predominantly two stroke combustion technology because of the need for light-weight engines that can be used multipositionally, including upside down and sideways, in handheld equipment. Nonhandheld engines, which are not so constrained by weight and generally operate in limited positions, are nearly all four stroke combustion technology. Because of their operating characteristics and design, two stroke engines have much greater hydrocarbon (HC) emissions than four stroke engines.[4] The standards for two stroke and four stroke engines reflect these differences—the nonhandheld hydrocarbon plus oxides of nitrogen standards are designed around four stroke engines and are significantly more stringent than the corresponding handheld engine standards.

[1] The preamble to the final Marine SI rule (61 FR 52090) explains that for purposes of the Marine SI rule, jetboats are considered as personal watercraft, except where their engines are derived from sterndrive or inboard type marinized automotive blocks.

[2] The regulations also prohibit, in the case of any person, the importation of Small SI engines and Marine SI engines manufactured after the applicable implementation date for the engine. The regulations also prohibit the importation of equipment containing Small SI engines unless the engine is covered by a certificate of conformity. (40 CFR 90.1003(a)(1)(ii) and 40 CFR 91.1103(a)(1)(ii)).

[3] The Marine SI standards take effect with the 1998 or 1999 model year, depending upon application, and then become progressively tighter each year through 2006. Some engines certified early in the program will be discontinued as the standards tighten down. Consequently, Marine SI engine manufacturers may need to provide uncertified replacement engines for pre-regulatory engines as well as for engines built to meet an earlier standard. The Phase 1 Small SI standards take effect with the 1997 or 1998 model year, depending upon application, and remain the same throughout Phase 1. At least during Phase 1, the Small SI manufacturers will only need to provide uncertified engines for pre-regulatory equipment.

[4] A two stroke or two cycle engine produces power strokes twice as often as a four stroke or four cycle engine, and therefore produces greater power for a given weight. Also, two stroke engines are lubricated by oil which is added to the fuel, while four stroke engines require a crankcase full of oil that must remain at the bottom of the engine. Consequently, two stroke engines can be operated multipositionally, but burn oil with their gasoline. Four stroke engines can not typically be operated multipositionally, but do not burn oil with their fuel. The two additional strokes used by a four stroke engine serve to push the exhaust gases out of the cylinder before any fresh fuel and air is admitted. In a two stroke engine, these extra strokes do not occur and there is considerable mixing of fresh fuel and air with the exhaust stream. The presence of this unburned fuel along with the byproducts of oil combustion cause two stroke engines to exhibit high HC emissions.

While nearly all nonhandheld equipment is powered by four stroke engines, some lawnmowers have historically used two stroke engines. A special provision was incorporated into the final rule to ease the transition to four stroke engines for the affected manufacturers. *See*, 40 CFR 90.103(a)(3). This provision allows certain manufacturers of lawnmowers to continue to use two stroke engines, subject to a declining production cap, up through model year 2002, provided the engines are certified to meet the handheld standards. This provision is discussed in greater detail in the preamble to the final rule (60 FR 34582, 34593–34594 (July 3, 1995)).

Recently, EPA has learned that some very low volume, specialized nonhandheld equipment has also historically been produced with two stroke engines. This equipment would require substantial modification and redesign to utilize four stroke engines. An amendment in this package will extend the flexibility provided for manufacturers of two stroke lawnmowers to manufacturers of other nonhandheld equipment, provided the equipment manufacturer can demonstrate to EPA its inability to readily convert to four stroke engines. If EPA approval is granted, this provision would then allow those equipment manufacturers to have the same opportunities to modify their equipment to use four stroke engines that the two stroke lawnmower manufacturers have. This provision is expected to affect a very small number of low volume, specialty equipment manufacturers.

V. Use of Uncertified Engines for Replacement of Failed Engines in Older Equipment and Marine Outboard Engines and Personal Watercraft (Including Jetboats)

A. Discussion

As indicated above, the Marine SI and the Small SI rules prohibit the introduction into commerce of any new nonroad engines subject to those regulations unless the engines are covered by a certificate of conformity issued by EPA. According to letters received from Small SI and Marine SI engine manufacturers, the Engine Manufacturers Association and a number of nonroad equipment manufacturers, these prohibitions pose a hardship to engine manufacturers and their customers when equipment produced before the applicable effective date of the rules, and therefore equipped with uncertified engines, or marine equipment with engines certified to an earlier standard, experiences catastrophic engine failures.[5, 6] In such cases, particularly for newer equipment still under warranty, engine manufacturers desire to be able to provide an entire new engine. However, certified engines that will fit in pre-regulatory equipment or equipment subject to an earlier standard will not always be available for reasons discussed below.

Under current regulations, an equipment owner who experiences a major engine failure with an uncertified engine or a marine engine certified to an earlier standard is limited to the following options. It can:

(1) Obtain a new, uncertified engine or a marine engine certified to an earlier standard from a manufacturer's or distributor's inventory. Engine manufacturers have informed us that because of the many variations of engines they produce, inventorying quantities of older marine engines or uncertified engines produced before the effective date of the regulations for anticipated replacement purposes would be impractical and prohibitively expensive. The Small SI regulations at 40 CFR 90.1003(b)(4) specifically provide

> * * * Nonroad vehicle manufacturers may continue to use noncertified nonroad engines built prior to the effective date until noncertified engine inventories are depleted; however, stockpiling (i.e. build up of an inventory of engines outside of normal business practices) of noncertified nonroad engines will be considered a violation of this section.[7]

EPA does not regard engines inventoried beyond the end of a model year for reasonable anticipated warranty needs to be ''stockpiled''. However, because of the manufacturers' understandable desire to avoid inventory costs, this option would not likely be able to supply significant numbers of replacement engines.

(2) Obtain a used or remanufactured engine. EPA has no restrictions on the installation of used or remanufactured engines in equipment that predates the relevant effective date of the Marine SI or Small SI rule. Further, marine engines certified to an earlier standard may be remanufactured to be identical to a certified configuration of the same or later model year and used for replacement applications. However, engine and equipment manufacturers have informed us that there is no significant rebuilding industry for Small SI engines as there is for categories of larger engines. Rebuilding of marine engines is more common, however marine engine manufacturers have informed us that rebuilt engines are not commonly available to replace engines that are less than approximately five years old and even then may not be widely available for some configurations.

(3) Repair the individual engine using a ''short block''. In this case, a new cylinder block with pistons, connecting rods, crankshaft and timing gear (a ''short block'') serves as a repair part. EPA has a long standing policy that a short block is not a new engine and will not result in a new engine when combined with the used components from the original engine.[8]

(4) Replace the failed engine with a new, certified engine. In this case, a new certified engine is installed in place of the uncertified engine or older marine engine. This is the most desirable option from the Agency's point of view, however in many cases certified engines will not fit in equipment that may have been designed around uncertified engines or older marine engines. Engines certified to the latest standards may be equipped with additional or different components which impact the external dimensions of or connections to the engines and therefore limit their abilities to fit in engine compartments of older equipment.

From the engine and equipment manufacturers' point of view, all of the current options described above have limitations. The manufacturers point to long standing industry practices of being able to provide complete, new replacement engines expeditiously when catastrophic engine failures occur, particularly when those failures affect equipment in the first few years of use, and even more particularly when it may still be under warranty. Many of the Small SI engines are used in specialized agricultural or construction equipment. Timely repairs can be crucial when the broken engine is in a piece of

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[5] For simplicity, from this point on in this preamble discussion, unless otherwise specified, the term ''equipment'' refers to both nonroad equipment using handheld or nonhandheld engines and to marine propulsion units including outboard and jet engines and their drive units. Therefore, the term ''engine'' as it pertains to marine engines will mean the powerhead of an outboard engine or the analogous power unit of a jet engine used in a personal watercraft or jet boat.

[6] Copies of these letters are available in the docket for today's rulemaking.

[7] No correponding provision is found in the Marine SI rule, however this regulation is essentially a codification of longstanding EPA policies implementing the prohibitions of section 203(a) of the Act. These policies are similarly applicable to marine engines. See, for example, EPA's letter of November 22, 1989 to the Public Transportation Division of the City of High Point, North Carolina. Copy in docket.

[8] Letters of December 11, 1989 and April 6, 1990 from Charles N. Freed, EPA to Mitsubishi Motors America, Inc. Copies located in docket.

construction equipment and a construction project sequence is being held up. Many Marine SI engines are used in commercial fishing or tourist vessels where downtime means loss of income to the operator. Also, many users of Small SI powered equipment and Marine SI engines are small businesses who can not afford the additional downtime and expense that may be associated with waiting for an engine overhaul. Further, because of the diversity of nonroad products using Small SI engines, suitable replacement or rental nonroad equipment is not always readily available. The equipment and engine manufacturers have also explained that the need to repair an engine using a short block leads to delays and extra costs that would not occur if the old, broken engine could simply be exchanged for a new uncertified engine. They argue that the short block option requires greater skills and facilities and more time to complete than an engine swap and produces an engine that is not a factory-tested and adjusted unit. From an air quality standpoint, they argue that an entire new uncertified engine might be better than an old engine repaired with a new short block or replaced with a remanufactured engine.

The two major U.S. manufacturers of outboard marine engines have indicated to EPA that replacement powerheads comprise less than one percent of annual U.S. sales. Engine replacement is rare in walk-behind lawnmowers which is the most common application of nonhandheld Small SI engines. Further, the two major manufacturers of walk-behind mower engines have indicated that their certified configurations will fit older mower applications. One of these companies has told EPA that replacement engines are less than one percent of its business. Another Small SI engine manufacturer has indicated to EPA that only about two percent of its annual sales are for replacement purposes, and that many of these will be certified engines. This particular manufacturer pointed out that its sales of replacement engines are probably higher than the industry average, because it produces mostly larger, more expensive nonhandheld engines used in ''high end'' equipment where the value of the equipment drives the decision toward replacing the engine rather than the entire piece of equipment.

Engine manufacturers are still producing uncertified complete engines for export, or are sometimes willing to produce small quantities for domestic replacement purposes, and desire to be able to sell them (or provide them under warranty) for replacement purposes. EPA notes that the California Air Resources Board, in its regulation of both Small SI engines and large nonroad compression ignition engines, permits the introduction into commerce of uncertified engines for replacement purposes up through January 1, 1999 and January 1, 2000 respectively. (California does not regulate Marine SI engines.) In a direct final rulemaking very similar to today's rulemaking that was published on November 12, 1996 (61 FR 58102), EPA established provisions to permit the sale of uncertified large compression ignition (Large CI) nonroad engines for replacement purposes in pre-regulation equipment based on considerations consistent with those described above.

The Agency is amending the Small SI and Marine SI regulations to permit the sale of uncertified replacement engines in those cases where a new, certified engine is not available with appropriate physical or performance characteristics to repower the equipment, as a reasonable way to balance achieving the air quality benefits of the Small SI and Marine SI programs with the desire to minimize disruption to equipment owners accustomed to using replacement engines. However, if a certified engine is available with sufficient torque and horsepower that will fit in the equipment, then the certified engine should be used so that the goals of the Clean Air Act to convert the fleet of Small SI and Marine SI engines to certified status are promptly fulfilled. The amended Small SI regulations will permit a nonroad engine in a piece of equipment that predates the applicable implementation date of the Small SI rule to be replaced with a new, uncertified engine. Similarly, the amended Marine SI regulations will permit the powerhead in an outboard or PWC (including a jetboat) that predates the applicable implementation date of the Marine SI rule to be replaced with a new, uncertified engine. The amended Marine SI regulation will also permit powerheads certified in an earlier year of the phase in, but not certified in the then current model year to be replaced with a new, uncertified powerhead provided the powerhead is of a configuration identical in all material respects to that of the failed powerhead or a later model year powerhead.

Given the small percentage of engines that will likely require replacement, the fact that some of those will get replaced with certified engines and the likelihood that a new replacement engine will be at least as clean as a remanufactured engine or an engine repaired with a short block, EPA concludes that permitting the use of uncertified replacement engines in these situations will not pose an environmental threat or reduce the environmental benefit of the Small SI or Marine SI rules. Further, EPA concludes that it would be unreasonable to impose upon equipment operators, the costs associated with having to replace failed engines with certified engines, where appropriate certified engines are not available for pre-regulatory equipment or for marine engines built to less stringent standards.

B. Regulatory Approach

EPA is implementing this provision through amendments to the Prohibited Acts sections at 40 CFR 90.1003 and 91.1103. To ensure that the replacement engine provision is properly used, these amendments will include controls nearly identical to those adopted in the direct final rule for Large CI engines referenced above. EPA is requiring that any uncertified Small SI engine produced for replacement purposes be clearly labeled as such and that such label include a warning that any use of the engine in post-regulation nonroad equipment constitutes a violation of the Act subject to civil penalty. EPA is adopting these same provisions for replacement marine engines except that the labeling requirement will be different to reflect the phase in of the marine standards. In this case the label must reflect that the engine may be used to replace only pre-regulation engines or engines certified for a model year that is no later than the last year in which the replacement engine was certified. For both Marine SI and Small SI engines, EPA is requiring that the manufacturer ascertain that no certified engine with appropriate characteristics is available that will fit in the equipment and that the manufacturer or its agent takes possession of the old engine. Requiring the equipment owner to ''turn in'' an old engine provides the manufacturer or its agent with a clear opportunity to confirm the existence of an old engine, evaluate its configuration and make sure the appropriate replacement engine is supplied. Unlike in the Large CI replacement engine rule, we are providing that EPA may approve alternative control measures to the requirement that the manufacturer or its agent take possession of the old engine when selling an uncertified replacement engine. We believe this flexibility may be necessary to accomodate some distribution channels through which small engines and marine engines may be sold if these channels are shown to be unable to accomodate old engines. EPA would approve alternate

approaches if persuaded that the approach provides equivalent control to the requirement to turn in the old engine to the manufacturer or its agent.

VI. Use of Two Stroke Engines in Nonhandheld Equipment

A. Discussion

Presently, the Small SI rule contains provisions at 40 CFR 90.103(a)(3) and 90.107(e)(1) through (5) to permit manufacturers of two stroke lawnmower engines to continue to sell those engines through model year 2002 provided they can certify them to the handheld standards appropriate for their displacement. These provisions require the engine manufacturer to establish a baseline annual sales number based on their 1992 through 1994 sales of such engines and then comply with a declining production cap through the 2002 model year. In 2003, the engines would have to meet the appropriate nonhandheld standards, either those contained in the current rule or in any superseding rule.

As discussed in the preamble to the final Phase 1 rule, these provisions were established to minimize the economic hardship of the small engine rule on two stroke lawnmower engine and equipment manufacturers and to provide adequate lead time for compliance with the nonhandheld standards. *See* 60 FR 34593–34594. EPA incorporates that discussion by reference. Recently, EPA has become aware of a very small manufacturer (less than 100 units per year) of specialty lawn care equipment who has historically used two stroke engines on its products, was unaware of the promulgation of the Phase 1 rule until recently, and would face severe lead time problems and economic hardship if it had to quickly switch over to four stroke engines to power its equipment. Its equipment will require substantial redesign to use four stroke engines for which additional lead time is necessary. EPA believes there may be other small entities with similar situations but does not believe there are any that produce substantial volumes of equipment. In the case of small volume manufacturers, the per unit cost of forcing equipment redesign to accommodate four stroke engines is especially high. EPA has concluded that it is equitable and appropriate to treat such companies in the same manner as the two stroke lawnmower engine manufacturers are being treated and has determined it is appropriate to expand the provisions providing relief for lawnmowers to encompass any nonhandheld equipment that has historically been produced with two stroke engines, provided that the manufacturer can demonstrate to EPA that no suitable four stroke engine is available and that substantial redesign of the equipment requiring additional lead time to avoid economic hardship would be necessary to accommodate a four stroke engine. Without providing relief to address these situations, the cost of compliance with the nonhandheld standards would be unreasonably high. In order to avoid this result, EPA has determined that it is more reasonable to provide a relaxation of standards in these situations.

With regard to the declining annual cap imposed in § 90.107(e) upon the lawnmower engine manufacturers, EPA believes that a declining cap may not be appropriate or necessary for specialty equipment whose production is already very low, and could serve to eliminate any benefit that the provision may offer to a small equipment manufacturer, because it might force them to produce both two and four stroke versions at the same time to maintain sales levels. Therefore, EPA is adding a provision at § 90.107(g) that would allow the cap to be waived by EPA upon a demonstration by the engine or specialty equipment manufacturer that compliance with the cap would not be economically feasible. This waiver authority would not be extended to the high volume lawnmower manufacturers currently covered under § 90.107(e), nor would it be extended to any other high-volume nonhandheld engine manufacturer, in the unlikely event that one might come forward and seek relief to enable it to use a two stroke engine.

B. Regulatory Approach

The regulatory change will be implemented by modifications to sections on Exhaust Emission Standards (§ 90.103) and the Application for Certification (§ 90.107). The relevant provision at § 90.103(a)(3) previously applied only to manufacturers of two stroke lawnmowers and will now be expanded to include ''lawnmowers or other nonhandheld equipment''. In § 90.107, a new paragraph will be added to provide the criteria by which EPA can approve the use of two stroke engines in nonhandheld equipment other than lawnmowers. Because the provision for two stroke engines in lawnmowers was based on substantial information about the impact of the Small SI nonhandheld standards on certain manufacturers and because EPA desires nonhandheld equipment manufacturers to use engines certified to nonhandheld standards whenever possible, EPA is including a requirement, applicable to manufacturers of nonhandheld equipment other than lawnmowers, that the equipment manufacturer must demonstrate that a suitable engine meeting nonhandheld standards is not available to fit the existing equipment design and that the equipment can not be converted to accept an engine meeting the nonhandheld standards without substantial and costly redesign for which additional lead time is necessary.

The original regulation included a declining production cap at § 90.107 to provide for the phase out of two stroke equipped lawnmowers. The declining cap approach was designed to address relatively high-volume two stroke lawnmower manufacturers who would be able to gradually shift their production to four stroke mowers. Nonhandheld equipment other than lawnmowers that may qualify to use two stroke engines is expected to be produced only in very small quantities and EPA believes that a declining production cap may be unnecessary for such equipment. Consequently, a provision has been added to permit EPA to waive the declining cap for equipment other than lawnmowers, if the equipment manufacturer can make a demonstration that complying with the cap would be economically infeasible.

VII. Final Action

EPA is publishing this rule without prior proposal because EPA views these amendments as noncontroversial and anticipates no adverse comments. However, in the event that adverse or critical comments are filed, EPA has prepared a Notice of Proposed Rulemaking (NPRM) proposing the same amendments. This NPRM is contained in a separate document in this **Federal Register** publication. The direct final action will be effective October 6, 1997, unless adverse or critical comments are received by September 8, 1997. If EPA receives adverse or critical comments on either the relevant revisions discussed in Section V or those discussed in Section VI, the revisions described in that section will be withdrawn. If adverse or critical comments are received on the revisions described in both sections, then both sections will be withdrawn before the effective date. In case of the withdrawal of all or part of this action, the withdrawal will be announced by a subsequent **Federal Register** document. All public comments will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not provide a second comment period on this action. Any parties

interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that the rule will be effective October 6, 1997.

VIII. Cost Effectiveness

This rulemaking alters an existing provision by allowing nonroad equipment manufacturers to have greater flexibility in their choice of engines under certain circumstances. It also permits nonroad engine manufacturers to sell engines that the original rule would not permit. Therefore, because this rulemaking alters existing provisions, and that alteration provides regulatory relief, there are no additional costs to original equipment manufacturers associated with this specific final action.

The costs and emission reductions associated with the Small SI rule were developed for the July 3, 1995 final rulemaking. The costs and emission reductions associated with the Marine SI rule were developed for the October 4, 1996 rulemaking. We do not believe the changes being implemented today affect the costs and emission reductions published as part of those rulemakings.

IX. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or, (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Reporting and Recordkeeping Requirements

This final rulemaking does not change the information collection requirements submitted to and approved by OMB in association with the Small SI final rulemaking (60 FR 34582, July 3, 1995) or submitted to OMB in association with the Marine SI final rulemaking (61 FR 52088, October 4, 1996). 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.

C. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant adverse economic impact on a substantial number of small entities. This is because today's rulemaking will provide regulatory relief to both large and small volume engine and equipment manufacturers by permitting greater flexibility in engine choices in equipment. Moreover, the provisions in this rulemaking simply permit long-standing business practices to continue.

D. Submission to Congress and the General Accounting Office

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

E. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, EPA has not prepared a budgetary impact statement for this rule.

List of Subjects in 40 CFR Parts 90 and 91

Environmental protection, Air pollution control, Confidential business information, Imports, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: July 30, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations, is amended as follows:

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

2. Section 90.103 is amended by revising paragraph (a)(3) to read as follows:

§ 90.103 Exhaust emission standards.

(a) * * *

(3) Notwithstanding paragraph (a)(2) of this section, two stroke engines used to power lawnmowers or other nonhandheld equipment as allowed in § 90.107 (e), (f) and (h) may meet class III, IV, or V standards until model year 2003.

* * * * *

3. Section 90.107 is amended by adding a new paragraph (h) to read as follows:

§ 90.107 Application for certification.

* * * * *

(h)(1) The Administrator may, upon receipt of a written request from an equipment manufacturer, accompanied by sufficient documentation, permit two stroke engines produced for nonhandheld equipment other than lawnmowers to meet the standards specified in § 90.103(a)(3) under the schedule outlined in paragraph (e) of this section. The equipment manufacturer must demonstrate to the satisfaction of the Administrator that:

(i) Four stroke engines for such equipment are not available with suitable physical or performance characteristics; and

(ii) The equipment can not be converted to use four stroke engines without substantial redesign for which additional lead time is necessary to avoid economic hardship.

(2) The Administrator may waive the phase-in percentages of paragraphs (e)(3) and (e)(4) of this section for engines used in low volume nonhandheld equipment other than lawnmowers where the equipment manufacturer demonstrates to the satisfaction of the Administrator that compliance with the production cap is not economically feasible.

4. Section 90.1003 is amended by adding paragraph (b)(5) to read as follows:

§ 90.1003 Prohibited acts.

* * * * *

(b) * * *

(5) A new nonroad engine, intended solely to replace an engine in a piece of nonroad equipment that was originally produced with an engine manufactured prior to the applicable implementation date as described in § 90.2, § 90.103 and § 90.106, shall not be subject to the requirements of § 90.106 or prohibitions of paragraphs (a)(1) and (b)(4) of this section provided that:

(i) The engine manufacturer has ascertained that no engine produced by itself or the manufacturer of the engine that is being replaced, if different, and certified to the requirements of this subpart, is available with the appropriate physical or performance characteristics to repower the equipment; and

(ii) Unless an alternative control mechanism is approved in advance by the Administrator, the engine manufacturer or its agent takes ownership and possession of the engine being replaced; and

(iii) The replacement engine is clearly labeled with the following language, or similar alternate language approved in advance by the Administrator:

This engine does not comply with federal nonroad or on-highway emission requirements. Sale or installation of this engine for any purpose other than as a replacement engine in a nonroad vehicle or piece of nonroad equipment whose original engine was not certified is a violation of Federal law subject to civil penalty.

PART 91—CONTROL OF EMISSIONS FROM MARINE SPARK-IGNITION ENGINES

5. The authority citation for part 91 continues to read as follows:

Authority: Sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

6. Section 91.1103 is amended by adding paragraph (b)(4) to read as follows:

§ 91.1103 Prohibited acts.

* * * * *

(b) * * *

(4) A new marine spark-ignition engine intended solely to replace an engine in an outboard engine, or other engine to which this Part is applicable as determined by §§ 91.1, 91.101, 91.106 that was originally produced with an engine manufactured prior to the applicable implementation date as described in §§ 91.2, and 91.106 and 91.205(a)(1), or that was originally produced in a model year in which less stringent emission standards under this part were in effect shall not be subject to the requirements of § 91.106 or the prohibitions of paragraph (a)(1) of this section provided that:

(i) The engine manufacturer has ascertained that no engine produced by itself or the manufacturer of the engine that is being replaced, if different, and certified to the requirements of this subpart, is available with the appropriate physical or performance characteristics to repower the outboard, personal watercraft or jetboat; and

(ii) Unless an alternative control mechanism is approved in advance by the Administrator, the engine manufacturer or its agent takes ownership and possession of the engine being replaced; and

(iii) The replacement engine is clearly labeled with the following language, or similar alternate language approved in advance by the Administrator:

This engine does not comply with Federal nonroad or on-highway emission requirements. Sale or installation of this engine for any purpose other than as a replacement engine in a marine vessel whose original engine was not certified, or was certified to less stringent emission standards than those that apply to the year of manufacture of this engine, is a violation of Federal law subject to civil penalty; and

(iv) Where the replacement engine is intended to replace an engine built after the applicable implementation date as described in §§ 91.2, 91.106 and 91.205(a)(1), but built to less stringent emission standards than are currently applicable, the replacement engine shall be identical in all material respects to a certified configuration of the same or later model year as the engine being replaced.

[FR Doc. 97–20821 Filed 8–6–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 90 and 91

[FRL–5871–2]

Control of Air Pollution; Amendments to Emission Requirements Applicable to New Nonroad Spark Ignition Engines At or Below 19 Kilowatts and New Marine Spark Ignition Engines: Provisions for Replacement Engines and the Use of Two Stroke Engines on Certain Nonhandheld Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes to amend the regulations applicable to spark-ignition nonroad engines at or below 19 kilowatts (kW) and spark ignition marine engines to address issues that have arisen with the implementation of regulations applicable to these nonroad engines. No significant air quality impact is expected from these amendments.

This NPRM proposes to allow engine manufacturers to provide uncertified engines to replace older engines when major engine failures occur and no suitable certified engine is available that will fit in the nonroad equipment or marine outboard or personal watercraft. The proposed amendments would also allow manufacturers of nonhandheld equipment who have historically used two stroke engines to avail themselves of an option currently available only to lawnmower manufacturers that have historically used two stroke engines. The current regulation permits the lawnmower manufacturers to have additional time to convert to engines that will meet the more stringent nonhandheld standards. The proposed amendment would extend the option to other types of nonhandheld equipment, subject to appropriate constraints.

Because the rule revision is not expected to receive any adverse comments, the revision is also being issued as a direct final rule in a separate part of this **Federal Register**.

DATES: Public comments on the amendments proposed herein will be accepted until September 8, 1997 or 30 days after the date of a public hearing if one is held.

The Agency will hold a public hearing regarding these proposed amendments on August 27, 1997 if it receives a request to testify at a hearing by August 18, 1997. The Agency will cancel this hearing if no one requests to testify. Members of the public should call the contact person indicated below to notify EPA of their interest in testifying at the hearing. Interested parties may call the contact person after August 18, 1997 to determine whether and where the hearing will be held.

ADDRESSES: Interested parties may submit written comments (in duplicate) for EPA consideration by addressing them as follows: EPA Air Docket (LE–131), Attention: Docket Number A–97–25, room M–1500, 401 M Street, S.W., Washington, D.C. 20460. Please contact the individual listed below before submitting comments.

Materials relevant to this rulemaking are contained in the docket listed above and may be reviewed at that location from 8:00 am until 5:30 pm Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: John Guy, Office of Mobile Sources, Engine Programs and Compliance Division (6403J), 401 M Street S.W., Washington, D.C. 20460, 202–233–9276.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which manufacture and use spark-ignition nonroad engines of 19 kW or less and those entities which manufacture and use spark-ignition marine outboard or personal watercraft (including jetboat) engines. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers and users of spark-ignition engines of 19 kW or less. Manufacturers and users of marine spark-ignition outboard or personal watercraft engines

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in §§ 90.1 and 91.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

If no adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in a separate part of this **Federal Register** will automatically go into effect on the date specified in that rule. If adverse comments are timely received on the direct final rule, the rule will be withdrawn in whole or in part and all public comment received on it will be addressed in a subsequent final rule based on this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period. For further supplemental information, the detailed rationale, and the rule revisions, see the information provided in the direct final rule in a separate part of this **Federal Register**.

List of Subjects in 40 CFR Parts 90 and 91

Environmental protection, Air pollution control, Confidential business information, Imports, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: July 30, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–20824 Filed 8–6–97; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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