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Contents

Federal Register

Vol. 62, No. 157

Thursday, August 14, 1997

Separate Parts In This Issue

Reader Aids
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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. 157
Thursday, August 14, 1997

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket Number FV96–351A]

RIN Number: 0581–AB48

Amendments to the Perishable Agricultural Commodities Act (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is revising the Regulations (other than Rules of Practice) Under the Perishable Agricultural Commodities Act (PACA) in order to implement legislative changes signed into law by President Clinton. Specifically, the legislative changes phase retailers and grocery wholesalers out of license fee payments over a 3-year period; establish that retailers and grocery wholesalers making an initial application during the 3-year period pay no fee for the renewal of the license for subsequent years; establish a one-time administrative fee for new retailers and grocery wholesalers entering the program after the 3-year phase-out period; and increase license fees from $400 to $550 annually for all other licensees.

EFFECTIVE DATE: September 15, 1997.

FOR FURTHER INFORMATION CONTACT: James R. Frazier, Chief, PACA Branch, Room 2095-So. Bldg., Fruit and Vegetable Division, AMS, USDA, 1400 Independence Avenue, S.W., Washington, DC 20250, Phone (202) 720–2272.

SUPPLEMENTARY INFORMATION:

Background

The PACA establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

The PACA was amended by the Perishable Agricultural Commodities Act Amendments of 1995 (P.L. 104–48). The regulations implementing the PACA (other than the Rules of Practice) are published in the Code of Federal Regulations at Title 7, Part 46 (7 CFR part 46). On September 10, 1996, the proposed revisions to the PACA regulations implementing P.L. 104–48 were published in the **Federal Register**. The finalized regulatory revisions became effective on April 30, 1997, with the exception of § 46.6, License Fees.

During the comment period on the proposal, the Food Marketing Institute (FMI), Food Distributors International (FDI), and the National Grocers Association (NGA), objected to the proposed revisions to § 46.6. They wrote that the proposed rule requiring that certain retailers and grocery wholesalers pay renewal fees was incorrect. They referred to section 499c(b)(3) of the statute designated, ''One-Time Fee for Retailers and Grocery Wholesalers that are Dealers'', which specifies the fees to be paid by a retailer or a grocery wholesaler making an initial application during the phase-out period and after such period ends. The commentors emphasized the statutory language at the end of section 499c(b)(3) which states: ''* * * a retailer or grocery wholesaler paying a fee under this paragraph shall not be required to pay any fee for renewal of the license for subsequent years.''

Our interpretation of the statutory language, as well as our understanding of the agreement between the various industry groups which preceded the final legislation, was that all retailers and grocery wholesalers would pay a license renewal fee during the 3-year phase-out period. After the end of the phase-out period, no renewal fee would be required. This interpretation treats all retailers and grocery wholesalers equally and does not discriminate against those who had complied with the licensing requirements prior to the law's enactment on November 15, 1995.

Since the commentors' interpretation of the legislative amendment was substantially different from our view but appeared plausible, we separated § 46.6 from the rest of the proposed regulations, and addressed the issue independently by reopening that part of the proposed rule in order to allow other interested parties to comment. Since the publication of the reopening of the comment period on March 31, 1997, we have collected renewal fees from retailers and grocery wholesalers which had received initial licenses during the phase-out period. However, in that document, we stated that in the event a determination is made that the law excludes those entities from paying renewal fees during the 3-year phase-out period, the collected renewal fees would be refunded with interest.

Comments

USDA received 17 comments on this reopened part of the proposed rule from 9 industry trade associations, 7 retailers, one grocery wholesaler, and one comment, signed by Congressman Thomas Ewing, Chairman of the House of Representatives' Subcommittee on Risk Management and Specialty Crops and Congressman John Boehner. Three of these comments were postmarked after the comment period ended on April 30, 1997, and are, therefore, not addressed in this rule.

We received comments supporting the proposed regulations (*i.e.*, to charge all retailers and grocery wholesalers a renewal fee during the 3-year phase-out period) from the American Farm Bureau Federation, United Fresh Fruit and Vegetable Association, Florida Fruit and Vegetable Association, and Western Growers Association. They reiterated their support for the proposed regulations as originally proposed, and urge that we adopt them without change. They argue that any change is without basis because there is no support in the statute nor in the legislative history to indicate that Congress chose to treat retailers and grocery wholesalers that were licensed after November 15, 1995, any more favorably than those licensed prior to that date. They point out that by changing the proposed regulations, retailers and grocery wholesalers would

pay different license fees based solely upon whether they were licensed under the PACA before or after November 15, 1995.

Two of these commentors state that the retail and grocery wholesale industries are incorrectly relying upon the ''plain meaning'' of the 1995 PACA Amendments; an assertion which the Supreme Court has repeatedly ruled that alone is not the sole consideration in implementing a statute. The commentors support their argument by quoting a Supreme Court decision in part: ''The plain meaning of legislation should be conclusive, except in ''rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'' In such cases, the intention of the drafters, rather than the strict language, controls.'' (*United States* v. *Ron Pair Enterprises, Inc.*,) 489 U.S. 235, 242 (1989), quoting, *Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, #571 (1982).

The two commentors also argue that the correct reading of the Public Law 104–48 is clearly delineated in the House of Representatives Report accompanying H.R. 1103, the bill that became the 1995 PACA Amendments (H.R. Rep. No. 104–207, 104th Cong., 1st Sess.). They emphasize the report language which stated that the legislation ''* * * phases retailers and grocery wholesalers out of license fee payments in three years, [and] establishes a one-time administrative fee for new retailers and grocery wholesalers entering the program *after the three-year phase-out.* * * *'' [emphasis added]. They point to other report language which states: ''During the phase-out period, new retailer and grocery wholesale applicants will pay the specified fee established under the phase-out year.'' They maintain that the language in the House Report clearly describes two periods of time: the phase-out period from November 15, 1995, to November 15, 1998, when new retailers and grocery wholesalers will pay the specified fee established for the phase out year; and the period after November 15, 1998, when no fee will be required.

We received 11 comments objecting to our original proposal that all licensees pay renewal fees during the 3-year phase-out of retailers and grocery wholesalers. However, several of these comments were nearly identical. In addition to a comment from Congressman Thomas W. Ewing, Chairman of the Subcommittee on Risk Management and Specialty Crops, which was co-signed by Congressman John Boehner, we received comments from FMI, FDI, and NGA which reiterated their original objections to our proposal.

The commentors contend that the statute explicitly provides that any retailer or grocery wholesaler making an initial application during those years pays just one time and that no renewal fee is required for any subsequent year. Each of their arguments centers around the statutory language in section 499c(b)(3), ''One-Time Fee for Retailers and Grocery Wholesalers that are Dealers'', which states: ''In either case, a retailer or grocery wholesaler paying a fee under this paragraph shall not be required to pay any fee for renewal of the license for subsequent years.''

One of the commentors contends that by creating a statutory subsection for a ''one-time fee'' separate from section 499c(b)(4), the law is clear, both in title and in substance, that first-time licensees after November 15, 1995, pay only one fee and that no renewal fee can be imposed. The commentor asserts that no other explanation exists for having a separate section for initial licenses. The commentor points out that the subsection contains only three sentences: the first applies to those who make an initial application during each 3-year phase-out period; the second applies to those who make an initial application after November 14, 1998; and the third sentence is explicit—''In either case, a retailer or grocery wholesaler paying a fee under this paragraph shall not be required to pay any fee for renewal of the license for subsequent years.''

Another commentor presents a similar analysis of the statutory language—that there are two classes of license applicants specifically identified in section 499c(b)(3): a retailer or grocery wholesaler making an initial application for a license during the 3-year period beginning on the date of enactment of the 1995 PACA amendments; and a retailer or grocery wholesaler making an initial application for a license after the end of the 3-year period. The commentor emphasizes that the statute goes on to remove the requirement for license renewal fees by providing that ''a retailer or grocery wholesaler paying a fee under this paragraph shall not be required to pay any fee for renewal of the license for subsequent years.'' The commentor states that the plain language of the phrase, ''[i]n either case,'' must refer to the two classes of license applicants noted in section 499c(b)(3), and as such, neither of these two classes of entities can be held liable for license renewal fees.

Both commentors insist that the statute is explicit, clear, and leaves no room for interpretation. Under the circumstances, the commentors demand that USDA implement the straight-forward statutory language, issue regulations which state that retailers and wholesalers who were licensed during the 3-year phase-out period shall not pay any renewal fees, and refund with interest license fees paid by affected licensees.

In their joint comment, Congressmen Ewing and Boehner state that the law requires that retailers and grocery wholesalers applying for a license during the first three years following enactment of P.L. 104–48 pay only the fee in effect for that year, and nothing in any subsequent year. With respect to these initial applicants, the Congressmen insist that subparagraph 3 of section 3(b) clearly states that the 3-year phase-out period is just that—a single period—and that whether the initial application is made in year 1, 2, or 3 of the phase-out period, the fee to be paid is a one-time event. They state that had Congress intended for retail and grocery wholesale applicants to pay the applicable fee in each year of the phase-out period, they would have written the first sentence of subparagraph 3 to state ''* * * the license fee required under paragraphs (A), (B) and (C) * * *'' rather than ''* * * the license fee required under subparagraph (A), (B) or (C) * * *'' They also stated that if Congress had intended initial applicants to pay a fee in each of the phase-out years, it would have never included the last sentence of subparagraph 3. The congressmen point out that USDA's interpretation of this paragraph, as reflected in the proposed rule, has the effect of ignoring this sentence, which does not differentiate between pre- or post-phase-out period when it states that a retailer or wholesaler shall not be required to pay any fee for renewal in subsequent years.

Based on full consideration of the comments received during the initial and reopened comment periods, USDA has determined that a change to the proposed revisions to § 46.6 is appropriate in order to harmonize the implementing regulation with the statutory language. Therefore, in the final rule, USDA is amending the regulatory language in § 46.6 to reflect that retailers and grocery wholesalers making an initial application during the 3-year phase-out period beginning on November 15, 1995, shall not be required to pay any fee for renewal of their licenses in subsequent years.

Executive Orders 12866 and 12988

This final rule is issued under the Perishable Agricultural Commodities

Act (7 U.S.C. 499 *et seq.*), as amended. USDA is issuing this final rule in conformance with Executive Order 12866.

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

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA has considered the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. The PACA requires that wholesalers, processors, food service companies, grocery wholesalers, and truckers be considered dealers and subject to a license when they buy or sell more than 2,000 pounds of fresh and/or frozen fruits and vegetables in any given day. A retailer is considered to be a dealer and subject to license when the invoice cost of its perishable agricultural commodities exceeds $230,000 in a calendar year. Brokers negotiating the sale of frozen fruits and vegetables on behalf of the seller are also exempt from licensing when the invoice value of the transactions is below $230,000 in any calendar year.

There are approximately 15,700 PACA licensees. Separating licensees by the nature of business, there are approximately 6,000 wholesalers, 4,750 retailers, 2,100 brokers, 1,200 processors, 550 commission merchants, 450 food service businesses, 150 grocery wholesalers, and 50 truckers licensed under PACA. The license is effective for 1 year unless suspended or revoked by USDA for valid reasons [7 CFR 46.9 (a)–(h)], and must be renewed annually by the licensee. Many of the licensees may be classified as small entities.

Approximately 650 to 700 retailers and grocery wholesalers who made an initial license application after November 15, 1995, and subsequently paid a fee to renew their license, will be affected by this rule. The renewal fees collected by USDA from each of the affected retailers and grocery wholesalers ($300, plus $150 for each branch in excess of nine) will be refunded with interest.

Accordingly, based on the information and the above discussion, it is determined that the provisions of this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements covered by this proposed rule were approved by OMB on October 31, 1996, and expire on October 31, 1999.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. Section 46.6 is revised to read as follows:

§ 46.6 License fees.

(a) For retailers and grocery wholesalers making an initial application for license, the license fee is as follows:

(1) During the period November 15, 1995 through November 14, 1996, the license fee is $400 plus $200 dollars for each branch or additional business facility operated by the applicant in excess of nine. In no case shall the aggregate annual fees paid by any retailer or grocery wholesaler during such period exceed $4,000.

(2) The license fee during the period November 15, 1996 through November 14, 1997, is $300 plus $150 for each branch or additional business facility operated by the retailer or grocery wholesaler in excess of nine. In no case shall the aggregate fees paid by any retailer or grocery wholesaler during such period exceed $3,000.

(3) The license fee during the period November 15, 1997 through November 14, 1998, is $200 plus $100 for each branch or additional business facility operated by any retailer or grocery wholesaler in excess of nine. In no case shall the aggregate fees paid by any retailer or grocery wholesaler during such period exceed $2,000.

(4) Any retailer or grocery wholesaler making an initial license application during the 3-year phase-out period shall pay no fee for renewal of the license for subsequent years.

(5) A retailer or grocery wholesaler that holds a license as of November 15, 1995, shall pay the license fee required in paragraphs (a) (1), (2), and (3) of this section for the renewal of the license during the phase-out period.

(6) No license fee will be required after November 14, 1998 for making an initial application for, or for renewal of a license by a retailer or grocery wholesaler. However, a retailer or grocery wholesaler making an initial application for a license after November 14, 1998, shall pay a $100 administrative processing fee.

(b) For commission merchants, brokers, and dealers (other than grocery wholesalers and retailers) the annual license fee is $550 plus $200 dollars for each branch or additional business facility in excess of nine. In no case shall the aggregate annual fees paid by any such applicant exceed $4,000.

(c) The Director may require that fees be paid in the form of a money order, bank draft, cashier's check, or certified check made payable to ''USDA–AMS''. Authorized representatives of the Division may accept fees and issue receipts.

Dated: August 8, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–21523 Filed 8–13–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–023–2]

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pink bollworm regulations by removing all or portions of previously regulated areas in Clay, Crittenden, and Mississippi Counties in Arkansas; Dunklin, New Madrid, and Pemiscot Counties in Missouri; and Dyer and Lauderdale Counties in

Tennessee from the list of suppressive areas for pink bollworm. The interim rule also removed Missouri and Tennessee from the list of States quarantined because of pink bollworm. We took this action because trapping surveys show that the pink bollworm no longer exists in these areas. The action was necessary to relieve unnecessary restrictions on the interstate movement of regulated articles from the previously regulated areas. The interim rule also amended the regulations by adding a previously nonregulated portion of Poinsett County in Arkansas to the list of suppressive areas for pink bollworm. The action imposed restrictions on the interstate movement of regulated articles from the regulated area in Poinsett County in Arkansas, and was necessary to prevent the interstate movement of pink bollworm into noninfested areas.

EFFECTIVE DATE: The interim rule was effective on May 2, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Cunningham, Chief Operations Officer, Program Support Staff, PPQ, APHIS, suite 4C09, 4700 River Road Unit 138, Riverdale, MD 20737–1236, (301) 734–8676; or e-mail: gcunningham@hal.aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on May 2, 1997 (62 FR 23943–23945, Docket No. 97–023–1), we amended the pink bollworm regulations in 7 CFR 301.52 through 301.52–10 by removing all or portions of previously regulated areas in Clay, Crittenden, and Mississippi Counties in Arkansas; Dunklin, New Madrid, and Pemiscot Counties in Missouri; and Dyer and Lauderdale Counties in Tennessee from the list of suppressive areas for pink bollworm in § 301.52–2a. The interim rule also removed Missouri and Tennessee from the list in § 301.52–2a of States quarantined because of pink bollworm. We took this action because trapping surveys show that the pink bollworm no longer exists in these areas. The action was necessary to relieve unnecessary restrictions on the interstate movement of regulated articles from these previously regulated areas. The interim rule also amended the regulations by adding a previously nonregulated portion of Poinsett County in Arkansas to the list of suppressive areas for pink bollworm in § 301.52–2a. The action imposed restrictions on the interstate movement of regulated articles from the regulated area in Poinsett County in Arkansas, and was necessary to prevent the interstate movement of pink bollworm into noninfested areas.

Comments on the interim rule were required to be received on or before July 1, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

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

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

Regulatory Flexibility Act

This rule affirms an interim rule that amended the pink bollworm regulations by removing all or portions of previously regulated areas in Clay, Crittenden, and Mississippi Counties in Arkansas; Dunklin, New Madrid, and Pemiscot Counties in Missouri; and Dyer and Lauderdale Counties in Tennessee from the list of suppressive areas for pink bollworm. The interim rule also removed Missouri and Tennessee from the list of States quarantined because of pink bollworm. We took this action because trapping surveys show that the pink bollworm no longer exists in these areas. The action was necessary to relieve unnecessary restrictions on the interstate movement of regulated articles from these previously regulated areas.

In 1995, the total U.S. cotton production was approximately 17.97 million bales of cotton and 8.12 million tons of cotton seed. Cotton plays an important role in the international trade of the United States. The United States is a net exporter of cotton. In 1995, the United States exported approximately 9.4 million bales of cotton, while it imported only 6,004 bales of cotton.

In order to move regulated articles from an area regulated for pink bollworm, the articles must either be treated to destroy infestation; have originated in noninfested premises in a regulated area and have not been exposed to infestation while within the regulated areas; upon examination, have been found to be free of infestation; or, have been grown, produced, manufactured, stored, or handled in such manner that no infestation would be transmitted. Cotton products produced in the portions of Arkansas, Missouri, and Tennessee that have been removed from the list of regulated areas will no longer be subject to these requirements. The treatment costs range approximately between $1.64 and $2.47 per bale of cotton or between $0.11 and $0.16 per bushel of cottonseed. These costs are minor compared to the crop losses and increased production costs that would result from the establishment of pink bollworm in the United States. For example, in 1996 the cotton pest control costs attributable to pink bollworm infestation were far larger than quarantine treatment costs, ranging between $28 and $74 per bale. In addition, the costs of treatment compared to the value of cotton and cotton products is insignificant. During 1993, 1994, and 1995, the average price per bale of cotton received by farmers was about $315. Thus, quarantine treatment costs, as a percentage of the value of cotton, range between 0.5 percent and 0.8 percent.

The interim rule also amended the regulations by adding a previously nonregulated portion of Poinsett County in Arkansas to the list of suppressive areas for pink bollworm. The action imposed restrictions on the interstate movement of regulated articles from the regulated area in Poinsett County in Arkansas, and was necessary to prevent the interstate movement of pink bollworm into noninfested areas. In 1995, the affected counties in Arkansas, Missouri, and Tennessee, including all of Poinsett County, Arkansas, together produced 1,042,120 bales of cotton and 472,210 tons of cotton seed. The portion of Poinsett County, Arkansas, added to the list of suppressive areas by the interim rule produced only about 1,880 bales of cotton and 750 tons of cotton seed in 1995. There are 4 cotton growers in the portion of Poinsett County, Arkansas, that was added to the list of suppressive areas. There are 43,046 cotton producing farms in the United States. All 4 of the cotton producing farms in the suppressive area of Poinsett County, Arkansas, and 97 percent of those in the United States are considered to be small entities by the Small Business Administration's (SBA) standards (annual gross revenues of less than $0.5 million). The average gross income of these farms is much smaller than the SBA's standard of $0.5 million. There are also 6 cotton related commercial activities in the portion of Poinsett County, Arkansas, that is listed as a suppressive area (1 cotton gin, 2 equipment companies, 2 transport companies, and 1 oil mill). All of these are also small entities. The exact sizes and number of entities outside the suppressive area in Poinsett County that could be impacted by the rule cannot be determined at this time. We expect the impact of this rule on affected entities in Poinsett County to be minimal.

Additionally, as stated previously, the costs that would result from the establishment of pink bollworm in the United States are far grater than the regulatory burden and quarantine treatment costs imposed on affected entities in regulated areas.

The United States plays an important role in international trade of cotton. Losses in cotton produced, or any loss of trade, that would result from a widespread pink bollworm infestation, would be very costly and harmful to the U.S. gross national income. The risk of potential disease spread is of great concern to U.S. exporters of cotton. Maintaining high quality standards is essential not only to the cotton industry but to the U.S. economy as a whole. Continued regulation ensures that importers of U.S. cotton and other raw cotton products will maintain their confidence in the safety of U.S. produced cotton products.

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 62 FR 23943–23945 on May 2, 1997.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 8th day of August 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–21522 Filed 8–13–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV97–947–1 FIR]

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in All Counties in Oregon, Except Malheur County; Define Fiscal Period and Decrease Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department), is adopting as a final rule, without change, the provisions of an interim final rule which established, in the regulatory text, the fiscal period of the Oregon-California Potato Committee (Committee) to begin July 1 of each year and end June 30 of the following year, and decreased the assessment rate established under Marketing Order No. 947 for the 1997–98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all counties in Oregon, except Malheur County. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997–98 fiscal period covers the period July 1 through June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 15, 1997.

FOR FURTHER INFORMATION CONTACT: *Martha Sue Clark,* Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; *Telephone:* (202) 720–2491; *FAX:* (202) 720–5698, or *Teresa L. Hutchinson,* Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, Room 369, 1220 Southwest Third Avenue, Portland, OR 97204; *Telephone:* (503) 326–2724; *FAX:* (503) 326–7440. Small businesses may request information on compliance with this regulation by contacting *Jay Guerber,* Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; *Telephone:* (202) 720–2491; *FAX:* (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947) regulating the handling of Irish potatoes grown in Oregon-California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Oregon-California potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes, in regulatory text, the fiscal period of the Committee to begin July 1 of each year and end June 30 of the following year, and decreases the assessment rate established for the Committee for the 1997–98 and subsequent fiscal periods from $0.005 to $0.004 per hundredweight.

The Oregon-California potato marketing order provides authority for the Committee, with the approval of the Department, to establish a fiscal period. The Committee has operated under a fiscal period of July 1 through June 30

for many years. This rule adds to the order's rules and regulations a definition of the fiscal period of the Committee to be the 12 month period beginning July 1 and ending June 30 of the following year, both dates inclusive.

The Oregon-California potato marketing order also provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Oregon-California potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on March 5, 1997, and unanimously recommended 1997–98 expenditures of $53,600 and an assessment rate of $0.004 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $61,200. The assessment rate of $0.004 is $0.001 less than the rate currently in effect. As the Committee's reserve exceeds the amount authorized in the order of one fiscal period's operational expenses, the Committee voted to lower its assessment rate and use more of the reserve to cover its expenses. The Committee discussed alternatives to this rule, including alternative expenditure levels, but recommended that the major expenditures for the 1997–98 fiscal period should include $30,000 for an agreement with the Oregon Potato Commission to provide miscellaneous services to the Committee, $4,000 for Committee meeting expenses, $3,000 for staff travel, and $3,000 for investigation and compliance. Budgeted expenses for these items in 1996–97 were $30,000, $4,200, $3,000, and $3,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Potato shipments for the year are estimated at 8,500,000 hundredweight, which should provide $34,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997–98 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

An interim final rule regarding this action was published in the May 19, 1997, issue of the **Federal Register** (62 FR 27169). That rule provided a 30-day comment period. No comments were received.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 550 producers of Oregon-California potatoes in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

This rule establishes, in the regulatory text, the fiscal period of the Committee to begin July 1 of each year and end June 30 of the following year, and decreases the assessment rate established for the Committee and collected from handlers for the 1997–98 and subsequent fiscal periods from $0.005 to $0.004 per hundredweight. The Committee unanimously recommended 1997–98 expenditures of $53,600 and an assessment rate of $0.004 per hundredweight of potatoes. The assessment rate of $0.004 is $0.001 less than the rate currently in effect. As the Committee's reserve exceeds the amount authorized in the order of one fiscal period's operational expenses, the Committee voted to lower its assessment rate and use more of the reserve to cover its expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but recommended that the major expenditures for the 1997–98 fiscal period should include $30,000 for an agreement with the Oregon Potato Commission to provide miscellaneous services to the Committee, $4,000 for Committee meeting expenses, $3,000 for staff travel, and $3,000 for investigation and compliance. The Committee also discussed the alternative of not decreasing the assessment rate. However, it decided against this course of action because continuation of the higher rate would not allow it to bring its operating reserve in line with the maximum amount authorized under the order. The reduced assessment rate will require the Committee to use more of its reserve for authorized expenses, and help bring the reserve within authorized levels.

Potato shipments for the year are estimated at 8,500,000 hundredweight, which should provide $34,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Recent price information indicates that the grower price for the 1997–98 marketing season will range between $4.00 and $7.00 per hundredweight of

potatoes. Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between .100 and .057 percent.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Oregon-California potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 5, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action will not impose any additional reporting or recordkeeping requirements on either small or large Oregon-California potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In the interim final rule published in the **Federal Register** (62 FR 27169) on May 19, 1997, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses. A copy of the interim final rule was also made available on the Internet by the U.S. Government Printing Office. The comment period ended June 18, 1997, and no comments were received concerning the impacts of this action on small businesses.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action reduces the current assessment rate; (2) the 1997–98 fiscal period began on July 1, 1997, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided a 30-day comment period; no comments were received.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

Accordingly, the interim final rule amending 7 CFR part 947 which was published at 62 FR 27169 on May 19, 1997, is adopted as a final rule without change.

Dated: August 8, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–21526 Filed 8–13–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV97–981–4 FR]

Almonds Grown in California; Amended Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the assessment rate for the Almond Board of California (Board) under Marketing Order No. 981 for the 1997–98 and subsequent crop years. The Board is responsible for local administration of the marketing order which regulates the handling of almonds grown in California. Authorization to assess almond handlers enables the Board to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: *Martin Engeler,* Assistant Regional Manager, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; *Telephone:* (209) 487–5901, *Fax:* (209) 487–5906; or *George Kelhart,* Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, *Room* 2525–S, P.O. Box 96456, Washington, DC 20090–6456; *Telephone:* (202) 690–3919, *Fax:* (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting *Jay Guerber,* Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, *Room* 2525–S, P.O. Box 96456, Washington, DC 20090–6456; *Telephone:* (202) 720–2491, *Fax:* (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California almond handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds beginning August 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate established for the Board for the 1997–98 and subsequent crop years from 1 cent to 2 cents per pound of almonds received by handlers.

The almond marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California almonds.

They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Board met on May 9, 1997, and recommended 1997–98 expenditures of $11,333,876.49 and an assessment rate of 2 cents per pound of almonds received by handlers. In comparison, last year's budgeted expenditures were $6,426,500. The primary reason for the increase for the upcoming crop year is the inclusion of funding for a generic paid advertising program. The assessment rate is higher than last year's established rate of 1 cent per pound; however, the Board also recommended a credit-back program whereby handlers can receive credit for their own promotional activities of up to 1 cent per pound against their assessment obligation. Handlers not participating in this program will remit the entire 2 cents to the Board. For administrative purposes, the Board will separate the assessment into two portions when billing handlers; an administrative portion of 1 cent per pound and an advertising portion of 1 cent per pound. The Board's initial recommendation indicated that implementation of the advertising portion of the assessment and the generic advertising program may be impacted by the outcome of litigation relative to advertising and promotion conducted under marketing orders. The Board recommended not implementing the advertising portion of the assessment until further action of the Board is taken. At a meeting held on July 1, 1997, the Board took action to implement the advertising portion of the assessment, after it is established. The Board also confirmed its intent to implement a generic paid advertising program.

The Board recommended that the major expenditures for the 1997–98 fiscal period should include $4,084,000 for information and research programs, $3,408,000 for paid generic advertising, $881,534 for salaries, $794,043 for international programs, $568,679 for production research, $95,400 for crop estimates, and $90,000 for travel. Budgeted expenses for major items in 1996–97 were $3,333,500 for information and research, $731,534 for salaries, $660,500 for international programs, $558,131 for production research, $91,160 for crop estimates, and $97,470 for travel.

The assessment rate recommended by the Board was derived by considering anticipated expenses and production levels of California almonds, and additional pertinent factors. In its recommendation, the Board utilized a production estimate of 681,600,000 pounds of edible almonds for the year. If realized, this will provide revenue of $6,816,000 from administrative assessments (681,600,000 pounds at 1 cent per pound). In addition, it is anticipated that $3,408,000 will be derived from the portion of assessments eligible for credit-back but received by the Board from handlers who do not obtain credit for their own promotional activities. Estimates of marketable production of almonds have been revised downward to 652,800,000 pounds since the Board's recommendation, which would result in administrative assessments of $6,528,000 and estimated credit-back revenue of $3,264,000. However, if assessment revenues fall short of initial projections due to a smaller crop, the Board maintains sufficient financial reserves to compensate for any such shortage. Income derived from handler assessments, along with interest income, Market Access Program reimbursement for international promotion activities, research conference revenue, miscellaneous income, and funds derived from the Board's authorized monetary reserve will be adequate to cover budgeted expenses. Any unexpended funds from the 1997–98 crop year may be carried over to cover expenses during the first four months of the 1998–99 crop year.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1997–98 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 97 handlers of California almonds who are subject to regulation under the marketing order and approximately 7,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Currently, about 58 percent of the handlers ship under $5,000,000 worth of almonds and 42 percent ship over $5,000,000 worth of almonds on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately $156,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This final rule will increase the assessment rate established for the Board for the 1997–98 and subsequent crop years from 1 cent to 2 cents per pound of almonds, of which up to 1 cent will be credited to handlers for their own promotional activities. The Board unanimously recommended 1997–98 expenditures of $11,333,876.49 and an assessment rate of 2 cents per pound of almonds. The assessment rate

of 2 cents is 1 cent more than the rate currently in effect. The primary reason for the increase for the upcoming crop year is the inclusion of funding for a generic paid advertising program.

The Board recommended that the major expenditures for the 1997–98 crop year should include $4,084,000 for information and research programs, $3,408,000 for paid generic advertising, $881,534 for salaries, $794,043 for international programs, $568,679 for production research, $95,400 for crop estimates, and $90,000 for travel. Alternative rates of assessment were considered during the budgeting process. Keeping the assessment rate at 1 cent was considered but not recommended because it would not generate the income necessary to administer the program. In order to fund the programs recommended by the Board for the 1997–98 season, it was determined that the assessment rate recommended by the Board, when applied to the preliminary crop estimate, would be necessary to generate sufficient revenue. Costs of various programs, desired and overall spending levels, and desired levels of monetary reserve were considered during the budgeting process.

Handlers' receipts of assessable almonds for the year were originally estimated at 681,600,000 pounds which would provide $10,224,000 in assessment income. The crop estimate was subsequently reduced to 652,800,000 pounds which if realized, would provide assessment revenue of $9,792,000. However, in either scenario, income derived from handler assessments, along with interest income, Market Access Program reimbursement, research conference revenue, miscellaneous income, and funds derived from the Board's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 1997–98 season could range between $1.00 and $1.50 per pound of almonds. Therefore, the estimated assessment revenue for the 1997–98 crop year as a percentage of total grower revenue could range between 1 and 1.5 percent.

While this rule will impose some additional costs on handlers, the costs would be minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers.

However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the May 9, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large California almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was issued by the Department on July 3, 1997, and published in the **Federal Register** on July 7, 1997 (62 FR 36233). Copies of the proposed rule were also mailed or sent via facsimile to all almond handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register.

A 15-day comment period was provided to allow interested persons to respond to the proposal. Fifteen days was deemed appropriate because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1997–98 crop year began on August 1, 1997, and the marketing order requires that the rate of assessment for the crop year apply to all assessable California almonds handled during the crop year; and (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other budget actions issued in past years. No comments to the proposed rule were received.

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already receiving 1997–98 crop almonds from growers, the crop year began August 1, and the assessment rate applies to all almonds received during the 1997–98 and subsequent seasons. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, A 15-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 981.343 [Amended]

2. Section 981.343 is amended by removing ''July 1, 1996,'' and adding in its place ''August 1, 1997,'', by removing ''$0.01 cent'' and adding in its place ''2 cents,'' and by adding as the last sentence ''Of the 2 cent assessment rate, 1 cent per assessable pound is available for handler credit-back.''

Dated: August 8, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–21525 Filed 8–13–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV97–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of Administrative Rules and Regulations Governing Issuance of Additional Allotment Base to New and Existing Producers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule reduces the number of regions established for issuing additional allotment bases to new producers from four to three, revises the procedure used for issuing additional allotment bases when no requests are received from a region for a class of spearmint oil, and eliminates obsolete language pertaining to the

issuance of additional allotment bases to existing producers during the 1992–93 and 1993–94 marketing years. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule to ensure that a maximum number of new producers receive additional allotment base each year at a level determined by the Committee to be a minimum economic enterprise.

EFFECTIVE DATE: This final rule becomes effective August 15, 1997.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2043; Fax: (503) 326–7440; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090-6456; telephone: (202) 720–2491; Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order''. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The spearmint oil order is a volume control program that authorizes the regulation of spearmint oil produced in the Far West through annual allotment percentages and salable quantities for Class 1 (Scotch) and Class 3 (Native) spearmint oils. The salable quantity limits the quantity of each class of spearmint oil that may be marketed from each season's crop. Each producer is allotted a share of the salable quantity by applying the allotment percentage to that producer's allotment base for the applicable class of spearmint oil. Handlers may not purchase spearmint oil in excess of a producer's annual allotment, or from producers who have not been issued an allotment base under the order.

Section 985.53(d)(3) of the order provides for rules to be established by the Committee, with the approval of the Secretary, for distribution of additional allotment bases. Pursuant to the authority in that section, the Committee unanimously recommended revising section 985.153 of the order's rules and regulations at its meeting on March 18, 1997. Section 985.153 provides regulations for the issuance of additional allotment bases to new and existing producers. This final rule modifies portions of section 985.153 to reflect current conditions within the Far West spearmint oil industry relative to the annual issuance of additional allotment bases to both new and existing producers. This rule reduces the number of regions established for issuing additional allotment bases to new producers from four to three, revises the procedure used for issuing additional allotment bases when no requests are received from a region for a class of spearmint oil, and eliminates obsolete language pertaining to the issuance of additional allotment bases to existing producers during the 1992–93 and 1993–94 marketing years.

Section 985.53(d)(1) provides that, beginning with the 1982–83 marketing year, the Committee annually makes additional allotment bases available in an amount not greater than 1 percent of the total allotment base for each class of spearmint oil. The order specifies that, each year, 50 percent of the additional allotment bases be made available for new producers and 50 percent be made available for existing producers. A new producer is any person who has never been issued allotment base for a class of oil, and an existing producer is any person who has been issued allotment base for a class of oil. Provision is made in the order for new producers to apply to the Committee for the additional allotment base, which in turn is issued to applicants in each oil class by lottery. The additional allotment bases being made available to existing producers are distributed equally among all existing producers who apply.

The order was amended on June 26, 1996 (61 FR 32924), by redefining the production area to exclude those portions of the area with no historic record of commercial production of spearmint oil. The amendment thus removed the regulated portions of California and Montana, leaving the defined production area to mean the States of Washington, Oregon, and Idaho, and portions of the States of Nevada and Utah.

Based on the order prior to the amendment, section 985.153(c) established the regions for issuing additional allotment base as follows:

(A) Region 1—Those portions of Montana and Utah included in the production area.

(B) Region 2—The State of Oregon and those portions of Nevada and California included in the production area.

(C) Region 3—The State of Idaho.

(D) Region 4—The State of Washington.

During past additional allotment base lotteries, the name of one new producer per class of oil in each of the above four regions was drawn by Committee staff. The lottery usually resulted in four new Scotch spearmint oil producers receiving approximately 2,300 pounds of allotment base each, and four new Native spearmint oil producers receiving approximately 2,500 pounds of allotment base each.

This rule replaces the above four regions with the following three regions:

(A) Region 1—The State of Oregon and those portions of Utah and Nevada included in the production area.

(B) Region 2—The State of Idaho.

(C) Region 3—The State of Washington.

The Committee made this recommendation primarily because of

the removal of Montana and California from the production area, as well as its analysis of statistics relating to current spearmint oil production and the number of requests received each year for additional allotment base from the various states included in the production area. For example, Committee records show that the average number of applications by state for additional allotment base from 1986 to 1996 for Class 1 and Class 3 spearmint oil, respectively, is 63.2 and 73.2 percent for Washington, 26.7 and 21.5 percent for Idaho, 9.6 and 11.2 percent for Oregon, 1.4 and 2.6 percent for Utah, and 0.2 and 0.2 percent for Nevada. Records also show that the number of producers, as well as the allotment bases held by those producers, is greatest in Washington followed in decreasing order by Idaho, Oregon, Utah, and Nevada. This rule increases the potential of having a significant number of applicants from each region each year, thus bringing about equity in issuing the additional allotment base. It also increases the amount of allotment base that is issued to each new producer.

In reaching its recommendation to establish three regions the Committee also considered the importance of issuing as many blocks of additional allotment base as are possible at a level considered economically viable to each recipient. The Committee also resolved that each region should receive an equal number of these blocks. To establish a reasonable minimum economic enterprise required to produce each class of spearmint oil, the Committee relied on available statistical information and on the spearmint oil production experience of each member. Using this information and experience, the Committee concluded that producers require approximately 14 acres for Scotch spearmint oil production and approximately 13 acres for Native spearmint oil production to be economically viable. Using a 5-year average yield and a nominal allotment percentage of 55 as a basis, the Committee calculated that each new block of additional allotment base should be approximately 3,000 pounds for Scotch spearmint oil, and approximately 3,400 pounds for Native spearmint oil.

The Committee used the following formula to establish a range of possible allotments for additional base: (Number of Acres x Average Yield per Acre = Production) ÷ Allotment Percentage = Allotment Base Required for Viability. For example, applying this formula to a theoretical 14-acre Scotch spearmint oil operation with a 5-year average yield of 126 pounds per acre and a nominal 55 percent allotment, each new producer would receive an allotment base of 3,207 pounds. To obtain the total additional allotment base available for new Scotch spearmint oil producers during the 1997–98 marketing year, the total allotment base of 1,811,556 was multiplied by 0.5 percent (50 percent of the additional allotment base). The result, 9,058 pounds, when divided equally among the three new regions, would provide three new Class 1 producers with 3,019 pounds of allotment base each.

Similarly, an example with a theoretical 13-acre Native spearmint oil operation, using a 5-year average yield of 151 pounds per acre and a nominal allotment percentage of 55, results in an allotment base of 3,569 pounds for each new producer. The total additional allotment base available for new Native spearmint oil producers during the 1997–98 marketing year, 10,048 pounds, was obtained by multiplying the total allotment base of 2,009,556 pounds by 0.5 percent. Thus, equal distribution among the three new regions would result in three new Class 3 producers each receiving 3,349 pounds of allotment base.

From such calculations the Committee determined that there should be three regions, that a reasonable minimum economic unit would currently be approximately 3,000 pounds for Scotch spearmint oil and approximately 3,400 pounds for Native spearmint oil, and that currently there should be one new producer per class per region drawn during the annual allotment base lottery. Based on the current total industry allotment bases, the Committee concluded that any more than one recipient per class of oil in a region would result in an inadequate level of allotment base being issued to each new producer.

The amount of allotment base to be issued to new Scotch spearmint oil producers is slightly higher than the approximate amount the Committee believes necessary for an economically viable production unit. The amount to be issued to new Native spearmint oil producers is only slightly lower than the Committee's guideline of 3,400 pounds. In both cases, the amount to be allocated to new producers is higher than under the previous four district system.

The Committee also recommended changing the procedure used to distribute unused additional allotment base for each class of oil in the event requests for such are not received from eligible new producers in one or more of the three proposed regions. Previously, if the Committee did not receive requests for additional allotment base for a class of oil from one or more regions, the unused allotment base was divided equally among the eligible new producers within the other regions receiving allotment base for that class of oil. That procedure occasionally resulted in a reduction in the number of additional allotment base recipients. To insure that a maximum number of new producers receive allotment base for each class of oil each year, the Committee recommended that, in the event no requests for additional allotment base for a class of oil are received from a region, the unused allotment base be issued to an eligible new producer whose name is drawn by lot from all remaining eligible new producers from all regions for that class of oil.

Finally, the Committee recommended that obsolete language in section 985.153(c)(2) pertaining to existing producers, but specific to the 1992–93 and 1993–94 marketing years, be removed. This language is specific to action taken on June 26, 1992 (57 FR 28569), to issue additional allotment base to existing producers with less than 3,000 pounds of allotment base to bring them up to a level not to exceed 3,000 pounds.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

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

There are 8 spearmint oil handlers subject to regulation under the order and approximately 250 producers of spearmint oil in the regulated production area. Of the 250 producers, approximately 135 producers hold Class 1 spearmint oil allotment base, and approximately 115 producers hold Class 3 spearmint oil allotment base. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose incomes from farming operations are not exclusively dependent on the production of spearmint oil. In the production of the spearmint plant, crop rotation is an essential cultural practice for weed, insect, and disease control. An average spearmint oil producing operation has acreage sufficient enough to ensure that the total acreage available for the production of the crop is approximately one-third spearmint and two-thirds rotational crops. Consequently, most spearmint oil producers have considerably more acreage available than is planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most such farms would fall into the category of large businesses.

Small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation. Records show that the order has contributed extensively to the stabilization of producer prices.

Based on the Small Business Administration's definition of small entities, the Committee estimates that none of the eight handlers regulated by the order would be considered small entities. All are large corporations involved in the international trading of essential oils and the products of essential oils. Further, the Committee estimates that 17 of the 135 Scotch spearmint oil producers and 10 of the 115 Native spearmint oil producers would be classified as small entities. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

Section 985.53 of the order provides that each year the Committee make available additional allotment bases for each class of oil in the amount of no more than 1 percent of the total allotment base for that class of oil. This affords an orderly method for new spearmint oil producers to enter into business and existing producers the ability to expand their operations as the spearmint oil market and individual conditions warrant. One-half of the 1 percent increase is issued annually by lot to eligible new producers for each class of oil. To be eligible, a producer must never have been issued allotment base for the class of spearmint oil such producer is making application for, and have the ability to produce such spearmint oil. The ability to produce spearmint oil is generally demonstrated when a producer has experience at farming, and owns or rents the equipment and land necessary to successfully produce spearmint oil.

This final rule reduces the number of regions established for the purpose of issuing annual additional allotment bases to new producers from four to three. It also changes the procedure used to issue additional allotment bases should no requests be received from eligible new producers in one or more of these three regions. This final rule also deletes obsolete provisions in section 985.153(c)(2) that pertain to the issuance of additional allotment base to existing producers during the 1992–93 and 1993–94 marketing years. The Committee recommended this rule for the purpose of ensuring equity in the distribution of additional allotment base following the order amendment that removed the regulated portions of California and Montana from the production area. Further, this rule will help to ensure that a maximum number of eligible new producers receive additional allotment base each year at a level determined by the Committee to be the minimum economic enterprise needed to produce each class of spearmint oil.

To establish a reasonable minimum economic enterprise required for the production of each class of spearmint oil, the Committee relied on available statistical information and on the spearmint oil production experience of each member. Using this information and experience, the Committee concluded that producers require approximately 14 acres for Scotch spearmint oil production and approximately 13 acres for Native spearmint oil production to be economically viable. Using a 5-year average yield and a nominal allotment percentage of 55 as a basis, the Committee calculated that each new block of additional allotment base should be approximately 3,000 pounds for Scotch spearmint oil, and approximately 3,400 pounds for Native spearmint oil.

The Committee used the following formula to establish a range of possible allotments for additional base: (Number of Acres × Average Yield per Acre=Production) ÷ Allotment Percentage = Allotment Base Required for Viability. For example, applying this formula to a theoretical 14-acre Scotch spearmint oil operation with a 5-year average yield of 126 pounds per acre and a nominal allotment percentage of 55, each new producer would receive an allotment base of 3,207 pounds. To obtain the total additional allotment base available for new Scotch spearmint oil producers during the 1997–98 marketing year, the Committee multiplied the total industry allotment base of 1,811,556 by 0.5 percent (50 percent of the additional allotment base). The result, 9,058 pounds, when divided equally among the three new regions, allots 3,019 pounds each for three new Class 1 producers.

Similarly, an example with a theoretical 13-acre Native spearmint oil operation, using a 5-year average yield of 151 pounds per acre and a nominal allotment of 55 percent, would result in an allotment base of 3,569 pounds for each new producer. To determine the actual total additional allotment base available for new Native spearmint oil producers during the 1997–98 marketing year, the Committee multiplied the total industry allotment base of 2,009,556 pounds by 0.5 percent. The result, 10,048 pounds, when equally distributed among the three new regions, ensures that three new Class 3 producers would receive 3,349 pounds of allotment base each.

From such calculations the Committee determined that there should be three regions, that a reasonable minimum economic unit would currently be approximately 3,000 pounds for Scotch spearmint oil and approximately 3,400 pounds for Native spearmint oil, and that currently there should be one new producer per class per region drawn during the annual allotment base lottery. Based on the current total industry allotment bases, the Committee concluded that any more than one recipient per class of oil in a region would result in an inadequate level of allotment base being issued to each new producer.

The amount of allotment base to be issued to new Scotch spearmint oil producers is slightly higher than the approximate amount the Committee

believes necessary for an economically viable production unit. The amount to be issued to new Native spearmint oil producers is only slightly lower than the Committee's guideline of 3,400 pounds. In both cases, the amount to be allocated to new producers will be higher than under the previous four district system.

During its deliberations, the Committee considered alternatives to this proposal. The first option discussed would have left section 985.153(c) unchanged. This was rejected because of the need to develop a more equitable method of issuing additional base in light of the order amendment that removed California and Montana from the production area. The Committee also discussed the possibility of eliminating the use of different regions in its additional allotment base issuance procedures. In such a scenario, available additional allotment base would be distributed equally to those new producers drawing the allotment regardless of their spearmint acreage location. However, this option was also rejected because the Committee determined that such a procedure has the statistical potential of adding more new producers to those states with a greater number of current producers than to the states with few producers.

The Committee made its recommendation after careful consideration of available information, including the aforementioned alternative recommendations, the order amendment that removed Montana and California from the production area, the minimum economic enterprise required for spearmint oil production, historical statistics relating to the locations of the producers applying for the annual additional allotment base, and other factors such as number of producers by state and the amount of allotment base held by such producers. Based on its review, the Committee believes that the action recommended is the best option available to ensure that the objectives sought will be achieved.

The information collection requirements contained in the section of the order's rules and regulations amended by this rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581–0065. This action does not impose any additional reporting or record keeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule was published in the **Federal Register** (62 FR 36236) on July 7, 1997. A 15-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. Copies of the rule were faxed and mailed to the Committee office, which in turn notified Committee members and spearmint oil producers and handlers of the proposed action. In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate in the discussion on these issues. A copy of the proposal was also made available on the Internet by the U.S. Government Printing Office. No comments were received.

Accordingly no changes are made to the rule as proposed.

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee plans an August 15, 1997, distribution of additional allotment base to new and existing producers for the marketing year beginning on June 1, 1998. The Committee devised the August distribution date so that producers may make cultural and marketing plans in advance of the 1998–99 marketing year. Furthermore, this rule was recommended at a public meeting and all affected parties are aware of it. Also, a comment period of 15 days was provided for in the proposed rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 985.153, paragraph (c) is revised to read as follows:

§ 985.153 Issuance of additional allotment base to new and existing producers.

* * * * *

(c) *Issuance*—(1) New producers. (i) *Regions:* For the purpose of issuing additional allotment base to new producers, the production area is divided into the following regions:

(A) *Region 1.* The State of Oregon and those portions of Utah and Nevada included in the production area.

(B) *Region 2.* The State of Idaho.

(C) *Region 3.* The State of Washington.

(ii) Each year, the Committee shall determine the size of the minimum economic enterprise required to produce each class of oil. The Committee shall thereafter calculate the number of new producers who will receive allotment base under this section for each class of oil. An equal number of grants of the additional allotment base for each class of oil that is available to new producers each marketing year shall be issued to producers within each region. The Committee shall include that information in its announcements to new producers in each region informing them when to submit requests for allotment base. The Committee shall determine whether the new producers requesting additional base have ability to produce spearmint oil. The names of all eligible new producers in each region shall be placed in a lot for drawing. A separate drawing shall be held for each region. If, in any marketing year, there are no requests in a class of oil from eligible new producers in a region, such unused allotment base shall be issued to an eligible new producer whose name is selected by drawing from a lot containing the names of all remaining eligible new producers from all regions for that class of oil. The Committee shall immediately notify each new producer whose name was drawn and issue that producer an allotment base in the appropriate amount.

(2) *Existing producers.* (i) The Committee shall review all requests from existing producers for additional allotment base.

(ii) Each existing producer of a class of spearmint oil who requests additional allotment base and who has the ability to produce additional quantities of that class of spearmint oil, shall be eligible to receive a share of the additional allotment base for that class of oil. Additional allotment base to be issued by the Committee for a class of oil shall be distributed equally among the

eligible producers for that class of oil. The Committee shall immediately notify each producer who is to receive additional allotment base by issuing that producer an allotment base in the appropriate amount.

* * * * *

Dated: August 8, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–21524 Filed 8–13–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1748–96; AG Order No. 2104–97]

RIN 1115–AE27

Executive Office for Immigration Review; Periods of Lawful Temporary Resident Status and Lawful Permanent Resident Status to Establish Seven Years of Lawful Domicile

AGENCY: Immigration and Naturalization Service (INS), Executive Office for Immigration Review (EOIR), Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change an interim rule published in the **Federal Register** by the Immigration and Naturalization Service and the Executive Office for Immigration Review on November 25, 1996, which amended Department of Justice regulations that limit discretion to grant an application for relief under section 212(c) of the Immigration and Nationality Act (the Act) by expanding the class of aliens eligible for section 212(c) relief. Although Congress recently limited the availability of section 212(c) relief, certain classes of aliens remain eligible. This rule allows a 212(c) eligible alien who has adjusted to lawful permanent resident status, pursuant to sections 245A or 210 of the Act, to use the combined period of his or her status as a lawful temporary resident and lawful permanent resident to establish seven (7) years of lawful domicile in the United States for purposes of eligibility for section 212(c) relief. This rule will provide uniformity between the regulation and case law.

DATES: This final rule is effective August 14, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470; David M. Dixon, Chief Appellate Counsel, Immigration and Naturalization Service, Suite 309, 5113 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 756–6257.

SUPPLEMENTARY INFORMATION: Two recent enactments affect the availability of relief under section 212(c). The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) restricts the classes of alien criminals eligible for section 212(c) relief. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 repeals and replaces section 212(c), but only for proceedings commenced on or after April 1, 1997. This rule only affects the cases not covered by these new restrictions, i.e., those commenced before April 1, 1997, and not barred by AEDPA.

Under recent 212(c) case law, an alien who has acquired lawful permanent resident status under section 245A of the Act may accrue the seven (7) years of lawful domicile required for purposes of section 212(c) relief from the date of his or her application for temporary resident status. See *Robles* v. *INS*, 58 F.3d 1355 (9th Cir. 1995); *Avelar-Cruz* v. *INS*, 58 F.3d 338 (7th Cir. 1995); *Castellon-Contreras* v. *INS*, 45 F.3d 149 (7th Cir. 1995). The current regulation allows an alien to apply for section 212(c) relief only if he or she has established at least seven consecutive years of lawful permanent resident status immediately prior to filing the application. See 8 CFR 212.3(f)(2). The Board of Immigration Appeals (BIA) has determined that, in cases arising in the Ninth Circuit, an alien may use the period of temporary resident status to establish the requisite seven years. See *In re Carlos Cazares-Alvarez*, Interim Decision 3262 (BIA 1996). However, in cases arising in circuits without such a temporary resident status rule, the BIA has determined that the current regulation requires seven years of lawful permanent resident status. See *In re Hector Ponce de Leon-Ruiz*, Interim Decision 3261 (BIA 1996). The BIA has referred these cases to the Attorney General pursuant to 8 CFR 3.1(h)(1)(ii) to resolve the issue. The issue raised in *White* v. *INS*, 75 F.3d 213 (5th Cir. 1996) (whether 8 CFR 212.3(f)(2) is consistent with 8 U.S.C. 1182(c) and therefore is entitled to deference), has been addressed and rendered moot by section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009 (September 30, 1996) (repealing section 212(c) and substituting other relief), effective April 1, 1997, codified at section 240A of the Immigration and Nationality Act as amended. The *White* court computed the years of lawful unrelinquished domicile (including the years of lawful temporary resident status) rather than lawful permanent residence in determining eligibility for relief.

The Service published an interim rule with request for comments in the **Federal Register** on November 25, 1996, at 61 FR 59824. The interim rule permitted an alien to demonstrate lawful domicile for section 212(c) relief purposes by combining his or her status as a lawful temporary resident and as a lawful permanent resident under sections 245A or 210 of the Act. Since no comments were received, the Service and EOIR are adopting the interim rule as final without changes.

Effective Date

Since there are no changes between the interim rule and this final rule, the Service believes that ''good cause'' exists to implement this rule effective upon date of publication in the **Federal Register.**

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b) has reviewed this regulation and, by approving it, certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. The affected parties are individuals not small entities, and the impact of the regulation is not an economic one.

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local, and tribunal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and

Naturalization Service and the Executive Office for Immigration Review, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation 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. In accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR part 212 which was published at 61 FR 59824 on November 25, 1996, is adopted as a final rule without change.

Dated: August 7, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–21458 Filed 8–13–97; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0959]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing amendments to Regulation E (Electronic Fund Transfers). The revisions implement an amendment to the Electronic Fund Transfer Act (EFTA), contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, that exempts certain electronic benefit transfer (EBT) programs from the EFTA. Generally, EBT programs involve the issuance of access cards and personal identification numbers to recipients of government benefits so that they can obtain their benefits through automated teller machines and point-of-sale terminals. The Board's amendments to Regulation E exempt needs-tested EBT programs that are established or administered by state or local government agencies. Federally administered EBT programs and state and local employment-related EBT programs (such as state pension programs) remain covered by Regulation E subject to modified requirements.

EFFECTIVE DATE: September 15, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

EFT Act and Regulation E

Regulation E implements the Electronic Fund Transfer Act (EFTA). The act and regulation cover any consumer electronic fund transfer (EFT) initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse, telephone bill-payment system, or home banking program. The act and Regulation E establish rules that govern these and other EFTs. The rules restrict the unsolicited issuance of ATM cards and other access devices; require disclosure of terms and conditions of an EFT service; document EFTs by means of terminal receipts and periodic account statements; limit consumer liability for unauthorized transfers; and establish procedures for error resolution.

The EFTA is not limited to traditional financial institutions holding consumers' accounts. For EFT services made available by entities other than an account-holding financial institution, the act directs the Board to assure, by regulation, that the provisions of the act are made applicable. The regulation also applies to entities that issue access devices and enter into agreements with consumers to provide EFT services.

Electronic Benefit Transfer Programs

Electronic benefit transfer (EBT) programs are designed to deliver government benefits such as food stamps, supplemental security income (SSI), and social security. These systems function much like commercial systems for EFT. Eligible recipients receive magnetic-stripe cards and personal identification numbers and they access benefits through electronic terminals. In the case of cash benefits such as SSI, the terminals may include ATMs that are part of existing commercial networks; for food stamp benefits, POS terminals in grocery stores are typically used.

EBT offers numerous advantages over paper-based delivery systems, both for recipients and for program agencies. For recipients, these advantages include faster access to benefits, greater convenience in terms of times and locations for obtaining benefits, improved security because funds may be accessed as needed, lower costs because recipients avoid check-cashing fees, and greater privacy and dignity. For agencies, EBT programs offer a system that can more efficiently deliver benefits for both state and federal programs by reducing the cost of benefit delivery, facilitating the management of program funds, and helping to reduce fraud.

In March 1994, the Board amended Regulation E to bring EBT programs expressly within its coverage. 59 FR 10678 (March 7, 1994). The special provisions, contained in § 205.15, apply most of the requirements of the regulation—including those relating to liability for unauthorized transactions and to error resolution—with some modifications. The major exception related to providing periodic statements of account activity: EBT programs need not provide periodic statements as long as (1) account balance information is made available to benefit recipients via telephone and electronic terminals and (2) a written account history is given upon request.

The basic premise underlying the Board's 1994 amendments to Regulation E was that all consumers using EFT services should receive substantially the same protection under the EFTA and Regulation E. To enable states to test and implement their EBT programs, the Board delayed the date of mandatory compliance to March 1, 1997.

II. Revised Regulatory Provisions

On August 22, 1996, the Congress enacted amendments to the EFTA as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a comprehensive welfare reform law (Pub. L. 104–193, 110 Stat. 2105). These amendments exempt ''needs-tested'' EBT programs established or administered under state or local law. (''Needs-tested'' EBT programs generally take a recipient's income or other resources into account to determine the appropriate level of benefits.) The exemption was enacted by the Congress at the urging of state and local officials, who expressed concern about the costs of compliance with the EFTA and

Regulation E. In particular, these officials believed that federal provisions limiting a recipient's liability for unauthorized transfers could raise serious budgetary problems at the state and local level.

In January, the Board issued a proposal to implement the exemption (62 FR 3242, January 22, 1997). Fifteen comments were received, generally in support of the amendments. Some commenters requested further clarification on certain technical issues. For example, clarification was requested on the treatment of SSI, a needs-tested benefit administered by the federal government through the Social Security Administration. Under the amendments to the EFTA, SSI benefits remain covered by the EFTA and Regulation E.

For cost efficiencies in the delivery of benefits, EBT programs may offer both federal and state benefits through the use of a single card. An EBT service provider requested clarification on how Regulation E applies when a card accesses benefits under multiple programs, some covered by and others exempt from Regulation E (for example, the Benefit Security Card® offered by the Southern Alliance of States). In this program, non-cash benefits (such as food stamps) are held in one account and cash benefits are held in a separate account. In the cash account, federally administered and state employment-related benefits (covered by Regulation E) may be pooled with state administered or established ''needs-tested'' benefits that are exempt from the regulation. Program agencies may allocate the withdrawal of a recipient's benefits from the pooled account in any manner they choose.

All federally administered benefits (and state employment-related benefits) accessed by the card from the pooled account must receive the protections provided by Regulation E. Agencies must ensure that the required disclosures concerning account balances, liability limits, error resolution procedures, and account histories clearly state how these protections apply with regard to a single card covering exempt and non-exempt programs. With regard to liability for unauthorized use, liability limits apply to the extent that the loss is charged against covered benefits. Similarly, error resolution procedures apply to the federally administered benefits (and state employment-related benefits) covered under Regulation E. This interpretation will be incorporated in the Official Staff Commentary to Regulation E.

Based on the comments and further analysis, the Board has adopted a final rule exempting ''needs-tested'' EBT programs established or administered by state or local government agencies. Federally administered EBT programs and employment-related programs established by federal, state, or local governments (such as state pension programs) remain covered by Regulation E, subject to the modified rules established by section 205.15.

III. Section-by-Section Analysis of Amendments

Section 205.15—Electronic Fund Transfers of Government Benefits

Section 205.15 contains the rules that apply to EBT programs as defined by the regulation. It provides modified rules on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices. Employment-related benefit programs established by federal, state, or local governments (as well as federally administered programs) remain subject to these modified rules.

15(a) Government agency subject to regulation

15(a)(1)

The act and regulation define coverage in terms of *financial institution,* a term that applies to entities that provide EFT services to consumers whether these entities are banks, other depository institutions, or other types of organizations entirely. Paragraph (a)(1) specifies when a government agency is a financial institution for purposes of the act and regulation. This provision has been revised to exclude needs-tested benefits in a program established under state or local law or administered by a state or local agency, consistent with the 1996 statutory amendments.

15(a)(2)

The term *account* is defined generally in § 205.2(b). For purposes of EBT programs, *account* is defined in § 205.15(a)(2) to mean an account established by a government agency (or agencies) for distributing benefits to a consumer electronically, such as through ATMs or POS terminals, whether or not the account is directly held by the agency or a bank or other depository institution. For example, an *account* under this section includes the use of a database (containing the consumer's name and record of benefit transfers) that is accessed for verification purposes before a particular transaction is approved. Under the Board's final rule, the definition is revised to exclude needs-tested benefits in a program established under state or local law or administered by a state or local agency, consistent with the 1996 amendments to the EFTA. Government benefits that remain covered include federally administered benefits such as social security and SSI and state and local benefits that are employment-related such as retirement and unemployment benefits.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the amendments to Regulation E. The amendments, which establish an exemption for certain EBT programs established or administered by a state or local agency, are not expected to have a significant impact on small entities.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The amendments provide an exemption for state-administered or state-established electronic benefit transfer programs; the amendments are not expected to affect the paperwork burden that the regulation imposes on state member banks or on other institutions.

An agency may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0200. The Board has a continuing interest in the public's opinions of the Federal Reserve's collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 205 as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

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

Authority: 15 U.S.C. 1693–1693r.

2. Section 205.15 is amended by revising paragraph (a) to read as follows:

§ 205.15 Electronic fund transfer of government benefits.

(a) *Government agency subject to regulation.* (1) A government agency is deemed to be a financial institution for purposes of the act and this part if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency. The agency shall comply with all applicable requirements of the act and this part, except as provided in this section.

(2) For purposes of this section, the term *account* means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 11, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–21584 Filed 8–13–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 970508108–7108–01; I.D. 022597B]

RIN 0648–AJ62

Fisheries of the Northeastern United States; Framework 9 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 9 to the Atlantic Sea Scallop Fishery Management Plan (FMP). These regulations exempt limited access and general category permit holders fishing exclusively under the State Waters Exemption Program (Exemption Program) from the 400 lb (181.44 kg) trip limit. This action is intended to sustain the participation of historic participants by allowing Federal permit holders to compete in the state waters fishery on a more equitable basis where Federal and state laws are inconsistent.

EFFECTIVE DATE: August 13, 1997.

ADDRESSES: Copies of Amendment 4 to the FMP (Amendment 4), its regulatory impact review and the initial regulatory flexibility analysis, its final supplemental environmental impact statement, and the supporting documents for Framework Adjustment 9 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906–1097.

Comments regarding burden-hour estimates for the collection-of-information requirement contained in this final rule should be sent to Dr. Andrew A. Rosenberg, Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing Amendment 4 to the FMP (59 FR 2757, January 19, 1994) added a framework adjustment process that allows for the adjustment of management measures, as necessary to meet or achieve consistency with the FMP's goals and objectives. The regulations authorize the New England Fishery Management Council (Council) to recommend adjustments to any of the measures currently in the FMP.

Framework Adjustment 2 to the FMP (59 FR 59967, November 21, 1994) implemented the Exemption Program that exempts federally permitted limited access and general category scallop vessels from Federal gear and days-at-sea effort restrictions while fishing in the state waters of Maine, New Hampshire, or Massachusetts. Vessels fishing in this Exemption Program are subject to a notification requirement (limited access vessels), must fish under the rules of the appropriate state, and may land no more than the 400–lb (181.44–kg) Federal limit. The basis for the Exemption Program was to allow the states to manage the scallop fisheries predominating in their waters under programs that were determined to be consistent with goals of the FMP. The state programs do not impose a landing limit and, thus, vessels that do not hold Federal permits and that are fishing in state waters are not subject to the 400–lb (181.44 kg) limit. This action was developed and submitted by the Council to provide more consistency with the state programs by exempting federally permitted vessels fishing under the Exemption Program from the 400 lb (181.44 kg) limit. This exemption further requires general category vessel operators to notify NMFS through the established call-in system of their intent to fish under the Exemption Program.

This modification to the Exemption Program was developed to eliminate the competitive disadvantage federally permitted vessels experience relative to non-federally permitted vessels fishing in state waters, while ensuring that the conservation goals of the FMP are met. Approximately 80 percent of the Gulf of Maine scallop fishery takes place in state waters and its management is predominately a state responsibility. These scallop stocks are not specifically included in the rebuilding program established in the FMP for the major stocks found on Georges Bank and in the Mid-Atlantic area. Therefore, this measure does not compromise the fishing mortality/effort reduction program for scallops in the EEZ. Implementing this exemption eliminates an inconsistency between Federal and state waters fisheries and has the positive effect of maintaining the continuity of the vessel trip reporting system for this sector by removing the incentive for federally permitted vessels to cancel their permits seasonally to become exempt from the 400–lb (181.44–kg) limit.

The Council requests publication of the management measures as a final rule after considering the required factors stipulated in the regulations governing the Atlantic sea scallop fishery and providing supporting analysis for each factor considered. The Regional Administrator concurs with the Council's recommendation and has determined that Framework Adjustment 9 should be published as a final rule.

NMFS is adjusting the scallop regulations following the procedure for framework adjustments established by

Amendment 4 and codified in 50 CFR part 648. The Council followed this procedure when making adjustments to the FMP by developing and analyzing the actions over the span of a minimum of at least two Council meetings held on November 6, 1996, and December 12, 1996.

Comments and Responses

The November 6, 1996, Council meeting was the first of two meetings that provided an opportunity for public comment on Framework Adjustment 9. A draft document containing the proposed management measures and their rationale was available to the public during the first week in December 1996 and notices of the initial and final Council meetings were mailed to approximately 1,900 people and published in the **Federal Register**. The final public hearing was held on December 12, 1996. Testimony provided by industry members at the public meetings favored the framework adjustment; there were no negative comments.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated, to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

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

The Assistant Administrator for Fisheries, NOAA (AA), finds that there is good cause to waive prior notice and opportunity for comment under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss the management measure implemented by this rule provided adequate prior notice and opportunity for public comment to be heard and considered; therefore, further notice and opportunity to comment before this rule is effective is unnecessary. The AA finds that under 5 U.S.C. 553(d)(1), there is good cause to waive the 30-day delay in effectiveness of this regulation. Implementation of this regulation, which relieves a restriction, will increase fishing opportunities by allowing vessels that have traditionally fished in the Gulf of Maine area to compete in the state waters on a more equitable basis where Federal and state laws are inconsistent.

Because a general notice of proposed rulemaking is not required to be published for this rule by 5 U.S.C. 553 or by any other law, this rule is exempt from the requirement to prepare an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act. As such, none has been prepared. The primary intent for this action is to exempt general category permit holders fishing exclusively under the Exemption Program from the 400–lb. (181.44– kg) trip limit.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains one new collection-of-information requirement subject to the PRA. This collection-of-information requirement has been approved by OMB, and the OMB control number and public reporting burden are listed as follows: Call-in notification for general category scallop vessels fishing in the Exemption Program, (2 minutes/response) under OMB # 0648–0202.

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate, or any other aspect of this data collection to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 8, 1997.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by removing in the left column under 50 CFR, the entries ''655.5'', ''655.7'', and ''655.8'', and in the right column, in corresponding positions, the control numbers; and by adding, in numerical order, in the left column, the entry ''648.54'', and in the right column, in the corresponding position, the control number ''–0202''.

50 CFR CHAPTER VI

PART 648–FISHERIES OF THE NORTHEASTERN UNITED STATES

3. The authority citation for part 648 continues to read as follows:

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

4. In § 648.54, paragraph (b)(2) is revised and paragraph (g) is added as follows:

§ 648.54 State waters exemption.

* * * * *

(b) * * *

(2) *General permits.* Any vessel issued a general scallop permit is exempt from the gear restrictions specified in § 648.51 (a), (b), and (e)(1) and (2) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Director under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (c) through (f) of this section.

* * * * *

(g) *Possession restriction exemption.* Any vessel issued a limited access permit that is exempt under paragraph (a) of this section from the DAS requirements of § 648.53(b), or any vessel issued a general scallop permit is exempt from the possession restrictions specified in § 648.52(a) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Director under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop

FMP, provided the vessel complies with paragraphs (c) through (f) of this section.

[FR Doc. 97–21531 Filed 8–13–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Veterinary Medicine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to reflect a new delegation that authorizes the Director and Deputy Director, Center for Veterinary Medicine (CVM), to sign certain **Federal Register** documents related to the implementation of the Animal Medicinal Drug Use Clarification Act of 1994 (the AMDUCA), as amended hereinafter. This authority will enable the agency to issue **Federal Register** documents related to implementation of the AMDUCA more efficiently.

EFFECTIVE DATE: August 14, 1997.

FOR FURTHER INFORMATION CONTACT:

Richard L. Arkin, Office of Policy and Regulations (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855–2773, 301–594–1737, or

Donna G. Page, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: The regulations are being amended in subpart B of part 5 (21 CFR part 5) by adding a new § 5.40 *Issuance of Federal Register documents pertaining to the determination of safe levels, notice of need for development of an analytical method, notice of availability of a developed analytical method, and prohibition of certain extralabel drug use* to reflect a new delegation that authorizes the Director and Deputy Director, CVM, to sign certain **Federal Register** documents related to the implementation of the AMDUCA (Pub. L. 103–396), as amended hereinafter. This delegation will permit the efficient implementation of the AMDUCA which was signed into law on October 22, 1994.

This authority may be further redelegated by the Director and Deputy Director, CVM. Authority delegated to a position by title may be exercised by a person officially designated to serve in such a position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. New § 5.40 is added to subpart B to read as follows:

§ 5.40 Issuance of Federal Register documents pertaining to the determination of safe levels, notice of need for development of an analytical method, notice of availability of a developed analytical method, and prohibition of certain extralabel drug use.

The Director and Deputy Director, Center for Veterinary Medicine (CVM) are authorized to issue **Federal Register** documents pertaining to the determination of safe levels, notice of need for development of an analytical method, notice of availability of a developed analytical method, and prohibition of certain extralabel drug use related to implementation of the Animal Medicinal Drug Use Clarification Act of 1994 (the AMDUCA) (Pub. L. 103–396). This authority may be further redelegated by the Director and Deputy Director, CVM.

Dated: August 8, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–21585 Filed 8–13–97; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–5874–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Removal of Final Rule Pertaining to the Determination of Attainment of Ozone Standard and Determination Regarding Applicability of Certain Requirements in the Richmond Area [VA–076–5022]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of direct final rule.

SUMMARY: On June 13, 1997, EPA published determination that the Richmond ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone, and that Richmond has continued to attain the standard to date. On the basis of this determination, EPA determined that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of part D of Title I of the Clean Air Act are not applicable to this area as long as this area continues to attain the ozone NAAQS. See 62 FR 32204.

EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as a noncontroversial amendment and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30-day comment period (62 FR 32204, June 13, 1997). At the same time, EPA announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** (62 FR 32258, June 13, 1997). The final rulemaking action would be withdrawn by publishing a notice announcing withdrawal of this action.

Notice of intent to adversely comment was submitted to EPA within the prescribed comment period. Therefore, EPA is amending 40 CFR 52.2428 by removing the June 13, 1997 final rulemaking action. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

EFFECTIVE DATE: August 14, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania

19107, or by telephone at: (215)566–2179. Questions may also be sent via e-mail, to the following address: Cripps.Christopher@epamail.epa.gov

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: August 4, 1997.

Marcia E. Mulkey,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart VV of Chapter I, title 40 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 VV—Virginia

§ 52.2428 [Removed]

2. Section 52.2428 is removed.

[FR Doc. 97–21538 Filed 8–13–97; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–37

[FPMR Amdt. G–112]

RIN 3090–AG54

Management, Use, and Disposal of Government Aircraft Parts

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This regulation provides policy on the management and disposal of Government-owned aircraft parts. This change is issued to address safety concerns that surplus Government aircraft parts are distributed without proper documentation and control, and to establish procedures to ensure that only eligible parts are made available for transfer and donation purposes.

EFFECTIVE DATE: August 14, 1997.

FOR FURTHER INFORMATION CONTACT: Peter Zuidema, Director, Aircraft Management Policy Division (MTA), 202–219–1377.

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.

Regulatory Flexibility Act

This rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

Paperwork Reduction Act

GSA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget. This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel. This rule is written in a ''plain English'' style.

What is the ''plain English'' style of regulation writing?

The ''plain English'' style of regulation writing is a new, simpler to read and understand, question and answer regulatory format.

How does the plain English style of regulation writing affect employees?

A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

List of Subjects in 41 CFR Part 101–37

Aircraft, Government property management.

For the reasons set forth in the preamble, 41 CFR part 101–37 is amended as follows:

PART 101–37—[AMENDED]

1. The authority citation for Part 101–37 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; Executive Order 11541; and OMB circular No. A–126 (Revised May 22, 1992).

2. Section 101–37.100 is amended by adding in alphabetical order the following definitions:

§ 101–37.100 Definitions.

* * * * *

Aircraft part means any part, component, system, or assembly primarily designated for aircraft.

* * * * *

Criticality Code is the one-digit code assigned by Department of Defense to designate an aircraft part as a Flight Safety Critical Aircraft Part (FSCAP).

* * * * *

Flight Safety Critical Aircraft Part (FSCAP) means any aircraft part, assembly, or installation containing a critical characteristic whose failure, malfunction, or absence could cause a catastrophic failure resulting in loss or serious damage to the aircraft or an uncommanded engine shut-down resulting in an unsafe condition.

* * * * *

Military surplus aircraft part is an aircraft part that has been released as surplus by the military, even if subsequently resold by manufacturers, owner/operators, repair facilities, or any other parts supplier.

* * * * *

Production approval holder is the holder of a Federal Aviation Administration Production Certificate (PC), Approved Production Inspection System (APIS), Parts Manufacturer Approval (PMA), or Technical Standard Order (TSO) who controls the design and quality of a product or part thereof, in accordance with Part 21 of the Federal Aviation Regulations (14 CFR 21.305).

* * * * *

Replacement means the process of acquiring property specifically to be used in place of property which is still needed but will no longer adequately perform all the tasks for which it was used.

* * * * *

Unsalvageable aircraft part is an aircraft part which cannot be restored to an airworthy condition due to its age, physical condition, a non-repairable defect, insufficient documentation, or non-conformance with applicable specifications. For additional information on disposition of such parts refer to FAA Advisory Circular No. 21–38, or other current applicable guidelines.

3. Subpart 101–37.6 is added to read as follows:

Subpart 101–37.6—Management, Use, and Disposal of Government Aircraft Parts

Sec.

Subpart 101–37.6—Management, Use, and Disposal of Government Aircraft Parts

§ 101–37.600 What does this subpart do?

This subpart prescribes special policies and procedures governing the management, use, and disposal of Government-owned aircraft parts.

§ 101–37.601 What responsibilities does the owning/operating agency have in the management and use of Government aircraft parts?

(a) The owning/operating agency is responsible for ensuring the continued airworthiness of an aircraft, including replacement parts. The owning/operating agency must ensure that replacement parts conform to an approved type design, have been maintained in accordance with applicable standards, and are in condition for safe operation.

(b) In evaluating the acceptability of a part, the owning/operating agency should review the appropriate log books and historical/maintenance records. The maintenance records must contain the data set forth in the latest version of Federal Aviation Administration (FAA) Advisory Circular 43–9. When the quality and origin of a part is questionable, the owning/operating agency should seek guidance from the local FAA Flight Standards District Office (FSDO) in establishing the part's airworthiness eligibility.

§ 101–37.602 Are there special requirements in the management, use, and disposal of military Flight Safety Critical Aircraft Parts (FSCAP)?

(a) Yes. Any aircraft part designated by the Department of Defense as a FSCAP must be identified with the appropriate FSCAP Criticality Code which must be perpetuated on all documentation pertaining to such parts.

(b) A military FSCAP may be installed on a FAA type-certificated aircraft holding either a restricted or standard airworthiness certificate, provided the part is inspected and approved for such installation in accordance with the applicable Federal Aviation Regulations.

(c) If a FSCAP has no maintenance or historical records with which to determine its airworthiness, it must be mutilated and scrapped in accordance with § 101–37.609. However, FSCAP still in its original unopened package, and with sufficient documentation traceable to the Production Approval Holder (PAH), need not be mutilated. Undocumented FSCAP with no traceability to either the original manufacturer or PAH must not be made available for transfer or donation. For assistance in the evaluation of FSCAP, contact the local FAA Flight Standards District Office (FSDO).

§ 101–37.603 What are the owning/operating agency's responsibilities in reporting excess Government aircraft parts?

(a) The owning/operating agency must report excess aircraft parts to GSA in accordance with the provisions set forth in part 101–43 of this chapter. The owning/operating agency must indicate on the reporting document if any of the parts are life-limited parts and/or military FSCAP, and ensure that tags and labels, applicable historical data and maintenance records accompany these aircraft parts.

(b) The owning/operating agency must identify excess aircraft parts which are unsalvageable according to FAA or DOD guidance, and ensure that such parts are mutilated in accordance with § 101–37.609. The owning/operating agency should not report such parts to GSA.

§ 101–37.604 What are the procedures for transferring and donating excess and surplus Government aircraft parts?

(a) Transfer and donate excess and surplus aircraft parts in accordance with part 101–43, Utilization of Personal Property, and part 101–44, Donation of Personal Property.

(b) Unsalvageable aircraft parts must not be issued for transfer or donation; they must be mutilated in accordance with § 101–37.609.

§ 101–37.605 What are the receiving agency's responsibilities in the transfer or donation of excess and surplus Government aircraft parts?

(a) The receiving agency must verify that all applicable labels and tags, and historical/modification records are furnished with the aircraft parts. The receiving agency must also ensure the continued airworthiness of these parts by following proper storage, protection and maintenance procedures, and by maintaining appropriate records throughout the life cycle of these parts.

(b) The receiving agency must perpetuate the DOD-assigned Criticality Code on all property records of acquired military FSCAP. The receiving agency must ensure that flight use of military FSCAP on civil aircraft meets all Federal Aviation Regulation requirements.

(c) The receiving agency must certify and ensure that when a transferred or donated part is no longer needed, and the part is determined to be unsalvageable, the part must be mutilated in accordance with § 101–37.609 and properly disposed.

§ 101–37.606 What are the GSA approving official's responsibilities in transferring and donating excess and surplus Government aircraft parts?

(a) The GSA approving official must review transfer documents of excess and surplus aircraft parts for completeness and accuracy, and ensure that the certification required in § 101–37.605(c) is included in the transfer document.

(b) The GSA approving official must also ensure the following statement is included on the SF123, Transfer Order Surplus Personal Property:

''Due to the critical nature of aircraft parts failure and the resulting potential safety threat, recipients of aircraft parts must ensure that any parts installed on a civil aircraft meet applicable Federal Aviation Administration Regulations, and that required certifications are obtained. The General Services Administration makes no representation as to a part's conformance with FAA requirements.''

§ 101–37.607 What are the State Agency's responsibilities in the donation of surplus Government aircraft parts?

(a) The State Agency must review donation transfer documents for completeness and accuracy, and ensure that the certification provisions set forth in § 101–37.605(c) is included in the transfer documents.

(b) The State Agency must ensure that when a donated part is no longer needed, and the part is determined to be unsalvageable, the donee mutilates the part in accordance with § 101–37.609.

§ 101–37.608 What are the responsibilities of the Federal agency conducting the sale of Government aircraft parts?

(a) The Federal agency must sell Government aircraft parts in accordance with the provisions set forth in Part 101–45, Sale, Abandonment, or Destruction of Personal Property of this chapter.

(b) The Federal agency must ensure that the documentation required pursuant to § 101–37.603(a) accompanies the parts at the time of sale, and that sales offerings on aircraft parts contain the following statement:

''Purchasers are warned that the parts purchased herewith may not be in compliance with applicable Federal Aviation Administration requirements. Purchasers are not exempted from and must comply with applicable Federal Aviation Administration requirements. Purchasers are solely responsible for all FAA inspections and/or modifications necessary to bring the purchased items into compliance with 14 CFR (Code of Federal Regulations).''

(c) The Federal agency must ensure that the following certification is executed by the purchaser and received by the Government prior to releasing such parts to the purchaser:

''The purchaser agrees that the Government shall not be liable for personal injuries to, disabilities of, or death of the purchaser, the purchaser's employees, or to any other persons arising from or incident to the purchase of this item, its use, or disposition. The purchaser shall hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to purchase or resale of this item.''

§ 101–37.609 What are the procedures for mutilating unsalvageable aircraft parts?

(a) Identify unsalvageable aircraft parts which require mutilation.

(b) Mutilate unsalvageable aircraft parts so they can no longer be utilized for aviation purposes. Mutilation includes destruction of the data plate, removing the serial/lot/part number, and cutting, crushing, grinding, melting, burning, or other means which will prevent the parts from being misidentified or used as serviceable aircraft parts. Obtain additional guidance on the mutilation of unsalvageable aircraft parts in FAA AC No. 21–38, Disposition of Unsalvageable Aircraft Parts and Materials.

(c) Ensure an authorized agency official witnesses and documents the mutilation, retain a signed certification and statement of mutilation.

(d) If unable to perform the mutilation, turn in the parts to a Federal or Federally-approved facility for mutilation and proper disposition. Ensure that contractor performance is in accordance with the provisions of this part.

(e) Ensure that mutilated aircraft parts are sold only as scrap.

§ 101–37.610 Are there special procedures for the exchange/sale of Government aircraft parts?

Yes. Executive agencies may exchange or sell aircraft parts as part of a transaction to acquire similar replacement parts in accordance with FPMR part 101–46. In addition to the requirements of this subpart, agencies must ensure that the exchange/sale transaction is accomplished in accordance with the methods and procedures contained in part 101–46 of this chapter, and comply with the restrictions and limitations under § 101–46.202 of this chapter.

(a) Prior to the proposed exchange/sale, agencies should determine whether the parts identified for disposition are airworthy parts. For additional guidance refer to the applicable FAA Advisory Circular(s), or contact the local FAA FSDO.

(b) At the time of exchange or sale, agencies must ensure that applicable labels and tags, historical data and modification records accompany the aircraft parts prior to release. The records must contain the information and content as required by current DOD and FAA requirements for maintenance and inspections.

(c) Life limited parts that have reached or exceeded their life limits, or which have missing or incomplete documentation, must either be returned to the FAA production approval holder as part of an exchange transaction, or mutilated in accordance with § 101–37.609.

(d) Unsalvageable aircraft parts, other than parts in paragraph (c) of this section, must not be used for exchange/sale purposes; they must be mutilated in accordance with § 101–37.609.

Dated: July 7, 1997.

David J. Barram,

Administrator of General Services.

[FR Doc. 97–21388 Filed 8–13–97; 8:45 am]

BILLING CODE 6820–24–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 97–218]

Forfeiture Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order amends the Commission's rules to incorporate, as a note to the rule, the Commission's policy statement regarding forfeitures and a suggested schedule of base forfeiture amounts. The policy statement and schedule of base forfeiture amounts is intended to provide a measure of predictability and uniformity to the process of assessing forfeitures.

EFFECTIVE DATES: Effective October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Pamera D. Hairston, Compliance and Information Bureau, (202) 418–1160.

SUPPLEMENTARY INFORMATION:

Adopted: June 19, 1997.

Released: July 28, 1997.

1. This rule making responds to the concerns expressed by the U.S. Court of Appeals for the District of Columbia Circuit when it vacated the Commission's previous policy statement in the decision, *United States Telephone Association* v. *FCC.*[1] In that decision, the Court stated that the forfeiture guidelines used by the Commission constituted a rule that was adopted without notice and comment proceedings as required by the Administrative Procedure Act. In light of the court's decision, the Commission initiated a Notice of Proposed Rule making proceeding,[2] proposing that the prior policy statement be adopted, but requesting comments on all aspects of the proposal. In addition, the Commission requested specific comment on: (a) Whether the Commission should use guidelines to assess forfeitures instead of the traditional case-by-case approach; (b) whether the guidelines proposed in the notice of proposed rule making should be modified; and (c) whether adjustment factor ranges should be adopted.

2. After evaluation of the record, the Commission adopted a Forfeiture Policy Statement on June 19, 1997. The majority of the commenters agreed that a guideline based approach was preferable to the traditional case-by-case approach. One commenter disagreed with the guideline approach and argued that too much Commission discretion or flexibility in the guidelines would invite litigation. The Commission agreed with the majority that guidelines would add a measure of predictability and uniformity to the forfeiture process. Regardless of which approach is used, Section 503 of the Act provides the violators an opportunity to litigate the facts underlying the violation in an administrative law hearing or a trial *de novo.* We do not believe, therefore, that the potential for litigation should preclude us from providing necessary guidance in the forfeiture process. Thus, the Commission expressly retains its discretion to depart from the guidelines where warranted by the facts of the case.

[1] *United States Telephone Association* v. *FCC,* 28 F.3d 1232 (1994).

[2] *In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines,* 10 FCC Rcd 2945 (1995), 60 FR 10056 (February 23, 1995).

3. Some commenters suggested that the Commission revise its forfeiture guidelines in view of the changes in the telecommunications industry since the Commission developed its original Forfeiture Policy Statement. Commenters argued that the base amounts were too high, and discriminatory because they were established according to the nature of the service or identity of the violator rather than the nature of the violation. They suggested that the base forfeiture amounts for identical violations should be uniform for all services. We agreed and have made revisions to the base forfeiture structure. We also agreed with the commenters that the adjustment factor percentage ranges were difficult to apply, and we are therefore eliminating the percentage ranges. The Commission will continue to use the adjustment factors to increase or decrease a forfeiture based on the unique facts of the case.

4. In sum, unless a violation is unique to a particular service, the base forfeiture amount for a violation will be the same for all services, regardless of the identity of the violator. We believe this is a more fair approach than our prior guidelines. There are two exceptions, however, to this methodology. The base amount for misrepresentation is set at the statutory maximum for each service. Moreover, base forfeiture amounts for violations that are unique to each service are established relative to the statutory maximum for that service. The schedule of forfeitures adopted with this Forfeiture Policy Statement does not constitute a comprehensive listing of all potential violations and concomitant base amounts. Omission from the forfeiture schedule does not mean that a violation is unimportant or that a forfeiture for an omitted violation would be less than those outlined in the schedule. We also note that assessing forfeitures for violations of the Commission's Broadcast Equal Employment Opportunities (EEO) rules will be addressed in a separate proceeding. [3]

5. To create base amounts that could be applied uniformly to all services, we used the statutory maximum for services other than those in the broadcasting, cable, and common carrier categories as the common denominator for developing base forfeiture amounts. Base forfeiture amounts may be increased or decreased upon evaluation of the unique facts of the case in light of the adjustment factors. These factors mirror the concerns outlined in Section 503 of the Act regarding the violation as well as the violator. Thus, a highly profitable entity can expect that its forfeiture may ultimately be assessed higher than the base amount in light of its ability to pay whereas a less profitable entity may be assessed a lesser amount. Factors such as degree of harm of the violation as well as the nature and circumstances surrounding the violation may mitigate or increase a forfeiture. We also believe that the guidelines established in this Forfeiture Policy Statement comport with the requirements of the Small Business Regulatory Fairness Enforcement Act (SBREFA) of the Contract with America Advancement Act of 1996. [4]

6. The Forfeiture Policy Statement also addresses several other issues raised in the proceeding. In response to the recommendation that warnings be issued for all first time violations, the Commission will continue to use its discretion in deciding whether to issue warnings, rather than assessing forfeitures, on a case-by-case basis. The commenters also contended, with respect to the issue of ability to pay a forfeiture, that the Commission focused solely on gross revenues in its evaluation and that the documentation required by the Commission to demonstrate inability to pay a forfeiture proved burdensome. The Commission noted, however, that it would look to the totality of the violator's circumstances and that it would consider objective documented evidence in evaluating a violator's ability, or lack thereof, to pay a forfeiture. With respect to use of prior forfeitures in subsequent proceedings, the Commission reiterated that the legislative history of Section 504 supports its use of the underlying facts of a prior violation in its evaluation of subsequent violations.

7. With respect to administrative matters, several commenters suggested that the Commission rescind all pending forfeitures imposed under the prior Forfeiture Policy Statements. The Commission explicitly stated that the pending forfeitures would not be cancelled because the forfeitures were assessed in full accord with Section 503 of the Act. Thus, the Commission will use the case-by-case approach in evaluating pending cases. This approach will also be used in cases where the violation occurred prior to the release of the Forfeiture Policy Statement but where the Commission commences forfeiture action after the effective date of the instant rule making.

8. Accordingly, pursuant to sections 4 (i) and 303 (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), *it is ordered* that 47 CFR § 1.80 is *amended* as set forth below, effective October 14, 1997. For copies of the Final Regulatory Flexibility Statement, contact International Transcription Services, Inc., (202) 857–3800.

List of Subjects in 47 CFR Part 1

Penalties.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, Part 1, is amended as follows:

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

PART 1—PRACTICE AND PROCEDURE

Authority: 47 U.S.C. 151, 154, 303, and 309(j); unless otherwise noted.

2. Section 1.80 is amended by adding a note following paragraph (b)(4) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b) * * *

(4) * * *

Note to paragraph (b)(4):

Guidelines for Assessing Forfeitures

The Commission and its staff may use these guidelines in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute. The forfeiture ceiling per violation or per day for a continuing violation stated in Section 503 of the Communications Act and the Commission's Rules are $25,000 for broadcasters and cable operators or applicants, $100,000 for common carriers or applicants, and $10,000 for all others. These base amounts listed are for a single violation or single day of a continuing violation. 47 U.S.C. 503(b)(2); 47 CFR 1.80. For continuing violations involving a single act or failure to act, the statute limits the forfeiture to $250,000 for broadcasters and cable operators or applicants, $1,000,000 for common carriers or applicants, and $75,000 for all others. *Id.* Pursuant to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, section 31001, 110 Stat. 1321 (1996), civil monetary penalties assessed by the federal government, whether set by statutory maxima or specific dollar amounts

[3] *Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines, Order and Notice of Proposed Rule Making,* 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996).

[4] Public Law. 104–121, section 110 Stat. 847 (1996).

as provided by federal law, must be adjusted for inflation at least every four years based on the formula outlined in the DCIA. Thus, the statutory maxima increased to $27,500 for broadcasters and cable operators or applicants; $110,000 for common carriers or applicants, and $11,000 for others. For continuing violations, the statutory maxima increased to $27,500 for broadcasters, cable operators, or applicants; $1,100,000 for common carriers or applicants; and $82,500 for others. The increased statutory maxima became effective March 5, 1997. There is an upward adjustment factor for repeated or continuous violations, see Section II, *infra.* That upward adjustment is not necessarily applied on a per violation or per day basis. *Id.* Unless Commission authorization is required for the behavior involved, a Section 503 forfeiture proceeding against a non-licensee or non-applicant who is not a cable operator or common carrier can only be initiated for a second violation, after issuance of a citation in connection with a first violation. 47 U.S.C. 503(b)(5). A prior citation is not required, however, for non-licensee tower owners who have previously received notice of the obligations imposed by Section 303(q) and part 17 of the Commission's rules from the Commission. Forfeitures issued under other sections of the Act are dealt with separately in Section III of this note.

SECTION I.—BASE AMOUNTS FOR SECTION 503 FORFEITURES

Violation	Amount
Misrepresentation/lack of candor	(1)
Construction and/or operation without an instrument of authorization for the service	$10,000
Failure to comply with prescribed lighting and/or marking	10,000
Violation of public file rules	10,000
Violation of political rules: reasonable access, lowest unit charge, equal opportunity, and discrimination	9,000
Unauthorized substantial transfer of control	8,000
Violation of children's television commercialization or programming requirements	8,000
Violations of rules relating to distress and safety frequencies	8,000
False distress communications	8,000
EAS equipment not installed or operational	8,000
Alien ownership violation	8,000
Failure to permit inspection	7,000
Transmission of indecent/obscene materials	7,000
Interference	7,000
Importation or marketing of unauthorized equipment	7,000
Exceeding of authorized antenna height	5,000
Fraud by wire, radio or television	5,000
Unauthorized discontinuance of service	5,000
Use of unauthorized equipment	5,000
Exceeding power limits	4,000
Failure to respond to Commission communications	4,000
Violation of sponsorship ID requirements	4,000
Unauthorized emissions	4,000
Using unauthorized frequency	4,000
Failure to engage in required frequency coordination	4,000
Construction or operation at unauthorized location	4,000
Violation of requirements pertaining to broadcasting of lotteries or contests	4,000
Violation of transmitter control and metering requirements	3,000
Failure to file required forms or information	3,000
Failure to make required measurements or conduct required monitoring	2,000
Failure to provide station ID	1,000
Unauthorized pro forma transfer of control	1,000
Failure to maintain required records	1,000

[1] Statutory Maximum for each Service.

VIOLATIONS UNIQUE TO THE SERVICE

Violation	Services affected	Amount
Unauthorized conversion of long distance telephone service	Common Carrier	$40,000
Violation of operator services requirements	Common Carrier	7,000
Violation of pay-per-call requirements	Common Carrier	7,000
Failure to implement rate reduction or refund order	Cable	7,500
Violation of cable program access rules	Cable	7,500
Violation of cable leased access rules	Cable	7,500
Violation of cable cross-ownership rules	Cable	7,500
Violation of cable broadcast carriage rules	Cable	7,500
Violation of pole attachment rules	Cable	7,500
Failure to maintain directional pattern within prescribed parameters	Broadcast	7,000
Violation of main studio rule	Broadcast	7,000
Violation of broadcast hoax rule	Broadcast	7,000
AM tower fencing	Broadcast	7,000
Broadcasting telephone conversations without authorization	Broadcast	4,000
Violation of enhanced underwriting requirements	Broadcast	2,000

Section II. Adjustment Criteria for Section 503 Forfeitures

Upward Adjustment Criteria

(1) Egregious misconduct.
(2) Ability to pay/relative disincentive.
(3) Intentional violation.
(4) Substantial harm.
(5) Prior violations of any FCC requirements.
(6) Substantial economic gain.
(7) Repeated or continuous violation.

Downward Adjustment Criteria

(1) Minor violation.
(2) Good faith or voluntary disclosure.
(3) History of overall compliance.
(4) Inability to pay.

Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors

Unlike Section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with one exception, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under Section 504 of the Act. The one exception is Section 223 of the Act, which provides a maximum of $50,000 per day. For convenience, the Commission will treat the $50,000 set forth in Section 223 as if it were a prescribed base amount, subject to downward adjustments. The following amounts were adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA) Public Law 104–134, section 31001, 110 Stat 1321 (1996). The new amounts became effective on March 5, 1997. These non-Section 503 forfeitures may be adjusted downward using the ''Downward Adjustment Criteria'' shown for Section 503 forfeitures in Section II of this note.

Violation	Statutory amount ($)
Sec. 202(c) Common Carrier Discrimination	6,600 330/day.
Sec. 203(e) Common Carrier Tariffs	6,600 330/day.
Sec. 205(b) Common Carrier Prescriptions	13,200.
Sec. 214(d) Common Carrier Line Extensions	1,200/day.
Sec. 219(b) Common Carrier Reports	1,200.
Sec. 220(d) Common Carrier Records & Accounts	6,600/day.
Sec. 223(b) Dial-a-Porn	55,000 maximum/day.
Sec. 364(a) Ship Station Inspection	5,500 (owner).
Sec. 364(b) Ship Station Inspection	1,100 (vessel master).
Sec. 386(a) Forfeitures	5,500/day (owner).
Sec. 386(b) Forfeitures	1,100 (vessel master).
Sec. 634 Cable EEO	500/day.

* * * * *

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BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 94–129; FCC 97–248]

Unauthorized Changes of Consumer's Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a combined Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration which amends the Commission's rules and policies governing the unauthorized switching of subscribers' primary interexchange carriers (PICs), an activity more commonly known as ''slamming.'' In the Order on Reconsideration, the Commission disposes of six petitions for reconsideration of its 1995 Report and Order, and amends its rules regarding changes in subscribers' long distance carriers in three respects. The Commission's decision is intended to deter and ultimately eliminate unauthorized changes in subscribers' long distance carriers.

EFFECTIVE DATE: January 12, 1998 except for § 64.1150 which will become effective upon approval by the Office of Management and Budget. The Commission will publish a document at a later date announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Cathy Seidel, Enforcement Division, Common Carrier Bureau (202) 418–0960.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration in CC Docket No. 94–129 [FCC 97–248], adopted on July 14, 1997 and released on July 15, 1997. The full text of the Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C.

Summary of Memorandum Opinion and Order on Reconsideration

I. Background

1. The Commission first established safeguards to deter slamming when equal access was implemented in 1985. By 1992, because the interexchange market had become more competitive, the need for additional safeguards to deter slamming increased. Therefore, the Commission adopted rules requiring that all IXCS institute one of four verification procedures before submitting a carrier change request generated through telemarketing on behalf of a customer. 7 FCC Rcd 1038 (1992), *recon. denied*, 8 FCC Rcd 3215 (1993). In 1994, the Commission on its own motion and in response to continuing complaints from subscribers regarding slamming, instituted a rule making and adopted rules in its *1995 Report and Order* 10 FCC Rcd 9560, 60 FR 35846 (July 12, 1995), establishing further anti-slamming safeguards to deter misleading letters of agency (LOAs). A LOA is a document signed by a subscriber which states that a

particular carrier has been selected as that subscriber's preferred carrier. Despite the Commissions anti-slamming efforts, the number of written slamming complaints received by the Commission in 1995 was 11,278, which represents a six-fold increase over the number of such complaints received in 1993. That number has continued to rise; over 16,000 such complaints were received in 1996. Shortly after, the adoption of the *1995 Report and Order* the Commission, on its own motion, stayed its *1995 Report and Order* insofar as it extends the PIC-change verification requirements set forth in § 64.1100 of the Commission's rules to consumer-initiated or in-bound telemarketing calls. The stay was imposed before the effective date of the *1995 Report and Order.* The consumer-initiated or in-bound telemarketing provision is the only component of its anti-slamming rules that the Commission stayed. The stay of this provision of the *1995 Report and Order* remains in effect.

II. Discussion

2. Six parties filed petitions for reconsideration of the Commission's *1995 Report and Order.* Allnet sought clarification or, in the alternative, reconsideration of the language in § 64.1150(e)(4) to reflect the terms ''interLATA'' and ''intraLATA'' instead of ''interstate'' and ''intrastate,'' respectively. AT&T, MCI and Sprint sought reconsideration and reversal of the Commission's decision to extend PIC-change verification requirements to consumer-initiated calling. MCI also sought reconsideration of the Commission's decision to permit the use of LOAs that double as checks. Frontier sought reconsideration of the Commission's LOA rules, maintaining that the rules should not apply to consumers who have executed written contracts to obtain an IXC's services. Finally, NAAG sought reconsideration of several aspects of the *1995 Report and Order.* Specifically, NAAG urged the Commission: (1) To eliminate, as a general rule, any liability for consumers if the switching IXC cannot document that the consumer authorized the switch in accordance with the law; (2) to modify § 64.1150 to require that: (a) LOAs be on a document separate from any promotional material, not just separable by a perforation; (b) combined check/LOAs be prohibited, unless additional safeguards are required; (c) if an LOA is provided in connection with any promotion, all or part of which is in a language other than English, the LOA must also be provided in that other language; and (d) any promotion in which any inducements to switch long distance service are in a language other than English, must contain a full explanation and make all disclosures in each language used to make the inducements; and (3) to modify § 64.1100(d)(8) to eliminate the negative option in accordance with paragraph 11 of the *1995 Report and Order* and § 64.1150(f).

3. The Commission modifies its rules regarding changes in subscribers' long distance carriers in three respects. First, the Commission modifies § 64.1150(g) to clarify that carriers using letters of agency (LOAs) must fully translate their LOAs into the same language(s) as their associated promotional materials or oral descriptions and instructions. Second, the Commission modifies § 64.1150(e)(4) to incorporate the terms interLATA and intraLATA, as well as interstate and intrastate, in order to remove possible confusion or uncertainty about the scope of the Commission's rules, which are generally relevant to all jurisdictions. Third, the Commission modifies § 64.1100(a) to clarify that carriers must confirm change orders for long distance service generated by telemarketing using only one of the four verification options of § 64.1100. Aside from these modifications and seeking further comment in the accompanying Further Notice of Proposed Rule Making, the Commission otherwise declines to adopt the positions urged by petitioners.

III. Final Regulatory Flexibility Analysis

4. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making (NPRM) in the Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carrier, 9 FCC Rcd. 6885 (1994). The Commission sought written public comment on the proposals in the NPRM, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Memorandum Opinion and Order on Reconsideration conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, 110 Stat. 847 (1996), codified as Title II of the Contract With America Advancement Act of 1996 (CWAAA), 5 U.S.C. 601 *et seq.*

i. Need for and Objectives of This Memorandum Opinion and Order on Reconsideration and the Rules Adopted Herein

5. The Commission adopts in the Order on Reconsideration rules that: (1) Modify § 64.1150(g) to clarify that interexchange carriers (IXCs) using LOAs must fully translate their LOAs into the same language(s) as their associated promotional materials, oral descriptions and instructions; (2) modify § 64.1150(e)(4) to incorporate the terms ''interLATA and intraLATA,'' as well as ''interstate and intrastate''; and (3) modify § 64.1100(a) to clarify that IXCs must employ only one of the four verification options in § 64.1100 to verify subscriber change orders generated by telemarketing. The objectives of the rules adopted in this Order on Reconsideration are to provide adequate safeguards to protect subscribers from unauthorized switching of their long distance carriers and to encourage full and fair competition among telecommunications carriers in the marketplace.

ii. Summary and Analysis of the Significant Issues Raised by the Public Comments in Response to the IRFA

6. In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses as defined by section 601(3) of the RFA. Specifically, small entities may feel some economic impact in additional printing costs due to the new requirement that IXCs must fully translate their LOAs into the same language(s) as their associated promotional materials, oral descriptions and instructions under § 64.1150(g). The IRFA solicited comment on alternatives to proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. Although the Commission has requested further comment on a number of these rules, the Commission received no comment(s) on the potential impact on small business entities with respect to the rules the Commission adopted in this Order on Reconsideration.

iii. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in the Memorandum Order and Opinion on Reconsideration in CC Docket No. 94–129 Will Apply

7. For the purposes of this analysis, the Commission examined the relevant definition of ''small entity'' or ''small business'' and applied this definition to identify those entities that may be affected by the rules adopted in this Order on Reconsideration. The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under

the Small Business Act, a ''small business concern'' is 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 Small Business Administration (SBA). Moreover, the SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.

Telephone Companies (SIC 4813)

8. *Total Number of Telephone Companies Affected.* The decisions and rules adopted by the Commission may have a significant effect on a substantial number of small telephone companies identified by the SBA. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone service, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers (LECs), IXCs, competitive access providers (CAPs), cellular carriers, mobile service carriers, operator service providers (OSPs), pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms are not IXCs, or may not qualify as small entities because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an IXC having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity IXCs that may be affected by this Order on Reconsideration.

9. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 companies (or, all but 26) were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small incumbent LECs or small entities based on these employment statistics. However, because it seems certain that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as ''small business concerns'' under the SBA definition. Moreover, although the rules adopted herein apply only to IXCs, this figure includes entities other than IXCs. Consequently, the Commission estimates using this methodology that there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the proposed decisions and rules and seeks comment on this conclusion.

10. *Non-LEC wireline carriers.* Next the Commission estimates the number of non-LEC wireline carriers, including IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers that may be affected by these rules. Because neither the Commission nor the SBA has developed definitions for small entities specifically applicable to these wireline service types, the closest applicable definition under the SBA rules for all these service types is for telephone communications companies other than radiotelephone (wireless) companies. However, the TRS data provides an alternative source of information regarding the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers nationwide. According to the Commission's most recent data: 130 companies reported that they are engaged in the provision of interexchange services; 57 companies reported that they are engaged in the provision of competitive access services; 25 companies reported that they are engaged in the provision of operator services; 271 companies reported that they are engaged in the provision of pay telephone services; and 260 companies reported that they are engaged in the resale of telephone services and 30 reported being ''other'' toll carriers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers that would qualify as small business concerns under SBA's definition. Firms filing *TRS Worksheets* are asked to select a single category that best describes their operation. As a result, some long distance carriers describe themselves as resellers, some as OSPs, some as ''other,'' and some simply as IXCs. Consequently, the Commission estimates that there are fewer than 130 small entity IXCs; 57 small entity CAPs; 25 small entity OSPs; 271 small entity pay telephone service providers; and 260 small entity providers of resale telephone service; and 30 ''other'' toll carriers that might be affected by the rules proposed in this Order on Reconsideration.

11. *Radiotelephone (Wireless) Carriers.* The SBA has developed a definition of small entities for Wireless (Radiotelephone) Carriers. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to the SBA definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable to estimate with greater precision the number of Radiotelephone Carriers and service providers that would qualify as small business concerns under SBA's definition. The Commission is also unable to estimate how many of these entities are IXCs. Consequently, the Comission estimates that there are fewer than 1,164 small entity radiotelephone companies that might be affected by the rules proposed in this Order on Reconsideration.

12. *Cellular and Mobile Service Carriers.* In an effort to further refine its calculation of the number of radiotelephone companies affected by the rules adopted herein, the Commission considers the categories of radiotelephone carriers, Cellular Service Carriers and Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to Cellular Service Carriers and to Mobile Service Carriers. The closest applicable definition under SBA rules for both services is for telephone companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of Cellular Service Carriers and Mobile Service Carriers nationwide of which the Commission is aware appears to be the data that it collects annually in connection with the TRS. According to the Commission's most recent data, 792

companies reported that they are engaged in the provision of cellular services and 138 companies reported that they are engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of Cellular Service Carriers and Mobile Service Carriers that would qualify as small business concerns under SBA's definition. The Commission is also unable to estimate how many of these entities are IXCs. Consequently, the Commission estimates that there are fewer than 792 small entity Cellular Service Carriers and fewer than 138 small entity Mobile Service Carriers that might be affected by the rules proposed in this Order on Reconsideration.

13. *Broadband PCS Licensees.* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, the Commission considers the category of radiotelephone carriers, Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR 24.720(b), the Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The Commission's definition of a ''small entity'' in the context of broadband PCS auctions has been approved by SBA. The Commission has auctioned broadband PCS licenses in Blocks A through F. The Commission does not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 183 winning bidders that qualified as small entities in the Blocks C, D, E, and F auctions. The Commission is unable to estimate how many of these entities are IXCs. Based on this information, the Commission concludes that the number of broadband PCS licensees in Blocks C through F that might be affected by the rules proposed in this Order on Reconsideration includes, at most, the 183 winning bidders that qualified as small entities in the Blocks C through F broadband PCS auctions.

14. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this Order on Reconsideration may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many IXCs provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. The Commission assumes, for purposes of this FRFA, that all of the extended implementation authorizations may be held by IXCs that are small entities, which may be affected by the decisions and rules adopted in this Order on Reconsideration.

15. The Commission completed its auctions for geographic area licenses in the 900 MHz SMR band on April 15, 1996. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. The Commission is unable to estimate how many of these entities are IXCs. Based on this information, the Commission concludes that the number of geographic area SMR licensees that may be affected by the rules adopted in this Order on Reconsideration includes, at most, these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses, or how many of these entities will be IXCs. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, the Commission assumes, for purposes of this FRFA, that all of the licenses may be awarded to IXCs that are small entities which, thus, may be affected by the decisions in this Order on Reconsideration.

iv. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

16. The Commission, in this Order on Reconsideration, (1) directs carriers that use LOAs to fully translate their LOAs into the same language(s) as their associated promotional materials, oral descriptions and instructions; (2) modifies § 64.1150(e)(4) of its rules to incorporate the terms ''interLATA'' and ''intraLATA,'' as well as ''interstate'' and ''intrastate''; and (3) clarifies that IXCs must employ only one of the four options in § 64.1100 to verify subscriber change orders generated by telemarketing. The Commission has determined that compliance with these provisions may require carriers to modify their marketing and advertising materials.

v. Steps Taken To Minimize the Significant Economic Impact of This Memorandum Opinion and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected

17. After consideration of potential alternatives, the Commission determined that the requirement that carriers translate LOAs into the same language as their associated promotional materials or oral descriptions and instructions may have a significant impact on a substantial number of small businesses as defined by section 601(3) of the RFA. Specifically, small entities may feel some economic impact in additional printing costs due to the new requirement under § 64.1150(g). Nevertheless, the overwhelming majority of commenters supported the Commission's adoption of this rule, without providing specific comment regarding the economic impact to small entities or alternatives to lessen the economic impact. Moreover, because the rules will not take effect for one hundred fifty (150) days, the Commission believes all IXCs, large and small, will have sufficient advance time to revise and print new LOAs, if necessary. By enacting this rule, the Commission is only requiring that IXCs using LOAs ensure that the language of their promotional material matches that which authorizes a change in subscriber service. The Commission believes that even if the economic impact is significant to some small entities, the benefit of protecting non-English speaking consumers from being mislead by language that they may not fully understand is consistent with the stated objectives, and thus justifies any increase in printing costs.

18. The Commission determined that the rule incorporating the terms ''interLATA and intraLATA'' as well as ''interstate and intrastate'' contained in this Order on Reconsideration will not impose any additional requirements on IXCs. These terms were incorporated only to remove possible confusion or uncertainty as to the scope of our rules as pertaining to all jurisdictions. Likewise, the rule clarifying that IXCs must employ only one verification option will not impose any additional requirements on IXCs. Therefore, adoption of these rules should have little or no economic impact on small entities. Because the Commission concludes that adoption of these rules will cause little or no economic impact on small entities, the Commission has identified no significant alternatives, nor were any offered by parties commenting on the IRFA.

vi. Report to Congress

19. The Commission shall send a copy of this FRFA, along with this Memorandum Opinion and Order on Reconsideration, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

IV. Conclusion

20. The Commission reaffirms, with minor modifications, its verification procedures adopted in the *1995 Report and Order.* The Commission's stay of its *1995 Report and Order*, insofar as it extends the PIC-change verification requirements set forth in § 64.1100 of the Commission rules to consumer-initiated or in-bound telemarketing calls, remains in effect.

V. Ordering Clauses

21. *It is ordered* that, pursuant to Sections 1, 4, 201–205, 215, 218, 220 and 258 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, 218, 220, and 258, the Petitions for Reconsideration of Allnet Communication Services, Inc., AT&T Corporation, Frontier Communications International, Inc., MCI Telecommunications Corporation, National Association of Attorneys General, and Sprint Communications Company Are granted to the extent described herein and Are denied in all other respects.

22. *It is further ordered* that the Petition for Clarification of the Telecommunications Resellers Association is granted to the extent described herein and is denied in all other respects.

23. *It is further ordered* that 47 CFR Part 64 is amended as set forth below.

24. *It is further ordered* that the policies, rules and requirements set forth below in this memorandum opinion and order on reconsideration are effective January 12, 1998 except for section 64.1150 which will become effective upon approval by the Office of Management and Budget. The Commission will publish a document at a later date announcing the effective date.

List of Subjects in 47 CFR Part 64

Communications common carriers, Consumer protection, Telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

47 CFR part 64 is amended as follows:

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, unless otherwise noted.

2. Section 64.1100(a) is revised to read as follows:

§ 64.1100 Verification of orders for long distance service generated by telemarketing.

* * * * *

(a) The IXC has obtained the customer's written authorization in a form that meets the requirements of § 64.1150;

* * * * *

3. Section 64.1150(e)(4) is revised to read as follows:

§ 64.1150 Letter of agency form and content.

* * * * *

(e) * * *

(4) That the subscriber understands that only one interexchange carrier may be designated as the subscriber's interstate or interLATA primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (e.g., for intrastate, intraLATA or international calling), the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier must be the carrier directly setting the rates for the subscriber. One interexchange carrier can be both a subscriber's interstate or interLATA primary interexchange carrier and a subscriber's intrastate or intraLATA primary interexchange carrier; and

* * * * *

4. Section 64.1150(g) is revised to read as follows:

§ 64.1150 Letter of agency form and content.

* * * * *

(g) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

[FR Doc. 97–21527 Filed 8–13–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 87–124; FCC 97–242]

Access to Telecommunications Equipment and Services by Persons With Disabilities (Hearing Aid Compatibility)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends Commission rules regarding HAC, which would have required all telephones manufactured or imported for use in the United States after November 1, 1998 to contain a volume control feature. Under the amended rules, this compliance date is extended to January 1, 2000. Furthermore, the Commission has made conforming amendments to its hearing aid compatibility rules so that workplaces, hotels and motels, and confined settings (*e.g,* hospitals and nursing homes) will not be required to ensure that new or replacement telephones contain a volume control feature until January 1, 2000, parallel with the manufacturing requirements. This action was taken in response to a petition for reconsideration filed by the Consumer Electronics Manufacturers Association (CEMA).

EFFECTIVE DATE: September 15, 1997.

FOR FURTHER INFORMATION CONTACT: Andy Firth, Attorney, 202/418–1898, Fax 202/418–2345, TTY 202/418–2224, afirth@fcc.gov, Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Order on

Reconsideration in the matter of Access to Telecommunications Equipment and Services by Persons With Disabilities, (CC Docket 87–124, adopted July 3, 1997, and released July 11, 1997.) The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room 239, 1919 M Street, N.W., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M Street, N.W., Suite 240, Washington D.C. 20037, phone 202/857–3800.

Paperwork Reduction Act

No impact.

Analysis of Proceeding

On June 27, 1996, the Commission adopted a Report and Order (R&O) (FCC 96–285), 61 FR 42181 (August 14, 1996), which was released on July 3, 1996. The R&O, among other things, required that as of November 1, 1998, all telephones manufactured or imported for use in the United States have a volume control feature. *See* 47 CFR 68.6. The R&O also required that, as of November 1, 1998, all replacement telephones and all newly purchased telephones in workplaces, confined settings, and hotels and motels must be equipped with volume control, in addition to having electro-magnetic coil hearing aid-compatibility. See 47 CFR 68.112 (b)(3), (b)(5), and (b)(6). The R&O included a technical specification for volume control. *See* 47 CFR 68.317.

On September 13, 1996, the Consumer Electronics Manufacturers Association (CEMA) filed a Petition for Reconsideration of the R&O, specifically for reconsideration of the rule adopted under 47 CFR 68.6, which would have required all telephones manufactured or imported for use in the United States after November 1, 1998, to contain volume control. CEMA asserted that the rule as adopted would cause undue financial burdens upon telephone equipment manufacturers, and also asserted that the rule exceeded the Commission's authority under the Hearing Aid Compatibility Act of 1988, 47 U.S.C. 610 (HAC Act). In the alternative, CEMA urged the Commission to find that 47 CFR 68.6 should only apply to new telephone models registered under part 68 after November 1, 1998, as opposed to all telephone products manufactured after that date. CEMA asserted that this ''grandfathering'' of existing telephone models would, among other things, lessen burdens upon the manufacturing industry by avoiding the need to re-tool existing production lines.

In its Order on Reconsideration, the Commission denied CEMA the specific relief requested in its Petition. The Commission concluded that CEMA's proposal would fall short of the HAC Act's requirement that persons with hearing disabilities have reasonable access to the telephone network, because there would be no assurance that manufacturers will phase out the production of existing models without volume control. By requiring volume control as a standard feature in the manufacture of all telephones, the intent of the HAC Act is furthered by minimizing the risk that persons with hearing disabilities would be unable to access the telephone network in the event of an emergency. The Commission also concluded that CEMA's argument that it failed to consider the costs and benefits of the volume control rule to be without merit, because in the R&O the Commission specifically considered the costs and benefits of the rule, and concluded that the costs of the volume control rule were not such a major obstacle as to negate the benefits of the rule. The Commission concluded that CEMA presented no further facts that would compel it to depart from this finding made in the R&O.

In the interest of minimizing potential burdens on the manufacturing industry, however, the Commission concluded that the volume control compliance date at 47 CFR 68.6 should be extended by fourteen (14) months, to January 1, 2000. The Commission noted that upon this date, manufacturers would have had three and one-half (3½) years to adjust their production cycles to comply with new volume control manufacturing requirements, a generous compliance timetable. Finally, the Commission adjusted existing rules at 47 CFR 68.112 that would have required workplaces, hotels and motels, and confined settings to provide telephones with volume control as of November 1, 1998, so that such establishments would not be required to comply until January 1, 2000, parallel with the manufacturing requirements.

Supplemental Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's Supplemental Final Regulatory Flexibility Analysis in this proceeding is as follows:

1. *Supplemental Final Regulatory Flexibility Analysis*: As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*). The Commission sought written public comments in the *NPRM*, including on the IRFA. In addition, pursuant to the RFA, 5 U.S.C. 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Report and Order*. Those analyses conformed to the RFA. This Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this *Order on Reconsideration* also conforms to the SBREFA. The Commission's SFRFA in this *Order on Reconsideration* is as follows:

a. *Need for, and Objectives of this Order on Reconsideration*: The need for and objectives of the rules adopted in this *Order on Reconsideration* are the same as those discussed in the FRFA in the *Report and Order*. In general, the rules adopted herein amend the Commission's rules at 47 CFR 68.6 to require that as of January 1, 2000, all wireline telephones manufactured or imported for use in the United States must have volume control. This represents an amendment of the original final rule in the *Report and Order* requiring all telephones manufactured or imported for use in the U.S. after November 1, 1998, to have volume control. For reasons explained in this *Order and Reconsideration*, the Commission has decided to extend its original November 1, 1998 compliance timeline for this rule by fourteen (14) months, to January 1, 2000. The Commission has also made conforming amendments to portions of 47 CFR 68.112, which require establishments such as workplaces, hospitals and hotels to provide volume control telephones in their facilities. These establishments will not be required to ensure that newly replaced or installed telephones must have volume control until after January 1, 2000. This likewise reflects a 14-month extension of the original November 1, 1998 timelines for such establishments adopted in the *Report and Order*.

b. *Summary of Significant Issues Raised by the Public Comments In Response to the FRFA*: No comments were submitted specifically in response to the FRFA. In its petition for reconsideration, which was the initiating document for this *Order on Reconsideration*, the Consumer Electronics Manufacturers Association (CEMA) asserted, *inter alia*, that if 47 CFR 68.6 was to be applicable to all telephone models on the compliance date, and not only to new models which are registered under part 68 of the Commission's rules after that date, manufacturers would incur significant expenses caused by the ''retooling'' of existing production cycles prior to November 1, 1998. Several telephone

equipment manufacturers also submitted comments in support of CEMA's petition for reconsideration, stating that the rule as adopted in the *Report and Order* would impose undue burdens on their manufacturing processes and resources.

c. *Description and Estimate of Number of Small Entities to Which Rules Will Apply*:

(1) Under the RFA, small entities may include small organizations, small businesses, and small governmental organizations. The RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). *Id*.

(2) The description and estimate of the number of small businesses to which the rules will apply set forth in the FRFA in the *Report and Order* also applies to the rules adopted in this *Order on Reconsideration*. The same four industry categories identified in the FRFA are also subject to the rules adopted in this *Order on Reconsideration*: (a) Workplaces; (b) confined settings, such as hospitals and nursing homes; (c) hotels and motels; and (d) importers and manufacturers of telephones for use in the United States. The determination of whether or not an entity within these industry groups is small is made by the Small Business Administration (SBA). These standards also apply in determining whether an entity is a small business for purposes of the RFA. The detailed analysis and estimate of the number of small entities within each of these above four industry categories in the FRFA to the *Report and Order* is also applicable to the rules adopted in this *Order on Reconsideration*.

d. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*:

(1) *Reporting and Recordkeeping:* No additional reporting requirements beyond those identified in the FRFA to the *Report and Order* are imposed by this *Order on Reconsideration*.

(2) *Other Compliance Requirements:*

(a) The rules adopted in this *Report and Order* require that on or after January 1, 2000, owners of workplaces, confined settings, and hotels and motels must ensure that newly installed or replacement telephones have volume control. These requirements will affect owners of workplaces, confined settings, and hotels and motels.

(b) The rules also require that on or after January 1, 2000, all telephones manufactured or imported for use in the United States must have volume control. These rules would affect small as well as large domestic manufacturers and importers of telephones.

e. *Steps Taken to Minimize Significant Economic Burdens on Small Entities, and Significant Alternatives Considered:*

(1) The Commission's efforts to learn of and respond to small business concerns detailed in the FRFA to the *Report and Order* are likewise applicable to this SFRFA. In applying the rules adopted in this *Order on Reconsideration*, the Commission has sought to minimize any disproportionate burden on small entities. The Commission's efforts described in the FRFA to the *Report and Order* are also applicable to the rules adopted in this *Order on Reconsideration*. In particular, the Commission's decision in this *Order on Reconsideration* to extend the date by which all telephones manufactured or imported for use in the United States must have volume control is a direct result of the Commission's consideration of the impact of the rule on small entities and manufacturers. Furthermore, the Commission's decision to also extend compliance dates for workplaces, confined settings, and hotels is a result of consideration of the potential impact of the rule on small business establishments.

(2) Under Section 610(e) of the Hearing Aid Compatibility Act, the Commission must consider the costs, as well as the benefits, of the proposed rules to all telephone users, including persons with and without hearing disabilities. In the *NPRM*, the Commission solicited comment on the costs to establishments of providing volume control and hearing aid compatible telephones. After reviewing the comments, the Commission concluded in the *Report and Order* that the new rules will not impose significant additional costs on telephone users, manufacturers or establishments, and that any costs are significantly outweighed by the benefits to be achieved. Likewise, in this *Order on Reconsideration* the Commission specifically considered the costs and benefits of the rules to all telephone users in its decision to extend the original compliance date for volume control by fourteen (14) months.

(3) Small entities will be among the beneficiaries of the Commission's new rules. Under the new rules, telephones in workplaces, confined settings and hotels and motels will be more accessible to persons with hearing disabilities. These changes may lead to new business for hotels and motels and confined settings, and workplaces may be able to hire better employees, since the pool of potential employees will be widened to include persons with hearing disabilities. In addition, the level of public safety will increase in all three settings, thereby benefitting both the business setting and the public at large. The volume control manufacturing requirement probably will increase the consumer demand for volume control telephones, benefitting large and small manufacturers alike, due to the fact that volume control is a feature useful not only to people with hearing disabilities, but to non-disabled telephone users as well. Furthermore, to the extent that the rule amendments may allow smaller manufacturers and suppliers more time to recoup costs sunk in any remaining equipment inventory and allow them to expand their marketing options, they are consistent with section 257 of the Communications Act, as amended, 47 U.S.C. 257. That section requires, among other things, that the Commission eliminate marker entry barriers for small businesses who may provide parts or services to providers of telecommunications services and information services. *Id*. at section 257(a).

(4) The Commission rejected the proposal of the Consumer Electronics Manufacturers Association in its petition for reconsideration that the volume control rules apply only to new telephone models registered under part 68 of the Commission's rules after the compliance date. The Commission concluded that this approach would mean that upon the compliance date, some telephone models would be without volume control, which would not further Congressional intent in the HAC Act that persons with hearing disabilities have reasonable access to the telephone network. Rather, the Commission concluded that by extending the compliance timeline by an additional fourteen (14) months, potential burdens on small entities could be reduced, while at the same time furthering the goals of the HAC Act to provide access to the telephone network for people with hearing disabilities.

f. *Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements:*

On or after January 1, 2000, all telephones manufactured or imported for use in the United States must have

volume control; and newly purchased and replacement telephones in workplaces, confined settings and hotels and motels must have volume control on or after January 1, 2000. There are no other recordkeeping or other compliance requirements.

g. Report to Congress: The Commission will include a copy of this Supplementary Final Regulatory Flexibility Analysis, along with this *Order on Reconsideration*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. Section 801(a)(1)(A). A copy of this SFRFA (or summary thereof) is also published herein.

Ordering Clauses

Accordingly, *It Is Orderd* that pursuant to Sections 1, 4, 405, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 405 and 610, part 68 of the Commission's rules Is Amended as set forth below.

2. It *Is Further Ordered* that, pursuant to Sections 1, 4, 405, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 405 and 610, the Petition for Reconsideration filed by the Consumer Electronics Manufacturers Association is granted to the extent indicated herein, and otherwise *Denied*.

3. *It Is Further Ordered* that the rule amendments set forth below shall be effective September 15, 1997.

List of Subjects in 47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Hearing aid compatibility, Labeling, Reporting and recordkeeping requirements, Telephone, Volume control.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 68 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for Part 68 is revised to read as follows:

Authority: 47 U.S.C. 154, 155, 303.

2. Section 68.6 is revised to read as follows:

§ 68.6 Telephones with volume control.

As of January 1, 2000, all telephones, including cordless telephones, as defined in § 15.3(j) of this chapter, manufactured in the United States (other than for export) or imported for use in the United States, must have volume control in accordance with § 68.317. Secure telephones, as defined by § 68.3 are exempt from this section, as are telephones used with public mobile services or private radio services.

3. Section 68.112 is amended by revising paragraphs (b)(3)(ii), (b)(3)(iii), (b)(3)(iv), (b)(5)(ii), and (b)(6)(i), to read as follows:

§ 68.112 Hearing aid-compatibility.

* * * * *

(b) * * *

(3) * * *

(ii) As of January 1, 2000 or January 1, 2005, whichever date is applicable, there shall be a rebuttable presumption that all telephones located in the workplace are hearing aid compatible, as defined in § 68.316. Any person who identifies a telephone as non-hearing aid-compatible, as defined in § 68.316, may rebut this presumption. Such telephone must be replaced within fifteen working days with a hearing aid compatible telephone, as defined in § 68.316, including, on or after January 1, 2000, with volume control, as defined in § 68.317.

(iii) Telephones, not including headsets, except those headsets furnished under paragraph (b)(3)(i)(A) of this section, that are purchased, or replaced with newly acquired telephones, must be:

(A) Hearing aid compatible, as defined in § 68.316, after October 23, 1996; and

(B) Include volume control, as defined in § 68.317, on or after January 1, 2000.

(iv) When a telephone under paragraph (b)(3)(iii) of this section is replaced with a telephone from inventory existing before October 23, 1996, any person may make a bona fide request that such telephone be hearing aid compatible, as defined in § 68.316. If the replacement occurs on or after January 1, 2000, the telephone must have volume control, as defined in § 68.317. The telephone shall be provided within fifteen working days.

* * * * *

(5) * * *

(ii) Telephones that are purchased, or replaced with newly acquired telephones, must be:

(A) Hearing aid compatible, as defined in § 68.116, after October 23, 1996; and

(B) Include volume control, as defined in § 68.317, on or after January 1, 2000.

* * * * *

(6) * * *

(i) Anytime after October 23, 1996, if a hotel or motel room is renovated or newly constructed, or the telephone in a hotel or motel room is replaced or substantially, internally repaired, the telephone in that room must be:

(A) Hearing aid compatible, as defined in § 68.316, after October 23, 1996; and

(B) Include volume control, as defined in § 68.317, on or after January 1, 2000.

* * * * *

[FR Doc. 97–20899 Filed 8–13–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970429101–7101–01; I.D. 070297B]

Fisheries Off West Coast States and in the Western Pacific States; West Coast Salmon Fisheries; Inseason Adjustment From the Queets River to Leadbetter Point, WA

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS announces that the daily bag limit for the recreational salmon fishery in the area from the Queets River to Leadbetter Point, WA, is two fish, only one of which may be a chinook, beginning the season opening date of July 21, 1997. This action is intended to help meet the recreational season duration objectives for this subarea.

DATES: Effective July 21, 1997, through September 25, 1997. Comments will be accepted through August 28, 1997.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS (Regional Administrator), 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this action is available for public review during business hours at the office of the Regional Administrator.

FOR FURTHER INFORMATION CONTACT: William Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: In the annual management measures for ocean salmon fisheries (62 FR 24355, May 5, 1997), NMFS announced that the recreational fishery in the subarea between the Queets River and

Leadbetter Point, WA, would open July 21, 1997 and continue through the earlier of September 25, 1997, or attainment of the 14,000 coho subarea quota, with a bag limit of two fish per day. Inseason management may be used to sustain season length and keep harvest within a guideline of 3,000 chinook.

The best available information on June 4, 1997, indicated that the 1985–1993 average of recreational catch ratios is 4.7 coho to 1 chinook, which is similar to the ratio of the coho quota to the chinook guideline for this fishery. Concern was expressed that this year's relative abundance of coho to chinook might be lower and that the chinook guideline could be achieved first, thus leaving a large portion of the coho quota unharvested. To optimize angler opportunity to fish on the available coho stocks, it is necessary to limit the retention of chinook at the beginning of the season by changing the bag limit to two fish, only one of which may be a chinook.

Modification of recreational bag limits is authorized by regulations at 50 CFR 660.409(b)(1)(iii). All other restrictions that apply to this fishery remain in effect as announced in the annual management measures, including the restriction of no more than four fish in 7 consecutive days.

The Regional Administrator consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fish and Wildlife, and the Oregon Department of Fish and Wildlife regarding this adjustment. The State of Washington will manage the recreational fishery in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notification procedures of 50 CFR 660.411, actual notice to fishermen of this action was given prior to 2400 hours local time, July 20, 1997, by telephone hotline number 206–526–6667 and 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to modify the bag limit before the opening of this fishery, NMFS has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

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

Dated: August 8, 1997.

Gary C. Matlock,

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

[FR Doc.97–21465 Filed 8–13–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 080897B]

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the third seasonal bycatch allowance of Pacific halibut apportioned to the shallow-water species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 11, 1997, through 1200 hrs, A.l.t., October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The prohibited species bycatch mortality allowance of Pacific halibut for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established as 200 metric tons by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) for the third season, the period July 1, 1997 through September 30, 1997.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the third seasonal apportionment of the 1997 Pacific halibut bycatch mortality allowance specified for the trawl shallow-water species fishery in the GOA has been caught. Consequently, the Regional Administrator is closing directed fishing for the species that comprise the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species''.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the third seasonal allowance of halibut mortality in the GOA. A delay in the effective date is impracticable and contrary to public interest. The fleet will soon take the seasonal allowance of halibut mortality. Further delay would only result in the seasonal allowance being exceeded and disrupt the FMP's objective of seasonally apportioning halibut mortality throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: August 8, 1997.

Gary C. Matlock,

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

[FR Doc. 97–21533 Filed 8–11–97; 12:13 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970613138–7138–01; I.D. 080797B]

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery; Shelikof District of Registration Area K

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

ACTION: Closure; inseason adjustment; request for comments.

SUMMARY: NMFS is closing the fishery for scallops in the Shelikof District of Registration Area K to prevent localized overfishing of scallops in that District. This action is necessary to prevent overfishing of scallops. It is intended to promote the goals and objectives of the Fishery Management Plan for the Scallop Fishery off Alaska.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 10, 1997, until 2400 hrs, A.l.t., June 30, 1998. Comments must be received at the following address no later than 4:30 p.m., A.l.t., August 29, 1997.

ADDRESSES: Comments may be sent to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn. Lori Gravel, or delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The scallop fishery off Alaska in the exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Scallop Fishery Off Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart F of 50 CFR part 600 and 50 CFR part 679.

The 1997 total allowable catch for scallops in Registration Area K, which includes the Shelikof District, was established by the 1997-98 Harvest Specifications (62 FR 34182, June 25, 1997) as 400,000 lb (181.4 mt) of shucked scallop meat. As of August 3, 1997, 223,000 lb (101.15 mt) of shucked scallop meat have been landed from the Shelikof District.

The Alaska Department of Fish and Game, Commercial Fisheries Management and Development Division, has monitored the scallop fishery in the Shelikof District of Registration Area K since the fishery opened on July 1, 1997. Harvest rates of scallops have declined by 20 percent, indicating that fishing mortality is exceeding the biologically acceptable catch in the Shelikof District.

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.63(a), § 679.25(a)(1)(i) and § 679.25(a)(2)(i)(A), that on the basis of the best available scientific information, the closure of the scallop season within the Shelikof District of Registration Area K is necessary to prevent overfishing of this stock of scallops. Therefore, NMFS is prohibiting the taking and retention of scallops in the Federal waters of the Shelikof District of Registration Area K.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment on this action is impracticable and contrary to the public interest. Immediate effectiveness is necessary to prevent overfishing the stock of scallops in the Shelikof District of Registration Area K. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.63 and is exempt from review under E.O. 12866.

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

Dated: August 8, 1997

Gary C. Matlock,

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

[FR Doc. 97–21534 Filed 8–11–97; 12:13 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 157
Thursday, August 14, 1997

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319, 320, 330, and 352

[Docket No. 97–037–1]

Removal of Mexican Border Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to remove the regulations at 7 CFR part 320, ''Mexican Border Regulations,'' which serve to prevent the introduction into the United States of plant pests from Mexico by regulating the importation of vehicles, soil, and other materials from Mexico. The regulations at 7 CFR part 330, ''Federal Plant Pest Regulations; General; Plant Pests; Soil, Stone, and Quarry Products; Garbage,'' serve to prevent the introduction into the United States of plant pests from all foreign countries by regulating the importation of plant pests themselves, as well as vehicles, soil, and other materials. We believe the provisions in the ''Mexican Border Regulations'' to prevent the entry of plant pests from Mexico are covered in part 330. Therefore, we believe the regulations in part 320 are unnecessary and should be removed. This action would meet the President's regulatory reform goal of removing redundant Federal regulations.

DATES: Consideration will be given only to comments received on or before October 14, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–037–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–037–1. Comments received may be inspected 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 comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Petit De Mange, Staff Officer, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 7 CFR part 320, ''Mexican Border Regulations,'' serve to prevent the entry into the United States of plant pests from Mexico by regulating the importation of vehicles, soil, and other materials from Mexico. Since 1917, the U.S. Department of Agriculture (USDA) has had the authority to inspect and apply safeguards to railway cars, vehicles, and various materials entering the United States from Mexico to prevent the introduction of plant pests. Congress granted such authority on an annual basis from 1917 until passage of the Mexican Border Act (7 U.S.C. 149) on January 31, 1942, which gave USDA the authority ''to provide for regulating, inspecting, cleaning, and, when necessary, disinfecting railway cars, other vehicles, and other materials entering the United States from Mexico.''

The regulations at 7 CFR part 330, ''Federal Plant Pest Regulations; General; Plant Pests; Soil, Stone, and Quarry Products; Garbage,'' serve to prevent the dissemination of plant pests into or within the United States by regulating the movement of plant pests, means of conveyance, earth, stone and quarry products, garbage, and certain other products and articles into or through the United States. The regulations at part 330 are authorized by the Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*).

As part of the President's Regulatory Reform Initiative, we are proposing to remove the Mexican Border Regulations because we do not believe that they are necessary to prevent the introduction of plant pests from Mexico into the United States via imported vehicles, soil, and other materials. We believe the Mexican Border Regulations are redundant because of the existence of part 330, which regulates the importation of plant pests themselves, as well as vehicles, soil, and other materials, from any foreign country, including Mexico.

The Mexican Border Regulations include nine sections. The basic provisions of these sections are as follows: Sections 320.1 through 320.3 are administrative. They set forth who is responsible for administering the regulations, the items subject to the regulations, and definitions of terms. Section 320.4 states that all articles designated in § 320.2 are subject to inspection as a condition of entry into the United States from Mexico. Sections 320.5 and 320.6 provide that USDA inspectors may, upon inspecting a vehicle or article, either allow its entry into the United States or require, as a condition of entry, cleaning, transfer of cargo, or disinfection, or all three. Sections 320.7 and 320.8 provide that the owner or agent of any vehicle or article that has been determined to need cleaning or disinfection before being allowed entry into the United States is responsible for covering the costs of such cleaning or disinfection. Finally, § 320.9 establishes a permit system for the importation of soil from Mexico.

We believe that all of the provisions of the Mexican Border Regulations are covered in part 330. The provisions in § 320.1 are covered in § 330.108 and refer to the authority of the Deputy Administrator for Plant Protection and Quarantine of USDA's Animal and Plant Health Inspection Service (APHIS) to prevent dissemination of plant pests into the United States or interstate. The provisions in § 320.2 are covered in §§ 330.101 and 330.102, which state the purpose and policy of the regulations in part 330 and the basis for them. Sections 320.3 and 330.100 both contain definitions. The provisions in §§ 320.4 through 320.8 are covered in §§ 330.105 and 330.106, which pertain to inspection of foreign arrivals, procedures to prevent pest dissemination, and orders for remedial measures, among other things. And the provisions in § 320.9 are covered in § 330.300, which pertains to the importation of soil from foreign countries.

Therefore, because the provisions in part 320 are covered in part 330, we are proposing to remove the regulations in §§ 320.1 through 320.9. We are also

proposing to remove all references to part 320 that appear in 7 CFR parts 319, 330, and 352.

Miscellaneous

We are also proposing to amend §§ 319.69a(c) and 330.300 of this chapter to correct some erroneous references to § 319.37–16a, which no longer exists.

The undesignated regulatory text at the beginning of § 330.300 prohibits the movement of soil from foreign countries or U.S. territories or possessions, except in accordance with certain regulations, including § 319.37–16a. When § 330.300 was first promulgated, § 319.37–16a(b) allowed certain subsoil from Japan and the Rkuyku Islands to be used as packing materials for lily bulbs imported into the United States. However, APHIS revoked § 319.37–16a(b) on November 30, 1979 (44 FR 68803–68804, FR Doc. 79–38849), because lily bulbs imported from Japan and the Rkuyku Islands had been found infested with nematodes. Therefore, the three references to § 319.37–16a that appear in § 330.300 in the undesignated regulatory text and in paragraph (a) should have been removed in 1979. We are now proposing to correct § 330.300 to remove these references.

APHIS revised all of § 319.37 on May 13, 1980 (45 FR 31572–31597, FR Doc. 80–14492), and the provisions of the remaining paragraphs of § 319.37–16a were redesignated as various other sections of § 319.37. The provisions pertaining to growing media became § 319.37–8, and the provisions pertaining to packing materials became § 319.37–9. Section 319.37–16a ceased to exist at that time, and all references to it should either have been removed or amended to refer to the appropriate section in § 319.37. However, current § 319.69a(c) includes a reference to defunct § 319.37–16a. This reference should have been changed to § 319.37–9, and, therefore, we are also proposing to make this correction at this time.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The purpose of this proposed rule is to remove redundant regulations from title 7 of the CFR. No segment of U.S. society should be affected by this regulatory action.

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

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 320

Imports, International boundaries, Mexico, Plant diseases and pests, Quarantine, Transportation.

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR, Chapter III, would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

§ 319.8–27 [Removed]

2. Section 319.8–27, ''Applicability of Mexican Border Regulations,'' would be removed.

§ 319.69a [Amended]

3. In § 319.69a, paragraph (c), the reference to ''§ 319.37–16a'' would be removed and a reference to ''§ 319.37–9'' would be added in its place.

PART 320—MEXICAN BORDER REGULATIONS [REMOVED]

4. Under the authority of 7 U.S.C. 149 and 150ee and 21 U.S.C. 136 and 136a, 7 CFR, Chapter III, would be amended by removing ''Part 320—Mexican Border Regulations''.

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

5. The authority citation for part 330 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd–150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331; 4332; 7 CFR 2.22, 2.80, and 371.2(c).

§ 330.105 [Amended]

6. In § 330.105, paragraph (a), third sentence, the reference to ''320,'' would be removed.

§ 330.300 [Amended]

7. Section § 330.300 would be amended as follows:

a. In the undesignated regulatory text, by removing the reference to '', § 319.37–16a,'' in the first sentence, and by removing the entire last sentence.

b. In paragraph (a), by removing the reference to '', § 319.37–16a,'' and the words '', or part 320''.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

8. The authority citation for part 352 would continue to read as follows:

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2260; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

§ 352.1 [Amended]

9. In § 352.1, paragraphs (b)(14), (b)(15), (b)(16), and (b)(24), the reference to ''320,'' would be removed.

§ 352.2 [Amended]

10. In § 352.2, in paragraph (a), the first sentence, and in paragraph (b), the reference to ''320,'' would be removed.

§ 352.5 [Amended]

11. In § 352.5, paragraph (d), the reference to ''320,'' would be removed both times it appears.

§ 352.10 [Amended]

12. In § 352.10, the reference to ''320,'' would be removed in the following places.

a. Paragraph (a), third sentence.

b. Paragraph (b)(1), sixth sentence.

c. Paragraph (b)(2), second sentence.

§ 352.13 [Amended]

13. In § 352.13, the reference to ''320,'' would be removed.

Done in Washington, DC, this 8th day of August 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–21521 Filed 8–13–97; 8:45 am]

BILLING CODE 3410–34–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 402

RIN 0960–AE68

Electronic Freedom of Information Act Amendments of 1996

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: These rules are proposed to reflect the changes made by the Electronic Freedom of Information Act Amendments (EFOIA) of 1996, that give the public access to government information and records maintained in an electronic format, provide for expedited processing of certain requests, establish ''electronic reading rooms,'' eliminate an agency backlog of work as a justification for delay in processing requests, require redacted material to be estimated or indicated in an agency's response, and require an agency reference guide on FOIA to be made available.

DATES: To be sure that your comments are considered, we must receive them no later than September 15, 1997.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to ''regulations@ssa.gov'' or delivered to 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.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 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. This file is in WordPerfect format and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1762 for information about these rules.

SUPPLEMENTARY INFORMATION: These proposed rules will revise our existing regulations to reflect the provisions of Public Law 104–231, the Electronic Freedom of Information Act Amendments of 1996. Pub. L. No. 104–231 amended 5 U.S.C. 552, popularly known as the Freedom of Information Act (FOIA), to provide public access to information in an electronic format, provide for expedited processing of certain requests, establish ''electronic reading rooms,'' eliminate an agency backlog of work as a justification for delay in processing requests, require redacted material to be estimated or indicated in an agency's response, and require an agency reference guide on FOIA to be made available. The proposed rules will also make technical changes to related rules.

According to the new law, the term ''record'' encompasses information, subject to the requirements of the FOIA, when maintained in any format, including an electronic format. The category of ''reading room'' records, at 5 U.S.C. 552(a)(2), is expanded to include records that the agency discloses in response to a FOIA request that have become, or are likely to become, the subject of future requests. An index of those records that are subject to multiple requests must be prepared and made available by computer telecommunications by December 31, 1999. Furthermore, agencies must create an ''electronic reading room'' to contain records created after November 1, 1996 that are required to be made available under 5 U.S.C. 552(a)(2). Additionally, agencies must make reasonable efforts to search for records, even when information is maintained in an electronic database, unless such efforts would significantly interfere with the operation of the agency's automated information system. If a requester requests a record in a particular format, agencies must attempt to provide the record in that format if the record is readily reproducible in such format.

The general period for responding to requests has been changed from 10 days to 20 days. Moreover, multi-track processing may be offered as a way to provide more timely responses. Agencies and requesters may discuss alternative time frames to process requests, or modifications to the requests, when the general 20-day time for responding cannot be met. Expedited processing of requests must be done when there is a compelling need for the records. ''Compelling need'' means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or when a request is made by a person primarily engaged in disseminating information (e.g., the news media), and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

The amount of information deleted on a record must be indicated, unless doing so would harm an interest protected by an exemption; and, if technically feasible, the indication shall be at the place in the record where the deletion is made. If whole pages or documents are withheld, an estimate of the volume of material withheld must be provided to the requester, unless doing so would harm an interest protected by an exemption. Furthermore, a guide for requesting records, to include an index and description of major record systems, must be made available to the public.

The definition of ''record'' in § 402.30 will be revised to reflect the provisions of section 3 of Public Law 104–231 to include information stored in an electronic format, and the meaning of ''record'' in the Records Disposal Act, 44 U.S.C. 3301, as well as the Supreme Court's decision in *U.S. Dept. of Justice* versus *Tax Analysts*, 492 U.S. 136 (1989).

Section 402.35 will be revised to reflect the provisions of section 4 of Public Law 104–231 concerning availability of records, extent of deletions, and a general index of records.

Section 402.40 will be revised to indicate that SSA Publications on CD–ROM are available for purchase.

Section 402.45 will be revised to add a new category to reading room records. These are records which ''the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.'' Also, we will provide an electronic index for this category of records as reflected in section 4 of the EFOIA amendments.

Section 402.100(b) will be revised to reflect the decision in *Dept. of Justice* v. *Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) concerning whether personal information may be released. In that case, the Court stated that the only public interest to be considered is whether disclosure would shed light on how an agency performs its statutory duties, and that the identity of the requester or purpose for which the information is requested is not relevant.

Section 402.115, which explains the deletion of personally identifying details in requested records, and § 402.120, which explains the creation of records, will be moved for ease of reference to § 402.145, which explains what we are required to do when responding to a request for information.

Section 402.130 will be revised by adding language about the electronic availability of a guide/handbook on how to request information from the Social Security Administration (SSA). We also will describe how the public can request FOIA records.

Section 402.140 will be revised to include multi-track processing, requests for expedited processing and the changes in time limits as provided in sections 7 and 8 of the EFOIA amendments. The EFOIA amendments extended the general period of 10 days for determining whether to comply with a request to 20 days.

The EFOIA amendments encourage agencies which experience difficulties in meeting FOIA's time limits to experiment with multi-track processing. Before the enactment of the EFOIA amendments, due to increased volumes of FOIA requests and staff losses, we experimented with various processes to reduce backlogs, among them multi-tracking. The results are encouraging and we plan to institute multi-tracking procedures. We plan on establishing four tracks depending on the ease of providing an answer:

- Track 1—Requests that can be answered with readily available records or information. These are the fastest to process.
- Track 2—Requests where we need records or information from other offices throughout the Agency, but we do not expect that the decision on disclosure will be as time consuming as for requests in Track 3.
- Track 3—Requests which require a substantive decision or input from another office or agency and a considerable amount of time will be needed for that, or the request is complicated or involves a large number of records. Usually, these cases will take the longest to process.
- Track 4—Requests that will be expedited.

The EFOIA requires agencies to promulgate regulations providing expedited access for requesters who show a ''compelling need'' for a speedy response. The EFOIA describes compelling need as when there is ''an imminent threat to the life or physical safety of an individual,'' or when it is a request from a member of the media, and there is an ''urgency to inform the public concerning actual or alleged Federal Government activity.''

Section 402.145 will be revised to include new provisions on searching for, retrieving, and furnishing records in electronic formats, and will describe how deletions on records will be indicated.

Section 402.150 will be revised to cross-refer to § 402.45 to describe the indexing of records for the new category of reading room records. This describes our procedures for releasing records for which we receive multiple requests or expect to receive multiple requests.

Section 402.160 will be revised to correct the reference to § 402.145 (b) and (c) and to clarify these paragraphs. These references should read § 402.155 (b) and (c).

Justification for 30-Day Public Comment Period

When required, we follow the notice of proposed rulemaking (NPRM) and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553 and guidelines in Executive Order 12866, 58 FR 51735 (September 30, 1993). We have determined that good cause exists for a 30-day comment period because this NPRM is primarily implementing the EFOIA legislation, and the 30-day time frame will provide the public with a meaningful opportunity to comment, and issuing the new rules as soon as possible would help our agency comply with the legislative provisions of the EFOIA sooner than would a 60-day comment period, which is to the benefit of the public.

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these 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 rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations will impose no additional reporting and recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income.)

List of Subjects in 20 CFR Part 402

Administrative practice and procedure, Archives and records, Freedom of information.

Dated: July 28, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we are proposing to amend part 402 of 20 CFR chapter III as follows:

PART 402—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation for 20 CFR part 402 continues to read as follows:

Authority: Secs. 205, 702(a)(5), and 1106 of the Social Security Act; (42 U.S.C. 405, 902(a)(5), and 1306); Section 413(b) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 923b), 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 18 U.S.C. 1905; 26 U.S.C. 6103; 31 U.S.C. 9701; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Section 402.30 is amended by revising the definition of ''records'' to read as follows:

§ 402.30 Definitions.

* * * * *

Records means any information maintained by an agency, regardless of forms or characteristics, that is made or received in connection with official business. This includes handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and material in other forms, such as punchcards; magnetic tapes; cards; computer discs or other electronic formats; paper tapes; audio or video recordings; maps; photographs; slides; microfilm; and motion pictures. It does not include objects or articles such as exhibits, models, equipment, and duplication machines, audiovisual processing materials, or computer software. It does not include personal records of an employee, or books, magazines, pamphlets, or other

reference material in formally organized and officially designated SSA libraries, where such materials are available under the rules of the particular library.

* * * * *

3. Section 402.35 is amended by adding new paragraph (d) to read as follows:

§ 402.35 Publication.

* * * * *

(d) *Availability by telecommunications.* To the extent practicable, we will make available by means of computer telecommunications the indices and other records that are available for inspection.

4. Section 402.40 is amended by adding new paragraph (h) to read as follows:

§ 402.40 Publications for sale.

* * * * *

(h) SSA Publications on CD–ROM.

5. Section 402.45 is amended by adding new paragraph (d) to read as follows:

§ 402.45 Availability of records.

* * * * *

(d) *Electronic reading room*. We will prepare an index of records which have become or are likely to become the subject of subsequent requests. The index, and, to the extent practicable, the records will be made available on the Internet or by other computer telecommunications means.

6. Section 402.100 is amended by revising the heading and paragraph (b) to read as follows:

§ 402.100 Exemption six: Clearly unwarranted invasion of personal privacy.

* * * * *

(b) *Balancing test.* In deciding whether to release records to you that contain personal or private information about someone else, we weigh the foreseeable harm of invading a person's privacy against the public interest in disclosure. In determining whether disclosure would be in the public interest, we will consider whether disclosure of the requested information would shed light on how a Government agency performs its statutory duties. However, in our evaluation of requests for records we attempt to guard against the release of information that might involve a violation of personal privacy because of a requester being able to ''read between the lines'' or piece together items that would constitute information that normally would be exempt from mandatory disclosure under Exemption Six.

* * * * *

§ 402.115 [Removed]

7. Section 402.115 is removed.

§ 402.120 [Removed]

8. Section 402.120 is removed.

§ 402.130 [Removed]

9. Section 402.130 is revised to read as follows:

§ 402.130 How to request a record.

You may request a record in person or by mail or by electronic telecommunications. To the extent practicable, and in the future, we will attempt to provide access for requests by telephone, fax, Internet, and e-mail. Any request should reasonably describe the record you want. If you have detailed information which would assist us in identifying that record, please submit it with your request. We may charge fees for some requests (§§ 402.145–402.175 explain our fees). You should identify the request as a Freedom of Information Act request and mark the outside of any envelope used to submit your request as a ''Freedom of Information Request.'' The staff at any Social Security office can help you prepare this request.

10. Section 402.140 is revised to read as follows:

§ 402.140 How a request for a record is processed.

(a) In general, we will make a determination as to whether a requested record will be provided within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of a request by the appropriate official (see § 402.135). This 20-day period may be extended in unusual circumstances by written notice to you, explaining why we need additional time, and the extension may be for up to 10 additional working days when one or more of the following situations exist:

(b) If we cannot process your request within 10 additional days, we will notify you and provide you an opportunity to limit the scope of the request so that it may be processed within the additional 10 days, or we will provide you with an opportunity to arrange with us an alternative time frame for processing the request, or for processing a modified request.

(c) *Multi-tracking procedures.* We will establish four tracks for handling requests and the track to which a request is assigned will depend on the nature of the request and the estimated processing time:

(1) Track 1. Requests that can be answered with readily available records or information. These are the fastest to process.

(2) Track 2. Requests where we need records or information from other offices throughout the Agency but we do not expect that the decision on disclosure will be as time consuming as for requests in Track 3.

(3) Track 3. Requests which require a decision or input from another office or agency and a considerable amount of time will be needed for that, or the request is complicated or involves a large number of records. Usually, these cases will take the longest to process.

(4) Track 4. Requests that will be expedited.

(d) We will provide for expedited access for requesters who show a ''compelling need'' for a speedy response. The EFOIA describes compelling need as when the failure to obtain the records on an expedited basis could reasonably be expected to pose ''an imminent threat to the life or physical safety of an individual,'' or when the request is from a person primarily engaged in disseminating information (such as a member of the news media), and there is an ''urgency to inform the public concerning actual or alleged Federal Government activity.'' We also will expedite processing of a request if the requester explains in detail to our satisfaction that a prompt response is needed because the requester may be denied a legal right, benefit, or remedy without the requested information, and that it cannot be obtained elsewhere in a reasonable amount of time. We will respond within 10 days to a request for expedited processing and, if we decide to grant expedited processing, we will then notify you of our decision whether to disclose the records requested or not as soon as practicable.

11. Section 402.145 is revised to read as follows:

§ 402.145 Responding to your request.

(a) *Retrieving records.* We are required to furnish copies of records only when they are in our possession or we can retrieve them from storage. We will make reasonable efforts to search for records manually or by automated means, including any information stored in an electronic form or format, except when such efforts would significantly interfere with the operation of our automated information system. If we have stored the records you want in the National Archives or another storage center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. Various laws, regulations, and manuals give the time periods for keeping records before they may be destroyed. For example, there is information about retention of records

in the Records Disposal Act of 1944, 44 U.S.C. 3301 through 3314; the Federal Property Management Regulations, 41 CFR 101–11.4; and the General Records Schedules of the National Archives and Records Administration.

(b) *Furnishing records.* We will furnish copies only of records that we have or can retrieve. We are not required to create new records or to perform research for you. We may decide to conserve Government resources and at the same time supply the records you need by consolidating information from various records rather than copying them all. For instance, we could extract sections from various similar records instead of providing repetitious information. We generally will furnish only one copy of a record. We will make reasonable efforts to provide the records in the form or format you request if the record is readily reproducible in that form or format.

(c) *Deletions.* When we publish or otherwise make available any record, we may delete information that is exempt from disclosure. For example, in an opinion or order, statement of policy, or other record which relates to a private party or parties, the name or names and other identifying details may be deleted. When technically feasible, we will indicate the extent of deletions on the portion of the record that is released or published at the place of the deletion unless including that indication would harm an interest protected by an exemption. If we deny a request, in whole or in part, we will make a reasonable effort to estimate the volume of any requested matter that is not disclosed, unless such an estimate would harm an interest protected by an exemption.

(d) *Creation of records.* We are not required to create new records merely to satisfy a request. However, we will search manually or by automated means to locate information that is responsive to the request. If extensive computer programming is needed to respond to a request, we may decline to commit such resources, or if we agree to do so, we may charge you for the reasonable cost of doing so. We do not mean that we will never help you get information that does not already exist in our records. However, diverting staff and equipment from our other responsibilities may not always be possible.

12. Section 402.150 is amended by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as new paragraph (b) to read as follows:

§ 402.150 Release of records.

(a) *Records previously released.* If we have released a record, or a part of a record, to others in the past, we will ordinarily release it to you also. However, we will not release it to you if a statute forbids this disclosure, and we will not necessarily release it to you if an exemption applies in your situation and it did not apply, or applied differently, in the previous situation(s) or if the previous release was unauthorized. See § 402.45(d) regarding records in electronic reading rooms.

* * * * *

13. Section 402.160 is amended by revising paragraphs (b) and (c) to read as follows:

§ 402.160 Fees to be charged—general provisions.

* * * * *

(b) If we are not charging you for the first two hours of search time, under paragraph (c) of § 402.155, and those two hours are spent on a computer search, then the two free hours are the first two hours of the time needed to access the information in the computer.

(c) If we are not charging you for the first 100 pages of duplication, under paragraph (b) or (c) of § 402.155, then those 100 pages are the first 100 pages of photocopies of standard size pages, or the first 100 pages of computer printout.

* * * * *

[FR Doc. 97–21546 Filed 8–13–97; 8:45 am]

BILLING CODE 4190–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–5874–7]

Stakeholders Meeting on Drinking Water Regulation Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of Stakeholders meeting on EPA's revision to the public notification rule under the 1996 Safe Drinking Water Act (SDWA) amendments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will hold a public meeting on August 27, 1997. The purpose of the meeting will be to gather information and collect opinions from parties who will be affected by provisions of the Public Notification Rule of the new Safe Drinking Water Act (SDWA), amended in 1996. Comments and views expressed will be used to help develop the new Federal and state program requirements. EPA is seeking input from State drinking water programs, the regulated community (public water systems), public health and safety organizations, environmental and public interest groups, and other stakeholders on a number of issues related to developing the drinking water regulation. EPA encourages the full participation of all stakeholders throughout this process.

DATES: The stakeholder meeting on the drinking water regulation for public notification will be held on August 27, 1997, from 10 a.m. to 3:30 p.m. Central Daylight Savings Time.

ADDRESSES: The meeting will be held at the Rice Auditorium, Indiana State Department of Health, 1330 West Michigan Street, Indianapolis, Indiana. For information on meeting logistics or if you want to register for the meeting, please contact the EPA Safe Drinking Water Hotline at 1–800–426–4791, or Stacy Jones of the Indiana Department of Environmental Management at (317) 308–3292. Participants registering in advance will be mailed a packet of materials before the meeting.

FOR FURTHER INFORMATION CONTACT: Carl Reeverts, U.S. EPA, at (202) 260–7273; or Linda Selmer, U.S. EPA, Region 5 Office, at (312) 886–6197.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency is developing revised Public Notification regulations (under existing 40 CFR 141.32) to incorporate the new provisions enacted under the 1996 Safe Drinking Water Amendments (SDWA), specifically the amended sections 1414 (c)(1) and (c)(2) of the SDWA. The 1996 SDWA amendments completely replaced the language in the statute under 1414(c). There is no statutory deadline for implementing the amended sections 1414(c)(1) and (c)(2).

The Administrator is required by statute to prescribe by regulation the manner, frequency, form, and content that public water systems must follow for giving public notice. The 1996 SDWA amendments amended this EPA obligation to require consultation with the States prior to rulemaking. Public Water Systems are currently required to notify their customers whenever: (1) A violation of any drinking water regulation occurs (including MCL, treatment technique, and monitoring/reporting requirements); (2) a variance or exemption (V&E) to those regulations is in place or the conditions of the V&E are violated; or (3) results from unregulated contaminant monitoring required under section 1445 of the SDWA are received. This coverage was

not changed by the 1996 SDWA Amendments.

The current rule sets different requirements based on the type of violation and type of system. The 1996 SDWA amendments substantially alter what is currently in place: (1) SDWA section 1414(c)(2)(C) requires notice within 24 hours and sets other new, more prescriptive notice requirements for violations with ''Potential to Have Serious Adverse Health Risks to Human Health''; (2) SDWA section 1414(c)(2)(D) gives EPA more discretion to set less prescriptive notice requirements for all other violations, including requiring the notice in an annual report; and (3) SDWA section 1414(c)(2)(B) allows the State to prescribe alternative notification requirements by rule to the form and content of the notice, consistent with the current primacy requirements.

To meet the letter and spirit of the new statutory provisions, EPA will hold three or more public stakeholder meetings prior to drafting the regulation. This is the first of the scheduled stakeholder meetings that are planned over the next several months, to exchange information on our mutual experience with the current regulation and the elements needed in the new regulation to meet the intent of Congress. The legislative changes provide an excellent opportunity to streamline the existing regulations by focusing the notices on situations that have potential to have serious adverse effects on human health. EPA will also solicit from the stakeholders existing public notification programs that work, and seek to share these experiences through our rulemaking communication. The reports from these meetings will be presented to the public notification workgroup to define the issues and to develop options for their resolution.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–21537 Filed 8–13–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129; FCC 97–248]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopted a combined Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration which amends the Commission's rules and policies governing the unauthorized switching of subscribers' primary interexchange carriers (PICs), an activity more commonly known as ''slamming.'' In the Further NPRM, the Commission proposes specific requirements to implement Section 258 of the Telecommunications Act of 1996, which extends the Commissions PIC-change verification rules to apply with equal force to all telecommunications carriers. The Commission also seeks comment regarding the liability among carriers and subscribers when slamming occurs. The Commission's objective in seeking comment in the FNPRM is to identify and evaluate further safeguards to protect consumers from unauthorized switching of their long distance carriers and to encourage full and fair competition among telecomunications carriers in the marketplace.

DATES: Written comments by the public on the proposed and/or modified information collections are due September 15, 1997 and reply comments on or before September 29, 1997. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before October 14, 1997.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Cathy Seidel, Enforcement Division, Common Carrier Bureau, (202) 418–0960. For additional information concerning the information collections contained in this Further NPRM contact Judy Boley at 202–418–0217, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further NPRM in CC Docket No. 94–129 [FCC 97–248], adopted on July 14, 1997 and released on July 15, 1997. The full text of the Further NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. This Further NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. Paperwork Reduction Act: This Further NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the information collections contained in this Further NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Further NPRM; OMB notification of action is due Otober 14, 1997.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, including small business.

Proposed sec.	Number of resp.	Est. time per resp.	Tot. annual burden	Est. costs per resp.
Sec. 64.1100	675	1.25	844	
Sec. 64.1150	1800	2	3600	
Sec. 64.1170	1800	3	5400	

Needs and Uses: The Commission, in its effort to protect subscribers from unauthorized switching of their preferred carriers, and to implement Section 258 of the Telecommunications Act of 1996 pertaining to illegal changes in subscriber carrier selections, issued the Further NPRM to propose specific requirements and seek comments regarding, *inter alia*, the liability of (1) slammed subscribers to carriers, (2) unauthorized carriers to properly authorized carriers, and (3) carriers to slammed subscribers. This information will be used to revise the Commission's rules to reflect its expanded authority to address unauthorized changes of both telephone toll and telephone exchange service by any telecommunications carrier.

Summary of Further Notice of Proposed Rule Making

I. Background

1. On July 14, 1997, the Commission adopted a combined Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration in Docket 94–129. The Commission adopted the Further NPRM to seek comment on (1) a proposal to amend the Commission's rules regarding verification of orders for long distance service generated by telemarketing to apply to all telecommunications carriers who submit or execute orders for telecommunications service; (2) whether the verification rules should apply to solicitation of preferred carrier freezes; (3) whether the ''welcome package'' verification option described in § 64.1100(d) continues to be a viable and necessary verification alternative; (4) the costs and benefits associated with verification of in-bound (or consumer-initiated) carrier change requests; (5) liability among carriers and subscribers when slamming occurs; and, (6) whether to establish a bright-line evidentiary standard for determining whether a subscriber has relied on a resale carrier's identity of its underlying, facilities-based network provider, hence requiring that the resale carrier notify the subscriber if the underlying network provider is changed.

2. The Commission first established safeguards to deter slamming when equal access was implemented in 1985. By 1992, because the interexchange market had become more competitive, the need for additional safeguards to deter slamming increased. Therefore, the Commission adopted rules requiring that all IXCs institute one of four verification procedures before submitting a carrier change request generated through telemarketing, on behalf of a customer. 7 FCC Rcd 1038 (1992), *recon. denied*, 8 FCC Rcd 3215 (1993). In 1994, the Commission on its own motion and in response to continuing complaints from subscribers regarding slamming, instituted a rule making and adopted rules in its *1995 Report and Order*, 10 FCC Rcd 9560 (1995), 60 FR 35846 (July 12, 1995), establishing further anti-slamming safeguards to deter misleading letters of agency (LOAs). A LOA is a document signed by a subscriber which states that a particular carrier has been selected as that subscriber's preferred carrier. Despite the Commissions anti-slamming efforts, the number of written slamming complaints received by the Commission in 1995 was 11,278, which represents a six-fold increase over the number of such complaints received in 1993. That number has continued to rise; over 16,000 such complaints were received in 1996. Shortly after the adoption of the *1995 Report and Order*, the Commission, on its own motion, stayed its *1995 Report and Order* insofar as it extends the PIC-change verification requirements set forth in § 64.1100 of the Commission's rules to consumer-initiated or in-bound telemarketing calls. The stay was imposed before the effective date of the *1995 Report and Order*. The consumer-initiated or in-bound telemarketing provision is the only component of its anti-slamming rules that the Commission stayed. The stay of this provision of the *1995 Report and Order*, remains in effect.

II. Discussion

3. The Commission expanded the above-captioned docket to seek comment on proposed modifications to its rules to implement Section 258 of the Communications Act of 1934, 47 U.S.C. 258, as amended by the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (Act). Section 258 of the Act makes it unlawful for any telecommunications carrier to ''submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' The section further provides that:

> [a]ny telecommunications carrier that violates the verification procedures described in subsection (a) and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation.

The plain language of Section 258 reflects Congressional recognition that unauthorized changes in subscribers' carrier selections, or ''slamming,'' is a significant consumer problem that threatens the pro-competitive goals and policies underlying the Act.

4. By enacting Section 258, Congress has substantially bolstered the Commission's continuing efforts and ability to deter, punish and, ultimately, eliminate slamming. The Commission stated that its verification procedures, together with the economic disincentives embodied in Section 258 (whereby unauthorized carriers must forfeit all charges collected from a subscriber it has slammed to the subscriber's properly authorized carrier) and the rules proposed in the Further NPRM, provide a two-pronged approach to deter slamming. The Commission has tentatively concluded that its current rules, with the additions and modifications described in the Further NPRM, will best implement the statutory prohibition against slamming by any telecommunications carrier, protect the right of consumers to be free of deceptive and misleading marketing practices, and help promote full and fair competition among telecommunications carriers in the marketplace by ensuring that consumers' choices are honored in the marketplace.

III. Ex Parte Requirements

5. This Further NPRM is a permit-but-disclose rule making proceeding. *Ex parte* presentations are permitted, in accordance with Commission rules, see generally 47 CFR 1.1200, 1.1202, 1.1204, 1.1206, provided that they are disclosed as required.

IV. Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in the Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Further NPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further NPRM. The Secretary shall send a copy of this NPRM to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA, 5 U.S.C. § 603(a).

i. Need for and Objectives of the Proposed Rules

7. The Commission, in its effort to protect subscribers from unauthorized switching of preferred carriers, and to implement provisions of the Telecommunications Act of 1996 pertaining to illegal changes in subscriber carrier selections, issues the Further NPRM to propose specific verification requirements for all carriers and to seek comments regarding the liability of (1) slammed subscribers to carriers, (2) unauthorized carriers to properly authorized carriers, and (3) carriers to slammed subscribers.

ii. Legal Basis

8. This Further NPRM is adopted pursuant to Sections 1, 4(i), 4(j), 201–205, 258, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 258, 303(r).

iii. Description and Number of Small Entities Which May Be Affected

9. As set forth above, in its specific efforts to deter unauthorized changes in subscribers' preferred carriers, the Commission is seeking comment on rules regarding changes in subscriber carrier selections. Under the Act and proposed rules, small entities that violate the Commission's preferred carrier change verification rules by slamming subscribers shall be liable to the subscriber's properly authorized carrier for all charges paid by the slammed subscriber and for the value of any premiums to which the subscriber would have been entitled if the slam had not occurred.

10. For the purposes of the analysis, the Commission examined the relevant definition of ''small entity'' or ''small business'' and applied this definition to identify those entities that may be affected by the rules adopted in this Further NPRM. The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is 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. Moreover, the SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.

11. Consistent with prior practice, the Commission excludes small incumbent LECs from the definition of ''small entity'' and ''small business concerns'' for the purpose of this IRFA. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of ''small entity'' and ''small business concerns.'' Accordingly, the Commission's use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, the Commission considers small incumbent LECs within this analysis and uses the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.''

Telephone Companies (SIC 4813)

12. *Total Number of Telephone Companies Affected.* The decisions and rules adopted by the Commission may have a significant effect on a substantial number of small telephone companies identified by the SBA. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone service, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the Further NPRM.

13. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 companies (or, all but 26) were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small incumbent LECs or small entities based on these employment statistics. However, because it seems certain that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as ''small business concerns'' under the SBA definition. Consequently, the Commission estimates using this methodology that there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the actions proposed herein and seeks comment on this conclusion.

14. *Local Exchange Carriers.* Although neither the Commission nor the SBA has developed a definition of small providers of local exchange services, the Commission considered two methodologies available for making these estimates. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813) (Telephone Communications, Except Radiotelephone) as previously detailed, *supra*. The Commission's alternative method for estimation utilizes the data

that it collects annually in connection with the Telecommunications Relay Service (TRS). This data provides the Commission with the most reliable source of information of which it is aware regarding the number of LECs nationwide. According to the Commission's most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,347 small LECs (including small incumbent LECs) that may be affected by the actions proposed in the Further NPRM.

15. *Non-LEC wireline carriers.* Next the Commission estimates the number of non-LEC wireline carriers, including interexchange carriers (IXCs), competitive access providers (CAPs), Operator Service Providers (OSPs), Pay Telephone Operators, and resellers that may be affected by these rules. Because neither the Commission nor the SBA has developed definitions for small entities specifically applicable to these wireline service types, the closest applicable definition under the SBA rules for all these service types is for telephone communications companies other than radiotelephone (wireless) companies. However, the TRS data provides an alternative source of information regarding the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers nationwide. According to the Commission's most recent data: 130 companies reported that they are engaged in the provision of interexchange services; 57 companies reported that they are engaged in the provision of competitive access services; 25 companies reported that they are engaged in the provision of operator services; 271 companies reported that they are engaged in the provision of pay telephone services; and 260 companies reported that they are engaged in the resale of telephone services and 30 reported being ''other'' toll carriers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers that would qualify as small business concerns under SBA's definition. Firms filing TRS Worksheets are asked to select a single category that best describes their operation. As a result, some long distance carriers describe themselves as resellers, some as OSPs, some as ''other,'' and some simply as IXCs. Consequently, the Commission estimates that there are fewer than 130 small entity IXCs; 57 small entity CAPs; 25 small entity OSPs; 271 small entity pay telephone service providers; and 260 small entity providers of resale telephone service; and 30 ''other'' toll carriers that might be affected by the actions proposed in the Further NPRM.

16. *Radiotelephone (Wireless) Carriers:* The SBA has developed a definition of small entities for Wireless (Radiotelephone) Carriers. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable to estimate with greater precision the number of radiotelephone carriers and service providers that would both qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,164 small entity radiotelephone companies that might be affected by the actions proposed in the Further NPRM.

17. *Cellular and Mobile Service Carriers.* In an effort to further refine its calculation of the number of radiotelephone companies affected by the rules adopted herein, the Commission considers the categories of radiotelephone carriers, Cellular Service Carriers and Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to Cellular Service Carriers and to Mobile Service Carriers. The closest applicable definition under SBA rules for both services is for telephone companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of Cellular Service Carriers and Mobile Service Carriers nationwide of which the Commission is aware appears to be the data that it collects annually in connection with the TRS. According to the Commission's most recent data, 792 companies reported that they are engaged in the provision of cellular services and 138 companies reported that they are engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of Cellular Service Carriers and Mobile Service Carriers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 792 small entity Cellular Service Carriers and fewer than 138 small entity Mobile Service Carriers that might be affected by the actions proposed in the Further NPRM.

18. *Broadband PCS Licensees.* In an effort to further refine its calculation of the number of radiotelephone companies affected by the rules adopted herein, the Commission considers the category of radiotelephone carriers, Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR 24.720(b), the Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The Commissions definition of a ''small entity'' in the context of broadband PCS auctions has been approved by SBA. The Commission has auctioned broadband PCS licenses in Blocks A through F. The Commission does not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 183 winning bidders that qualified as small entities in the Blocks C, D, E, and F auctions. Based on this information, the Commission concludes that the number of broadband PCS licensees that may be affected by the actions proposed in the Further NPRM includes, at a minimum, the 183 winning bidders that qualified as small entities in the Blocks C through F broadband PCS auctions.

19. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average

annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules proposed in the Further NPRM may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. The Commission assumes, for purposes of the IRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the rules proposed in the Further NPRM.

20. *Potential SMR Licensees.* The Commission completed its auctions for geographic area licenses in the 900 MHz SMR band on April 15, 1996. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, the Commission concludes that the number of geographic area SMR licensees that might be affected by the rules proposed in this Further NPRM includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, the Commission assumes, for purposes of the IRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the rules proposed in the Further NPRM.

21. *Cable Systems:* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

(a) The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). Based on the Commission's most recent information, it estimates that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed in the Further NPRM.

(b) The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' 47 U.S.C. 543(m)(2). The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, the Commission found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission finds that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

iv. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

22. The proposed rules would impose verification and disclosure requirements upon telecommunications carriers that wish to submit or execute a change in a subscriber's selection of a provider of telecommunications service. Submitting and executing telecommunications carriers would be required to ensure that a carrier change comports with the verification requirements of 47 CFR 64.1100 and 64.1150 established by the Commission. Furthermore, if a subscriber is a victim of slamming, the unauthorized carrier would be required to remit to the properly authorized carrier (1) all charges paid by the subscriber from the time the slam occurred, and (2) the value of any premiums to which the subscriber would have been entitled if the slam had not occurred. The properly authorized carrier would be required to request such payments from the unauthorized carrier within ten days of notification from the subscriber that an unauthorized carrier change has occurred. Upon notification that the subscriber has been slammed, the unauthorized carrier would be required to remit such payments to the properly authorized carrier. The subscriber's properly authorized telecommunications carrier would then be responsible for restoring to the subscriber any premiums to which the subscriber would have been entitled had the slam not occurred. In the event of disputes between carriers regarding the transfer of charges and the value of lost premiums, the carriers would be required to pursue private settlement negotiations before instituting proceedings before the Commission to resolve such disputes.

v. Significant Alternatives to Proposed Rules Which Minimize the Significant Economic Impact on Small Entities and Small Incumbent LECs and Accomplish Stated Objectives

23. The Commission has considered proposing no rule changes beyond those specifically required by the Act. Therefore, as discussed above, the Commission is proposing very limited rule changes to its existing rules which, given that slamming is becoming an increasingly prevalent practice, it believes that there are minimally intrusive steps necessary to discourage possible evasion of the Subscriber Carrier Selection Change requirements contained in Section 258 of the Communications Act. The Commission proposes that, in the event of a dispute between carriers under these liability provisions, the carriers involved in such disputes must pursue private settlement negotiations regarding the transfer of charges and the value of lost premiums from the unauthorized carrier to the properly authorized carrier. The

Commission believes that the adoption of such a dispute mechanism will lessen the economic impact of a dispute on small entities. Under the proposed rules, telecommunications carriers, including small entities, that violate the Commission's verification rules and slam subscribers would be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid by the slammed subscriber plus the value of premiums to which the subscriber would have been entitled had the slam not occurred. The Commission invites parties commenting on the regulatory analysis to provide information as to the number of small businesses that would be affected by the proposed regulations and identify alternatives that would reduce the burden on these entities while still ensuring that subscribers' telecommunications carrier selections are not changed without their authorization.

24. Although the Commission has proposed no rule regarding the circumstances under which resale carriers must notify their subscribers of a change in their underlying network provider, the Commission received a request for clarification of this issue from TRA. TRA proposes that, instead of determining the materiality of such changes on a case-by-case basis, the Commission establish a ''bright-line'' materiality test that would offer the subscriber safeguards now provided by the current case-by-case approach, while minimizing the regulatory burden on small to mid-sized carriers. According to TRA, the unpredictability of the case-by-case approach is unduly burdensome on small to mid-sized resale carriers, and thus diminishes competition. The Commission invites parties to comment on whether the current case-by-case approach has a significant economic impact on small entities, and on whether the Commission's proposal to establish a bright-line test for determining whether a subscriber has relied on a resale carrier's identity of its underlying facilities-based network provider, hence requiring that the resale carrier notify the subscriber if the underlying network provider is changed, would minimize any significant economic impact. The Commission also seeks comment on alternatives that would reduce the burden on these entities without diminishing consumer safeguards now in place.

vi. Federal Rules That May Overlap, Duplicate, or Conflict With the Proposed Rules

25. None.

V. Conclusion

26. With the Further NPRM, the Commission seeks comment on the foregoing issues regarding implementation of Section 258 of the Telecommunications Act of 1996 and PC-change verification procedures to deter illegal changes in subscriber carrier selections. Any party disagreeing with the Commission's tentative conclusions should explain with specificity its position in terms of costs and benefits.

VI. Ordering Clauses

27. *It is ordered,* pursuant to Sections 1, 4, 201–205, 215, 218, 220 and 258 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, 218, 220, and 258, that a further notice of proposed rule making is issued, proposing the amendment of 47 CFR Part 64 as set forth below.

28. *It is further ordered* that the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

29. *It is further ordered* that the Secretary shall send a copy of this further notice of proposed rule making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 64

Communications common carriers, Consumer protection, Telecommunications.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rules Changes

47 CFR Part 64 is proposed to be amended as follows:

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 258, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, 258, unless otherwise noted.

2. The heading for Subpart K is proposed to be revised to read as follows:

Subpart K—Changing Telecommunications Service

3. Section 64.1100 is proposed to be revised to read as follows:

§ 64.1100 Verification of orders for telecommunications service generated by telemarketing.

No telecommunications carrier shall submit a primary carrier change order generated by telemarketing unless and until the order has first been confirmed in accordance with the following procedures:

(a) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of § 64.1150; or

(b) The telecommunications carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the primary carrier is to be changed, to submit the order that confirms the information described in paragraph (a) of this section to confirm the authorization. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the primary carrier change, including automatically recording the originating automatic numbering identification; or

(c) An appropriately qualified independent third party operating in a location physically separate from the telemarketing representative has obtained the subscriber's oral authorization to submit the primary carrier change order that confirms and includes appropriate verification data (*e.g.,* the subscriber's date of birth or social security number); or

(d) Within three business days of the subscriber's request for a primary carrier change, the telecommunications carrier must send the subscriber an information package by first class mail containing at least the following information concerning the requested change:

(1) An explanation that the information is being sent to confirm a telemarketing order placed by the subscriber within the previous week;

(2) The name of the subscriber's current carrier;

(3) The name of the newly-requested carrier;

(4) A description of any terms, conditions, or charges that will be incurred;

(5) The name of the person ordering the change;

(6) The name, address, and telephone number of both the subscriber and the soliciting carrier;

(7) A postpaid postcard which the subscriber can use to deny, cancel or confirm a service order;

(8) A clear statement that if the customer does not return the postcard the customer's long distance service will be switched within 14 days after the date the information package was mailed to [name of soliciting carrier];

(9) The name, address, and telephone number of a contact point at the Commission for consumer complaints; and

(10) Carriers must wait 14 days after the form is mailed to subscribers before submitting their primary carrier change orders. If subscribers have cancelled their orders during the waiting period, carriers cannot submit the subscribers' orders.

4. Section 64.1150 is proposed to be revised to read as follows:

§ 64.1150 Letter of agency form and content.

(a) A telecommunications carrier relying on a written authorization for a primary carrier change must obtain a letter of agency as specified in this section. Any letter of agency that does not conform with this section is invalid.

(b) The letter of agency shall be a separate document (an easily separable document containing only the authorizing language described in paragraph (e) of this section) having the sole purpose of authorizing a telecommunications carrier to initiate a primary carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary carrier change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the primary carrier change order;

(2) The decision to change the primary carrier from the current telecommunications carrier to the prospective telecommunications carrier;

(3) That the subscriber designates [name of the submitting carrier] to act as the subscriber's agent for the primary carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (*e.g.*, for intrastate, intraLATA or international calling), the letter of agency must contain separate statements regarding those choices. One telecommunications carrier can be both a subscriber's interstate or interLATA primary interexchange carrier and a subscriber's intrastate or intraLATA primary interexchange carrier; and

(5) That the subscriber understands that any primary carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's primary carrier.

(f) Any carrier designated in a letter of agency as a primary interexchange carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

5. Section 64.1160 is proposed to be added to subpart K to read as follows:

§ 64.1160 Changes in subscriber carrier selections.

(a) *Prohibition.* No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telecommunications service except in accordance with the verification procedures prescribed in this Subpart. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) Where the submitting carrier submits a verification that fails to comply with § 64.1160, the executing carrier will be liable where there has been some wrongdoing or malfeasance on the part of the executing carrier; otherwise the submitting carrier will be solely liable for violating § 64.1160(a).

(2) Where the submitting carrier has complied with § 64.1160(a), but the executing carrier executes the change inconsistent with the subscriber carrier change selection, the executing carrier will be solely liable for violating § 64.1160(a).

(3) When a dispute arises between the submitting and executing carriers the carriers must pursue private settlement negotiations prior to requesting that the Commission institute proceedings to resolve any such dispute.

(b) *Carrier Liability for Charges.* Any telecommunications carrier that violates the verification procedures prescribed by the Commission and that collects charges for telecommunications service from a subscriber shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid by such subscriber after such violation. The remedies provided by this subsection are in addition to any other remedies available by law.

6. Section 64.1170 is proposed to be added to subpart K to read as follows:

§ 64.1170 Reimbursement procedures.

(a) Upon receiving notification from the subscriber that the subscriber's carrier selection was changed without authorization, the properly authorized carrier must, within ten days, request from the unauthorized carrier the following:

(1) An amount equal to the charges paid by the subscriber to the unauthorized carrier; and,

(2) An amount equal to the value of any premiums to which the subscriber would have been entitled if the subscriber's selection had not been changed. Where a subscriber notifies the unauthorized carrier, rather than the properly authorized carrier, of an unauthorized subscriber carrier selection change, the unauthorized carrier must, within ten days, notify the properly authorized carrier.

(b) Upon notification of a violation of § 64.1160(a), the unauthorized carrier must remit to the affected subscriber's properly authorized carrier the total charges collected from the subscriber and the value of any premiums to which the consumer would have been entitled if the subscriber's selection had not been changed.

(c) *Restoration of Premium Programs.* Upon receiving from the unauthorized

carrier the value of premiums to which the consumer would have been entitled if the subscriber's selection had not been changed, the properly authorized carrier must provide or restore to the subscriber any premiums to which the consumer would have been entitled if the subscriber's selection had not been changed. Where a particular premium cannot be restored, the properly authorized carrier may substitute an equivalent premium or dollar amount as reasonably determined by the properly authorized carrier.

(d) *Dispute Resolution.* Carriers must pursue private settlement negotiations regarding the transfer of charges and the value of lost premiums from the unauthorized carrier to the properly authorized carrier prior to requesting that the Commission institute proceedings to resolve any dispute regarding such transfer of charges and the value of lost premiums.

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Notices

Federal Register
Vol. 62, No. 157
Thursday, August 14, 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

Forest Service

Control Lake Timber Harvest

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare a Supplement to the Draft Environmental Impact Statement.

SUMMARY: The Tongass National Forest-Ketchikan Area will prepare a Supplement to the Control Lake Draft Environmental Impact Statement (DEIS). The Supplement will address several changed conditions including; a) the closure of the Ketchikan Pulp Mill, b) that timber would no longer be offered to Ketchikan Pulp Company under its long term timber sale contract with the Forest Service, and c) issuance of the Revised Tongass National Forest Land Management Plan. The Supplement will also address public comments received on the Control Lake DEIS.

FOR FURTHER INFORMATION CONTACT: Questions about the project can be directed to: Forest Supervisor, Tongass NF-Ketchikan Area, Attn: Control Lake SDEIS, Federal Building, Ketchikan, AK 99901.

SUPPLEMENTARY INFORMATION: The Supplemental DEIS is expected to be available to the public during the Fall of 1997. The comment period on the Supplement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553, (1978). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments on the Supplement to the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits: Permits required for implementation include the following:

1. U.S. Army Corp of Engineers

—Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
—Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;

2. Environmental Protection Agency

—National Pollutant Discharge Elimination System (402) Permit;
—Review Spill Prevention Control and Countermeasure Plan;

3. State of Alaska, Department of Natural Resources

—Tideland Permit and Lease or Easement;

4. State of Alaska, Department of Environmental Conservation

—Solid Waste Disposal Permit;
—Certification of Compliance with Alaska Water Quality Standards (401 Certification)

RESPONSIBLE OFFICIAL: Bradley E. Powell, Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: July 25, 1997.

Bradley E. Powell,

Forest Supervisor.

[FR Doc. 97–21544 Filed 8–13–97; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sand Ecosystem Restoration, Wenatchee National Forest, Chelan County, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site specific proposal for the Sand Ecosystem Restoration. The proposed action is 7 miles south of the town of Cashmere, Washington on approximately 6,000 acres of National Forest System Land in the Slawson, Sherman, Sand, Little Camas, Poison, Mission, Bear Gulch, and Fairview Canyon drainages on the Leavenworth Ranger District of the Wenatchee National Forest. It is partially located within the Devil's Gulch Roadless Area. The purpose of the EIS will be to develop and evaluate a range of alternatives for ecosystem restoration activities within the Sand Planning Area. The objectives include: (1) Reducing the number of trees in dense stands and (2) reducing fuel loading. To achieve these objectives the alternatives may include the following actions: timber harvest; yarding tops; pruning; slash piling; prescribed burning; pre-commercial thinning; reforestation; seeding; road construction; and road decommissioning.

The alternatives will include a no action alternative, and at least one alternative that proposes no action in the Devil's Gulch Roadless Area. The proposed project will be consistent with direction given in the Wenatchee National Forest Land and Resource Management Plan, as amended by the April 13, 1994, Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl. This Forest Service proposal is scheduled for implementation in 1998–2003. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and analysis of this proposal must be received by October 1, 1997.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Rebecca Heath, District Ranger, Leavenworth Ranger District, 600 Sherbourne, Leavenworth, Washington 98826.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Bob Stoehr, Interdisciplinary Team Leader, Leavenworth Ranger District, 600 Sherbourne, Leavenworth, Washington 98826; phone 509–548–6977, extension 226.

SUPPLEMENTARY INFORMATION: This analysis was prompted by the Mission Creek Watershed Analysis. This study found that fire exclusion and other management over the last 90 years have changed many dry forests from open, parklike stands to very dense and stagnated stands which are now susceptible to large, intense wildfires as well as bark beetle infestations. The environmental analysis will look at different ways to move this part of the Mission Creek Watershed toward a more healthy, sustainable condition.

The proposed action is to treat approximately 6,000 acres. Treatments would be made through a combination of activities including: (1) Thinning of dense stands, and (2) pruning and fuel reduction through the use of prescribed fire. This proposal will include helicopter yarding as the primary method of tree removal, and may require the construction of approximately 4 miles of access roads.

To date, the following key issues have been identified: Remnant stands of old ponderosa pine; dry forest ecosystem sustainability; threatened and endangered wildlife species; fire risk; inventoried roadless area; and economic viability.

The decision to be made through this analysis is where, how, and to what extent should the various vegetation management and fuels reduction treatments be implemented within the Sand Planning Area, and what roading, if any, should occur.

A range of alternatives will be considered, including a no action alternative, and an alternative that proposes no actions in the Devil's Gulch Roadless Area. Other alternatives will be developed in response to relevant issues received during scoping. All alternatives will need to respond to specific conditions in the Sand Planning Area.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, tribes, and local agencies, as well as individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating non-significant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in June, 1998. EPA will publish a notice of availability of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register.** Copies of the draft EIS will be distributed to interested and affected agencies, organizations, tribes, and members of the public for their review and comment. It is very important that those interested in the management of the Wenatchee National Forest participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

At this early stage, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of their proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. (*City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986)) and (*Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp, 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

The final EIS is scheduled to be completed in August 1998. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Sonny O'Neal, Forest Supervisor, Wenatchee National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations 36 CFR Part 215.

Dated: July 28, 1997.

Elton Thomas,

Natural Resources Group Leaders.

[FR Doc. 97–21543 Filed 8–13–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Decision and Order

In the Matter of: Ian Ace, with addresses at 4 Mimosa Way, Pinelands, South Africa, A. Rosenthal (PTY) Ltd., P.O. Box 3721, 13 Loop Street, Cape Town, South Africa, and A. Rosenthal (PTY) Ltd., P.O. Box 44198, 65 7th Street, Denmyr Building, 2104 Linden, South Africa, Respondent.

Decision and Order

On November 27, 1995, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA''), issued a charging letter initiating an administrative proceeding against Ian Ace. The charging letter alleged that Ian Ace committed seven violations of the Export Administration Regulations (currently codified at 15 C.F.R. parts 730–774 (1997)) (hereinafter the ''Regulations''),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. sections 2401–2420) (hereinafter the ''Act'').[2]

Specifically, the charging letter alleged that, between mid-1990 and early 1992, Ace, manager of A. Rosenthal (PTY) Ltd., Cape Town, South Africa, conspired with James L. Stephens, president and co-owner of Weisser's Sporting Goods, National City, California, and Karl Cording, co-owner and managing director of A. Rosenthal (PTY) Ltd., Windhoek, Namibia, to export and, on two separate occasions, actually exported U.S.-origin shotguns, with barrel lengths of 18 inches and over, to Namibia and South Africa, without applying for and obtaining from the U.S. Department of Commerce the validated export licenses Ace knew or had reason to know were required under the Act and Regulations. In addition, BXA alleged that, in furtherance of the conspiracy, and in connection with each of those exports, Ace made false or misleading representations of material fact to a U.S. Government Agency in connection with the preparation, submission, or use of export control documents. BXA alleged that, in so doing, Ace committed one violation of Section 787.3(b), two violations of Section 787.4(a), two violations of Section 787.5(a), and two violations of Section 787.6 of the former Regulations, for a total of seven violations of the former Regulations.

BXA issued a charging letter to Ace at his residential address in Pinelands, South Africa, and at his business address in Linden, South Africa. BXA has presented evidence that Ace was served with notice of issuance of the charging letter at his Linden, South Africa, business address on December 9, 1995.[3] Ace failed to answer the charging letter. Thus, on June 26, 1997, pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge find that facts to be as alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, on July 8, 1997, Chief Administrative Law Judge Joseph A. Angel issued a Recommended Decision and Default Order in which he found the facts to be as alleged in the charging letter. He concluded that those facts constituted violations of the Act and Regulations. The Administrative Law Judge also concurred with BXA's recommendation that the appropriate penalty to be imposed for these violations is a denial, for a period of 20 years, of all of Act's export privileges. As provided by Section 766.22(a) of the Regulations, the Administrative Law Judge referred the Recommended Decision and Order to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the Administrative Law Judge. I believe that the Administrative Law Judge's recommended denial of export privileges for 20 years is appropriate. This case is aggravated by the fact that Ace violated export controls that were designed to express U.S. abhorrence with apartheid as then practiced in South Africa. These violations were serious and undetermined important U.S. foreign policy interests. A lengthy period of denial will help keep U.S.-origin items out of his hands and make future violations less likely. Finally, this penalty is, as the Administrative Law Judge explained, consistent with the penalties received by the other participants in these violations.

Accordingly, it is therefore ordered,

First, that for a period of 20 years from the date of this Order, Ian Ace, with the following addresses, 4 Mimosa Way, Pinelands, South Africa; A. Rosenthal (PTY) Ltd., P.O. Box 3721, 13 Loop Street, Cape Town, South Africa; and A. Rosenthal (PTY) Ltd., P.O. Box 44198, 65 7th Street, Denmyr Building, 2104 Linden, South Africa, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

[1] The violations at issue occurred between mid-1990 and early 1992. The Regulations governing those violations are found in the 1990, 1991, and 1992 versions of the Code of Federal Regulations (15 C.F.R. parts 768–799 (1990, 1991, and 1992)) and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, currently codified at 15 C.F.R. Parts 730–774 (1997), establish the procedures that apply to the matters set forth in this Decision and Order.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R. 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R. 1995 Comp. 501 (1996)) and August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C. 1701–1706).

[3] The copy of the charging letter addressed to Ace at his residential address was returned to BXA during April 1996. (It had been marked by South African postal authorities as ''Unclaimed''.) On April 24, 1996, BXA sent a copy of the November 27, 1995 charging letter to Ace at a second business address in Cape Town, South Africa. Ace received this copy of the charging letter on June 13, 1996.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by a denied person, or service any item, of whatever origin, that is owned, possessed or controlled by a denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in § 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that a copy of this Order shall be served on Ace and BXA, and shall be published in the **Federal Register**.

This Order, which constitutes final agency action in this matter, is effective immediately.

Dated: August 8, 1997.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 97–21453 Filed 8–13–97; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 14, 1997.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the antidumping duty administrative review for the antidumping order on Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand, pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act'').

FOR FURTHER INFORMATION CONTACT: John Totaro or Dorothy Woster, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–1398 or 482–3362, respectively.

SUPPLEMENTARY INFORMATION: Under § 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete this review within the statutory time limit. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa (August 7, 1997).

Because it is not practicable to complete this review within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 days after publication of the preliminary determination for final results), in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the final results until October 7, 1997.

Dated: August 8, 1997.

Roland L. MacDonald,

Executive Director, AD/CVD Enforcement Office VII.

[FR Doc. 97–21582 Filed 8–13–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–820]

Notice of Final Results of Antidumping Duty Administrative Review: Ferrosilicon From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 8, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on Ferrosilicon from Brazil. This review covers exports of this merchandise to the United States by two manufacturers/exporters, Companhia Brasileria Carbureto de Calcio (''CBCC'') and Companhia Ferroligas Minas Gerais-Minasligas (''Minasligas''), during the period March 1, 1995, through February 29, 1996.

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 programming errors, we have changed our results from those presented in our preliminary results, as described below in the comment section of this notice. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: August 14, 1997.

FOR FURTHER INFORMATION CONTACT: Cameron Werker or Sal Tauhidi, AD/CVD Enforcement Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3874 and (202) 482–4851, respectively.

The 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 C.F.R. part 353 (April 1, 1996).

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1997, the Department of Commerce (the Department) published in the **Federal Register** (67 FR 16763) the preliminary results of review of the antidumping duty order on ferrosilicon from Brazil (March 14, 1994, 59 FR 11769). On May 8, 1997 and May 15, 1997, we received case and rebuttal briefs from the respondents, CBCC and Minasligas, and from petitioners, SKW Metals & Alloys, Inc. and Aimcor Inc. At the request of both petitioners and respondents, we held a hearing on May 22, 1997. In response to questions raised by the Department at the hearing, the petitioners submitted additional information on June 11, 1997, regarding the Department's product concordance program with respect to the distinction between lumps and fines. (For more information on lumps and fines, see *Comment 1* below.) The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of Review

The merchandise subject to this review is ferrosilicon, a ferro alloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element. Ferrosilicon is a ferro alloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon. Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this review. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferro alloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferro alloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this review is dispositive. Ferrosilicon in the form of slag is included within the scope of this order if it meets, in general, the chemical content definition stated above and is capable of being used as ferrosilicon. Parties that believe their importations of ferrosilicon slag do not meet these definitions should contact the Department and request a scope determination.

Product Comparison

In accordance with section 771(16) of the Act, we considered all products produced by CBCC and Minasligas, covered by the description in the ''Scope of the Review'' section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product based on the following criteria: (1) The grade of ferrosilicon (*i.e.*, standard, high purity and low aluminum); (2) the percentage range, by weight, of silicon content; and (3) the sieve size.

Although we have used the sieve size category as a matching criterion in past reviews, we reconsidered the matching criteria for CBCC and Minasligas in light of additional data on the record in this review. Although cost differences among sieve size categories do not exist, we considered whether the merchandise was a ''lump'' or a ''fine'' in making our product comparisons because sales of ferrosilicon fines command significantly lower market prices than sales of ferrosilicon lumps. In addition, it appears that the two products have different end-uses. Lumps are defined as having a minimum dimension of equal to or greater than one millimeter and fines as having a minimum dimension of less than one millimeter. We did not consider any difference in sieve size ranges within the lump or fine categories in determining the most appropriate product comparison because significant price differences within the lump or fine sieve size category did not exist.

Verification

As provided in section 782(i) if the Act, on February 17 through 28, 1997, we verified information provided by CBCC and Minasligas by using standard verification procedures, including onsite inspection of one of the respondent's production facilities (CBCC), the examination of relevant sales and financial records, and original documentation containing relevant information. The results of those verifications are outlined in the public versions of the verification reports dated March 19, 1997, on file in room B–099 of the main Commerce building.

Comment 1: Fines and Lumps. The petitioners contend that the dimensions used by the Department to define lumps and fines in the preliminary results were confusing and left gaps because the Department defined lumps and fines based on a minimum and maximum dimension, respectively. As a result, the petitioners claim that merchandise with one dimension smaller or larger than the established maximum and minimum ranges cannot be classified as either lumps or fines. The petitioners argue that in the final results, the Department should use a distinction that defines lumps and fines based only on a maximum or a minimum dimension. Consistent with their argument, petitioners noted at the May 22, 1997, hearing, that the Department's use of the minimum dimension to define both lumps and fines in the product concordance program, was in fact, correct.

CBCC states that although the criteria chosen by the Department for defining fines are not perfect, it agrees that the Department's criteria generally makes sense from a market point of view. Citing the Department's April 1, 1997 Concurrence Memorandum, CBCC contends that because the selling price of ferrosilicon of less than 1mm in diameter is lower than ferrosilicon of 1mm higher in diameter, the criteria used by the Department in this review appear to be reasonable.

DOC Position: We agree with the petitioners. While the product concordance program developed by the Department in the preliminary results defined lumps and fines in terms of minimum dimensions, we stated in the **Federal Register** notice that we used a

maximum dimension to define fines and a minimum dimension to define lumps (see Notice of Preliminary Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil, 62 FR 16763 (April 8, 1997)). We agree that this inconsistency in the parameters defining lumps and fines was confusing, and that we should use the same parameters in the narrative definition and the product concordance program. Since none of the parties dispute that our product concordance program accurately matched lumps and fines to the appropriate comparison products, we have revised the language in the ''Product Comparisons'' section of this notice rather than alter the concordance program. *See* the ''Product Comparisons'' section, above.

Comment 2: The Sales Below Cost Test. Minasligas and CBCC contend that the Department overstated the quantity of home market sales below cost by comparing a domestic price that was exclusive of value added taxes (VAT) to a cost of production (COP) which was inclusive of VAT. Minasligas and CBCC argue that such a comparison results in an inequitable comparison and creates below cost sales where none would have otherwise existed. Minasligas and CBCC further maintain that in order to produce a fair comparison, it is the Department's practice to compare COP and the domestic price on the same basis. To support their claim, Minasligas and CBCC cite the Department's practice of comparing the net COP and the net home-market prices on the same basis in Ferrosilicon from Brazil: Final Results of Administrative Review, 61 FR 59407, 59410 (November 22, 1996) (Ferrosilicon from Brazil 96). Minasligas and CBCC further contend that the Department's Import Policy Bulletin at 94.6 states that ''both the net COP and the net home market prices should be on the same basis.''

Petitioners agree that if the Department excludes VAT from the home market net prices that are compared to COP, it is proper to exclude VAT paid on material inputs from COP in order to make an ''apples-to-apples'' comparison. However, petitioners contend that the Department should include in COP the amounts for PIS (Program Intergracao Social) and COFINS (Social Contributions on Gross Sales) taxes that CBCC excluded from the direct materials costs that the Department used for the preliminary results calculations. Citing Silicon Metal from Brazil: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 62 FR 1976 (January 14, 1997) (Silicon Metal from Brazil 97), the petitioners contend that the Department determined that PIS and COFINS taxes are gross revenue taxes and, therefore, are not taxes that a buyer pays directly when purchasing materials. In order for the COP to reflect the full purchase price of the materials, petitioners claim that the Department's policy is to add to CBCC's reported material costs the hypothetical values that CBCC reported as PIS and COFINS taxes on its material inputs.

For these reasons, the petitioners contend that for the final results, the Department should exclude VAT from the cost of manufacture (COM) used to calculate COP, but should include PIS and COFINS taxes. In addition, petitioners maintain that PIS and COFINS taxes should be included in the calculation of constructed value (CV) for the same reasons explained above.

DOC Position: We agree with petitioners and respondents that we incorrectly compared COPs inclusive of VAT to VAT-exclusive home market prices for purposes of the preliminary results. Therefore, for purposes of the final results, we excluded VAT (ICMS and IPI) taxes from the calculation of COP for purposes of performing the sales below cost test, as we excluded these taxes from the home market prices.

In addition, for reasons fully explained in Comments 8 and 26 of Silicon Metal from Brazil: Final Results of Antidumping Duty Review 61 FR 4673, 46764 (September 5,1996) (Silicon Metal from Brazil 96) and also in *Comment* 4 below, we agree with the petitioners that the Department should not reduce materials costs in COP and CV by amounts for PIS and COFINS taxes claimed by CBCC and Minasligas. As stated in Silicon Metal from Brazil 96, ''PIS and COFINS taxes are gross revenue taxes, and therefore are not taxes that a buyer pays directly when purchasing materials. For this reason, in order for COP to reflect the complete cost of materials, the costs the Department uses in its calculation of COP must not be net of any hypothetical tax amounts that are presumably imbedded within the purchase price of the materials.'' Furthermore, we note that PIS and COFINS are internal taxes. In this review, these taxes are paid by the supplier on the revenue generated from the sale of material inputs. As such, in order for the COP to reflect the full purchase price of the materials, we must add to its reported material costs the hypothetical values that CBCC reported as PIS and COFINS taxes on its material inputs. Thus, in accordance with our determination in Silicon Metal from Brazil 96, we determine that these taxes are not imposed directly upon the merchandise or components thereof, and as a result have no statutory basis to deduct them from the cost of manufacture used to calculate COP and CV. (See also Silicon Metal from Argentina, Final Determination of Sales at Less Than Fair Value, 56 FR 37891, 37893 (August 9, 1991) (Silicon Metal from Argentina 91)).

However, we disagree with petitioners that CBCC excluded PIS and COFINS taxes from its direct materials cost. Although CBCC provided these taxes separately in its questionnaire response, we found at verification that the direct material costs reported by CBCC included both PIS and COFINS taxes. Similarly, Minasligas also reported, and we verified, that its direct material costs were inclusive of PIS and COFINS. Therefore, for purposes of the preliminary results, the COP for both respondents was calculated inclusive of PIS and COFINS. We have made no changes in the final results for PIS and COFINS taxes.

Comment 3: Advance Exchange Contracts (ACCs) on U.S. Sales. Minasligas claims that by using ACCs to finance its export sales, the company obtains payment prior to shipment. Minasligas argues that in the final results the Department should recognize the economic benefit arising from prepayment and allow Minasligas to offset its imputed credit expenses with negative imputed credit expenses or credit revenue resulting from prepayment. Specifically, Minasligas contends the following:

(1) The ACCs are directly related to U.S. sales. Minasligas maintains that the Department was able to identify exactly which ACCs were associated with each U.S. sale and the product is fixed at the time the ACC is signed and cannot be changed. Therefore, Minasligas asserts that the ACCs are secured in advance for export sales of ferrosilicon;

(2) The Department found that bank charges incurred between the date Minasligas receives an ACC and the date the merchandise is shipped from the plant were directly related to the U.S. sales and subsequently used these expenses to calculate imputed credit costs in the preliminary results. Minasligas argues that this demonstrates a direct relationship between the ''credit revenue'' reported by Minasligas and the U.S. sales;

(3) The Department's rejection of Minasligas' negative imputed credit expense contradicts the Department's regulations which state that the Department will make a circumstance-of-sale (COS) adjustment for selling expenses ''which bear a direct

relationship to the sales compared.'' Minasligas contends that the negative credit expenses are a direct result of a specific U.S. sale of ferrosilicon because without a U.S. sale there would be no credit revenue; and

(4) The Department's treatment of ACCs is contrary to its treatment of identical credit expenses in prior and parallel proceedings involving Minasligas.

Minasligas and CBCC argue that in the event the Department determines not to use the negative credit expenses or credit revenue reported by the companies for its imputed U.S. credit calculation, the credit calculation used by the Department in the preliminary results contains several errors:

First, Minasligas and CBCC argue that the bank charges overstate the credit period. Specifically, Minasligas and CBCC claim that the bank charges represent the interest expense incurred between the date a company receives an advance under an ACC and the date of payment by the U.S. customer. Because the date of receipt of the advance can predate the date of shipment from the plant, Minasligas and CBCC contend that the bank charges overstate the imputed credit expense (an expense which is intended to capture the cost of extending credit between the date the merchandise is shipped to the customer and the date the respondent receives payment from the customer). Minasligas and CBCC contend that the Department should calculate imputed credit expenses using the actual period between the date of shipment and the date of payment. Furthermore, Minasligas asserts that in its preliminary results the Department inadvertently double-counted the bank charges in the calculation of normal value (NV). The bank charges were added both as part of the reported direct selling expenses and as the imputed credit expense. Finally, Minasligas argues that the Department erred by calculating credit expenses based on a U.S. price which was inclusive of VAT. Minasligas contends that it is the Department's practice to calculate credit expenses on a price exclusive of VAT.

Petitioners agree with the Department's decision in the preliminary results to disregard Minasligas' reported imputed credit revenue based on the finding that ACCs are not directly tied to specific export sales. The petitioners argue that the Department's preliminary finding was correct because: (1) The export value of the sale was not fixed on the date the ACC was signed; (2) the ACCs were obtained prior to the U.S. date of sale for all of CBCC's U.S. sales and certain sales made by Minasligas, and thus not directly tied to a specific U.S. sale for future unspecified shipments; (3) the amount borrowed under certain ACCs did not correspond exactly with the value of the U.S. sale which was later shipped; (4) in certain cases, more than one ACC was used to finance a single U.S. transaction; and (5) certain ACCs were used to finance more than one U.S. export.

Moreover, the petitioners agree with Minasligas and CBCC that the Department's practice to use the interest and bank charges Minasligas paid for the ACCs to determine U.S. imputed credit expenses for each U.S. sale is inconsistent with the Department's determination that ACCs are not directly related to U.S. sales. For this reason, petitioners argue that the Department should calculate U.S. imputed credit expenses for Minasligas and CBCC in accordance with its established practice (*i.e.*, based on the period from the date of shipment from Minasligas's plant to the date of payment by the U.S. customer).

DOC Position: We agree with petitioners that ACCs are not directly tied to specific export sales at the time the ACC is opened, and therefore, we determine that the advance resulting from the ACC does not represent prepayment for an export sale. In fact, all parties agree that, as of the date an ACC is opened with a bank, no tie exists between an ACC and specific export sales. The link between ACC and sale does not occur until the respondents present the issuing bank with the export documentation for a given sale. Until that time, each respondent is able to use the money from the ACC to finance any export sale of ferrosilicon to any export market.

This fact pattern is similar to that of the Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from Brazil, 55 FR 23,120 (June 6, 1990) (''Nitrocellulose''). (Upheld by the CIT, March 2, 1995.) In Nitrocellulose, the Department disallowed a negative credit expense adjustment because the respondent ''borrowed money which was to be repaid with the proceeds from future unspecified export sales'' and the Department found ''that the U.S. sales were not paid for in advance.'' Therefore, for purposes of the final results, the Department finds that the ACC bank loans are not directly related to the U.S. sales. We have therefore continued to disallow the claimed negative credit expenses and/or interest revenue.

Regarding the calculation of imputed credit expenses, we agree with all parties that by using the reported bank charges, we calculated credit using a period longer than that period normally captured by our imputed credit calculation (*i.e.*, the period between the date of shipment from the plant and the date of payment from the customer). Therefore, for purposes of the final results, we have calculated imputed credit based on a credit period between the date of shipment from the plant and the date of payment from the customer. In addition, we have used the average ACC interest rates derived from the ACCs examined at verification for each of the respondents. These interest rates represent the actual interest rates received by each respondent for U.S. dollar-denominated short-term loans. (See the Sales Calculation Memorandums from Cameron Werker to the File for both CBCC and Minasligas, each dated August 6, 1997, for further discussion of the calculations of credit periods and interest rates.)

We also agree with CBCC and Minasligas that we double-counted bank charges in the preliminary results. It is inappropriate to use bank charges as a surrogate for credit expenses for specific U.S. sales having determined that there is no direct link between an ACC and a sale at the time the sale is made. In addition, the money received from opening an ACC is used by each of the respondents as working capital to finance future, unspecified export sales. As a result, each respondent is then responsible for paying the bank interest on the loan. It is reasonable to assume that these interest payments are captured by each respondent in their respective ''Interest'' accounts. Therefore, the Department has already captured these expenses as part of our interest calculation, and thus, we have made no further adjustments for these expenses (*i.e.*, we did not include them as direct selling expenses).

Finally, regarding Minasligas contention that the Department calculated credit expenses based on U.S. prices inclusive of VAT, we note that at verification Minasligas was unable to substantiate its claim that VAT charges are passed along to U.S. customers and are included in the reported prices. Therefore, we have not made a deduction from U.S. price for VAT.

Comment 4: Treatment of Taxes in the Calculation of Normal Value(NV). A. PIS/OFINS Taxes. Minasligas and CBCC contend that the Department's failure to deduct the PIS and COFINS taxes from NV for price-to-price comparisons in accordance with 19 U.S.C. 1677b (a)(6)(C)(iii) led to an unfair comparison since these taxes are paid on home market sales but not on U.S. sales.

Minasligas and CBCC assert that these taxes are directly related to home market sales since they are generated directly by sales of ferrosilicon in the home market. Minasligas and CBCC further assert that the Department should account for these taxes in the final results by making a circumstance of sale (COS) adjustment as directed by 19 U.S.C. 1677b(a)(6)(C)(iii), or an adjustment to NV under 19 U.S.C. 1677b (a)(6)(B)(iii).

Petitioners contend that the Department was correct in using a NV that was not reduced by PIS and COFINS taxes. Citing section 773(a) (6)(B)(iii) of the Act, the petitioners argue that NV may only be reduced by taxes imposed directly upon the foreign like product or components thereof. The petitioners further contend that this language is identical to that of section 772(d)(1)(C), the parallel provision in effect prior to the enactment of the URAA, which they claim provided for an upward adjustment to the U.S. price.

To support their argument, petitioners cite Silicon Metal from Argentina 91. In that case, petitioners contend that the Department determined that taxes similar to the PIS and COFINS taxes were not taxes directly imposed upon the merchandise or components thereof and, therefore, did not qualify for an adjustment to U.S. price. As in Silicon Metal from Argentina 91, petitioners maintain that the taxes at issue in this case do not qualify for a COS adjustment pursuant to 773(a)(6)(C)(iii) of the Act for the same reason that they do not qualify for an adjustment to NV. Petitioners state that the Department's regulations specify that the Department will limit allowances for differences in the circumstances of sales ''to those circumstances which bear a direct relationship to the sales compared'' (*see* 19 CFR section 353.56(a)(1)). In this instance, petitioners argue that the PIS and COFINS taxes are not imposed on ferrosilicon sales transactions, but instead, are assessed on gross receipts from operations, including sales and other revenues, but excluding revenues from export sales. Consistent with the Department's determinations in the 1993–1994 and 1994–1995 administrative reviews on silicon metal from Brazil, petitioners maintain that PIS and COFINS are not directly related to specific sales and do not qualify for a COS adjustment. For these reasons and for the similar reasons presented in *Comment 2,* the petitioners argue that the Department was correct not to adjust NV or U.S. price by PIS and COFINS taxes.

DOC Position: We agree with petitioners. As stated in *Comment 2* above, information on the record demonstrates that the PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue. Thus, these taxes are not imposed on the merchandise or components thereof. Therefore, because these taxes cannot be tied directly to ferrosilicon sales, we have no statutory basis to deduct them from NV. This position is consistent with our practice in Silicon Metal from Argentina 91 at *Comment 8* and *Comment 26.* We also agree with petitioners that because the PIS and COFINS taxes are gross revenue taxes, they do not bear a direct relationship to home market sales and, therefore, do not qualify for a COS adjustment. Therefore, for the purposes of these final results, we have not made an adjustment to NV for PIS and COFINS taxes.

B. VAT Incurred on Material Inputs. CBCC argues that the Department improperly included VAT (ICMS and IPI) in the calculation of CV. CBCC maintains that CV inclusive of VAT incurred on the purchase of material inputs led to an unfair comparison in the preliminary results. CBCC contends that in a tax scheme such as Brazil's, a respondent may be able to show that VAT on inputs did not in fact constitute a cost of materials for the exported product within the meaning of 19 U.S.C. 1677b(e)(1)(A). Citing Silicon Metal from Brazil 96, CBCC contends that Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code requires that dumping assessments be tax neutral and that this requirement has continued under the Agreement on Implementation of Article VI of the GATT. CBCC further contends that the above-referenced cite states that the URAA explicitly amended the antidumping law to remove consumption taxes from the home market price and eliminated the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. CBCC also contends that the Statement of Administrative Action states that this amendment was intended to result in tax neutrality which is the Department's guiding principle for dealing with VAT. For these reasons, CBCC asserts that it is improper for the Department to compare CV inclusive of VAT to a U.S. price exclusive of VAT, without first determining whether the VAT paid on the material inputs is a cost of materials for the exported product.

The petitioners argue that the Department was correct in including VAT (ICMS and IPI) paid on ferrosilicon material inputs in CV. Petitioners contend that the source of the language on tax neutrality that CBCC refers to in Silicon Metal from Brazil 96 only addresses adjustments for taxes paid on sales of the final product in price-based margin calculations but does not address taxes paid on inputs and the treatment of those taxes in CV-based margin calculations. Rather, petitioners contend that the Department's treatment of taxes on inputs used to produce exported merchandise in calculating CV is directly governed by the statute. Petitioners state that section 773(e)(1) of the Act provides that the CV of imported merchandise shall be an amount equal to the sum of the cost of materials. Furthermore, petitioners argue that section 773(e) provides that ''* * * that the cost of materials shall be determined without regard to an internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandises produced from such materials.''

Therefore, petitioners contend, the plain language of the statute states that a home market tax that is directly applicable to materials used in the manufacture of merchandise exported to the United States constitutes an actual cost of producing the exported merchandise unless, and only if, the tax is remitted or refunded upon the subsequent exportation of that merchandise. Petitioners argue that it is undisputed that CBCC paid ICMS and IPI taxes on inputs it used to produce exported ferrosilicon and that these taxes were not remitted or refunded upon exportation. As a result, petitioners maintain that the Department followed its established practice (see Silicon Metal from Brazil 96) of including ICMS and IPI taxes in CV.

The petitioners further assert that CBCC's claim that the Department must determine whether CBCC paid more VAT on inputs used to produce exported ferrosilicon than it collected on home market sales of ferrosilicon has already been rejected by the Department. Again citing Silicon Metal from Brazil 96, petitioners argue that the Department, in accordance with section 773(e) of the Tariff Act, did not account for the reimbursement to the respondents of ICMS and IPI taxes by means of home market sales of silicon metal.

DOC Position: We made only price-to-price comparisons for purposes of these final results. Therefore, since we did not resort to the use of CV, it was not necessary to address the above issue.

Comment 5: Home Market Credit Expenses. Minasligas argues that because Minasligas did not have short-

term borrowings during the POR, the Department understated the short-term borrowing rate used to calculate home market credit expenses by utilizing the ''taxa referential'' (TR). However, Minasligas contends that the TR rate is only a reference rate published by the Brazilian Central Bank and that Brazilian companies do not have access to this rate. In addition, Minasligas asserts that the TR rate is unrealistically low when compared to other short-term rates offered by commercial banks during the POR. For the final results, Minasligas contends that the Department should calculate home market credit expenses using a rate obtained from a commercial lender in effect during the POR such as those contained on the record in this proceeding. Minasligas contends that this practice is consistent with the Department's treatment of home market credit expenses calculated for Ferbasa in Ferrosilicon from Brazil 96.

The petitioners contend that the Department's use of the TR rate to calculate home market credit expenses and inventory carrying cost is consistent with the Department's previous practice. In this regard, petitioners cite Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review (62 FR 18,486, 18,487 (April 15, 1997)) (Cut-to-Length Plate from Brazil) where the Department determined that the TR rate is a benchmark comparable to a prime rate published by the Bank of Brazil and, therefore, used the TR rate to calculate home market credit expenses. Petitioners further claim that Minasligas itself stated that the TR rate was established to measure the cost of credit and that it is also the rate most widely used by companies in Brazil to determine the interest rate for short-term borrowing. (See Final Redetermination on Remand: Ferrosilicon from Brazil, LFTV Investigation (January 17, 1996) (Final Redetermination on Remand).)

Further, the petitioners argue that under established Department practice, ''it is up to a respondent to substantiate and document any adjustment or claim to the Department.'' (See Silicon Metal From Brazil 97.) Petitioners maintain that Minasligas failed to provide the Department with any evidence that the alternative interest rates on the record constitute ''published commercial bank prime short-term lending rates.'' The petitioners contend that Minasligas' submission of the monthly short-term borrowing rates of a commercial bank, BEMGE, that were in effect during the POR, were in fact only a fax listing 30-day interest rates for the period December 1994 through May 1996. Petitioners assert that Minasligas failed to provide any evidence that the listed rates were published or that they constitute prime rates. Similarly, petitioners also contend that no evidence exists to support Minasligas' claim that the bank lending rate published by the International Monetary Fund (IMF) constitutes prime rates or commercial bank interest rates for business loans. Rather, petitioners assert that the IMF rate is not a published commercial interest rate for short-term business loans, but rather a rate at which banks, not companies, can borrow. For these reasons, the petitioners argue that the Department properly used the TR rate in calculating Minasligas' home market imputed credit expenses.

DOC Position: We agree with petitioners. Consistent with Cut-to-Length Plate from Brazil, we determine that the TR rate is a benchmark comparable to a prime rate published by the Bank of Brazil. Therefore, in the absence of actual home market short-term borrowings and the lack of substantiated evidence that Minasligas could have borrowed at the interest rates provided at verification, we have used the TR rate as the interest rate in the calculation of imputed home market credit. Further, in response to Minasligas' argument that the Department did not use the TR rate in the preceding review of this case, we note that the company in question had actual home market short-term borrowings and, therefore, it was not necessary to resort to the use of the TR rate.

Comment 6: Date of Sale. Minasligas submits six arguments on the date of sale. First, Minasligas contends that the Department erred when it changed the date of sale for one U.S. sale reported as sold prior to the POR to within the POR. Minasligas argues that there is no sales document on the record justifying the use of a sale date within the POR for the sale in question. Moreover, Minasligas asserts that by using the date within the POR as the date of sale, the Department incorrectly used a date of sale that was subsequent to the date of shipment from the plant. Minasligas maintains that, as stated in the questionnaire, the date of sale cannot occur after the date of shipment. Therefore, Minasligas contends that the sale was improperly included in the calculation of export price in the preliminary results.

Second, Minasligas contends that the Department's position to exclude several U.S. sales of merchandise produced by Minasligas from the calculation of export price is supported by past Department practice. (See Silicon Metal from Brazil 96 and Silicon Metal From Brazil 97.)

Third, Minasligas contends that the issue as to whether to conduct a review and what sales to consider within the POR for dumping purposes are two different determinations which involve the two different concepts of entry and sale. In reviews where a respondent had one or more entries during the POR, Minasligas asserts that the Department's practice is to review the respondent's sales to determine the antidumping duty margin and, in accordance with section 751(a)(2), use this margin to assess the entries during the POR. In reviews where the respondent had no entries during the POR, Minasligas contends that the Department normally conducts a no shipment review.

Fourth, Minasligas contends that the Department is not required to tie sales to entries. (See Silicon Metal from Brazil 96.) Minasligas further contends that when the Department reviews all sales to an importer during the POR, the Department relies on the date of such sales to determine whether they are within the POR. The date of entry is of no relevance because the date of sale is the date on which the basic terms of the sale, particularly price and quantity, are agreed upon by the buyer and the seller. (*See* Department's 1996 Questionnaire, Appendix 1 at 5, Glossary of Terms.)

Fifth, Minasligas further argues that petitioners' arguments repeat that which was already rejected by the Department in the above-referenced final determinations. Finally, Minasligas also notes that all the determinations cited by the petitioners in support of their argument predate the determinations cited by Minasligas. For all of these reasons, Minasligas asserts that for the final results, the Department should determine Minasligas' antidumping duty rate based on Minasligas' sales during the POR and exclude from its dumping analysis sales which fall outside the POR.

Petitioners argue that regardless of the date of sale, the statute, legislative history, intended purpose of administrative reviews, and established Department practice require that the margin calculations in administrative reviews be based on entries that were made into the U.S. Customs territory during the POR. According to petitioners, the quantity, the ship date, and the name of the consignee of at least one of the sales in question is identical to the Piers Import/Export Reporting Service data indicating that this sale entered the United States during the POR. The petitioners, therefore, conclude that the Department should

include the sale in question in the final results margin calculations.

Morever, the petitioners argue that although these sales had dates of sale prior to the POR, these sales entered the U.S. customs territory during the POR and should therefore be included in the calculation of export price (see e.g., High-Tenacity Rayon Filament Yarn from Germany: Final Results of Antidumping Duty Administrative Review, 61 FR 51,421, 51,422 (October 2, 1996)). The petitioners argue that these entries have never been reviewed and that by excluding these sales, Minasligas' dumping margin for the preliminary results was understated.

DOC Position: We agree with Minasligas regarding its first point, that the Department erred when it changed the date of sale for one U.S. sale reported as sold prior to the POR to within the POR. After reviewing the sales documentation for this sale, we found that the verification report was incorrect with respect to the actual date of sale for this transaction. As a result, we determine that Minasligas correctly reported the date of sale for this transaction in its sales listing. However, we have included this sale in our final analysis based on the fact that this sale was shipped during the POR.

We agree with petitioners regarding the review of sales entered during the POR in export price situations. It has been the Department's practice to calculate dumping margins for export price sales based on sales entered during the POR. In fact, the antidumping questionnaire issued in this review specifically required companies to ''report each U.S. sale of merchandise entered for consumption during the POR, except: (1) For EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR. * * *'' We note that, in response to these questionnaire instructions, Minasligas reported certain sales with dates of sale prior to the POR. Minasligas appears, therefore, to have complied with the questionnaire instructions by reporting sales shipped or entered during the POR regardless of whether the date of sale was within the POR. Moreover, Minasligas does not deny that these sales were shipped or entered during the POR. Therefore, for these final results, we have included all such sales in our analysis.

Comment 7: The Dumping Margin Calculation. CBCC contends that the Department incorrectly calculated the dumping margin as a percentage of total U.S. sales value based on net U.S. prices, rather than gross unit prices. In doing so, CBCC claims that the Department overstated the dumping margin.

Petitioners contend that section 731(2)(B) of the Act requires that whenever the Department determines that foreign merchandise is being sold in the United States at less than fair value, there shall be imposed upon such merchandise an antidumping duty in an amount equal to the amount by which the NV exceeds the export price (or constructed export price) for the merchandise. Therefore, petitioners assert that by using the aggregate export prices for all U.S. sales as the denominator in the calculation of the dumping margin, the Department calculated CBCC's weighted-average dumping margin in accordance with the statute.

DOC Position: We disagree with CBCC. CBCC's margin was calculated in accordance with the Department's standard methodology of using aggregate value of net export prices to derive total U.S. sales value. (See Notice of Final Determination at LTFV: Certain Steel Concrete Reinforcement Bars from Turkey, 62 FR, 9737, (March 4, 1997).) Therefore, we have made no change for the final results.

Comment 8: Calculation of General and Administrative (G&A) and Interest Expense. Minasligas contends that the Department overstated the G&A used in the calculation of COP in the preliminary results. Specifically, Minasligas argues that the Department calculated a G&A rate as a percentage of the cost of sales based on the figures reported by Minasligas and Delp Enganharia Mecanica S.A. (Delp) in their financial statements and then mistakenly applied this rate to a COM which included VAT. Minasligas contends that due to the fact that VAT is neither an income nor an expense, VAT is not reflected in sales revenue or cost of sales on the income statement. To support its contention, Minasligas cites the Department's remand proceeding relating to the final determination of ferrosilicon from Brazil where the Department stated that it was incorrect to apply the calculated interest factor and profit percentage to a COM inclusive of VAT. (See Memorandum from Peter Scholl, Senior Accountant to Catherine Miller, Program Manager, January 17, 1996, Remand of July 20, 1995, Consolidated Court 90. 94–03–00182). Minasligas, therefore, contends that because VAT was not part of the cost of sales upon which the G&A rate was calculated, the Department should apply the G&A rate to a COM exclusive of VAT.

Similarly, CBCC contends that in the preliminary results the Department overstated G&A and interest expenses used in the calculation of CV. Specifically, CBCC argues that the G&A expenses and interest expenses were overstated because the Department applied these ratios on a COM that included VAT. Because the countries in which CBCC and its parent company are located (*i.e.*, Brazil and Belgium, respectively) are countries with a VAT system, CBCC asserts that for the final results the Department should deduct ICMS from COM to calculate the G&A and interest expense. CBCC provided revised calculations for G&A and interest.

Although petitioners agree with Minasligas and CBCC that the Department overstated G&A and interest expenses when it calculated those expenses using a COM inclusive of VAT paid on inputs, petitioners contend that CBCC's revised percentages are wrong. First, petitioners maintain that CBCC failed to include PIS and COFINS taxes in its calculations of CV. Second, petitioners argue that CBCC did not use the correct ratios for calculating G&A and interest.

DOC Position: We agree with all parties that it was incorrect to apply the calculated ratios for G&A and interest to a COM inclusive of VAT in the calculation of COP. However, we note that both respondents reported G&A and/or interest expenses based on a COM inclusive of VAT. Thus, for purposes of the final results, we calculated the G&A for Minasligas and G&A and interest expenses for CBCC used in the calculation of COP, based on the COM exclusive of VAT. For the reasons stated in *Comment 2* above, we have continued to include PIS and COFINS taxes in COP (see Cost Calculation Memorandums for Minasligas and CBCC, each dated July 28, 1997, for further discussion). Since we made only price-to-price comparisons for purposes of these final results, it was not necessary to address this issue with respect to CV.

Comment 9: Calculation of Depreciation Expense for Minasligas. Petitioners argue that the Department understated depreciation in its COP and CV calculations by using the amount reported by Minasligas which understated depreciation in the current period as a result of its use of accelerated depreciation in prior years. For the final results, petitioners contend that the Department should recalculate depreciation for Minasligas, eliminating any prior year's accelerated depreciation.

Minasligas argues that it has historically used accelerated depreciation in its financial records and

such methodology is consistent with Brazilian GAAP. Minasligas maintains that the Department has accepted its use of accelerated depreciation in prior proceedings.

DOC Position: We disagree with petitioners that Minasligas' depreciation calculation is unacceptable because it is based on accelerated depreciation. Minasligas' methodology of depreciation is based on its financial records, which are consistent with Brazilian GAAP and do not distort actual costs. In this regard, the Department's position is consistent with the decision of the Court of International Trade, which supported the Department's calculation of depreciation based on a respondent's actual financial records which do not distort actual costs. Moreover, in previous silicon metal reviews, we have used accelerated depreciation where Minasligas has historically reported depreciation on this basis for purposes of its financial statements (see Silicon Metal From Brazil 97). Moreover, we have applied this practice in other instances (see Final Determination of Sales at Less Than Fair Value Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom; 61 FR 51411, 51418 (October 2, 1996)) and *Laclede Steel Co.* v. *United States,* 18 CIT 965, 975 (1994)). Therefore, for purposes of these final results of review, we have continued to use Minasligas' reported depreciation in calculating COP and CV.

Comment 10: Calculation of G&A Expenses. Petitioners claim that the Department failed to include amounts for social contributions in the reported G&A expense despite the fact that the Department has a longstanding practice of including social payments such as severance, social security or pension expenses in the G&A expense. Petitioners argue that the Department should include provisions for social contributions in the calculation of the G&A expense.

Minasligas argues that petitioners misinterpreted Minasligas' financial statements because the social contributions are not a cost of producing the merchandise, but a federal tax similar to the income tax levied by the government as a percentage of profit. Minasligas further argues that the social contributions are not social payments such as social security or pension expenses which were properly reported either as part of direct labor costs or as part of the G&A expenses for administrative employees.

DOC Position: We agree with Minasligas. The social contributions at issue are a type of federal income tax which is deducted from profit. All other social charges and fringe benefits were properly accounted for either as part of direct labor costs or as part of G&A expenses. Accordingly, no adjustment has been made for the final results.

Comment 11: Calculation of Indirect Selling Expenses. Petitioners contend that the Department determined per-unit indirect selling expenses for Minasligas by multiplying the gross-unit price for home market sales by an indirect selling expense ratio. Petitioners state that, in calculating the ratio, the Department divided the sum of the monthly company-wide indirect selling expenses by the sum of the monthly sales values for all products during the POR. However, the petitioners claim that in calculating the monthly values, the Department incorrectly added rather than subtracted the value of returned merchandise. In doing so, petitioners argue that the Department overstated the denominator of the indirect selling expense ratio, thus understating the ratio, which in turn understated the calculated per-unit indirect selling expenses.

Regarding CBCC, the petitioners claim that CBCC allocated indirect selling expenses among its products to the relative sales volume of those products. Petitioners note that the Department's verification report in this proceeding states that ''because indirect selling expenses are a value-based expense, CBCC should have allocated the total commercial department expenses over the value of merchandise sold during the POR, not the tonnage sold.'' Petitioners further note that, while at verification, the Department did not collect data regarding the total value of CBCC's sales of silicon metal and calcium carbide during January and February 1996. As a result, it is not possible to perform the proper allocation of indirect selling expenses based on sales value. Therefore, petitioners argue that the Department should request CBCC to provide a worksheet and supporting documentation showing the total sales value of the above products for January and February 1996.

DOC Position: We made only price-to-price comparisons for purposes of these final results. Therefore, since we did not resort to the use of CV, it was not necessary to address the above issues.

Comment 12: Conversion of U.S. Sales Prices Denominated in U.S. Dollars. The petitioners contend that the prices for Minasligas' U.S. sales were negotiated in U.S. dollars and paid for in U.S. dollars. However, Minasligas reported the gross unit price for its U.S. sales in Brazilian reais. Petitioners maintain that the Department used these Brazilian-currency prices in its preliminary results margin calculations. Petitioners cite Silicon from Brazil 96 and 97, as the Department's established practice of using the actual U.S. price in the currency in which it was originally denominated on the date of sale, and to avoid any unnecessary currency conversion. Therefore, for the final results, the petitioners contend that the Department should use U.S. dollar-denominated gross prices reported in the sales listing, rather than the Brazilian-reais denominated gross unit prices, as the starting U.S. price for calculating the dumping margin.

DOC Position: We agree in part with petitioners. It is established Department policy to use the actual U.S. price in the currency in which it was originally denominated on the date of sale and to avoid any unnecessary currency conversion. (See Ferrosilicon from Brazil, (January 14, 1997).) In this case, Minasligas reported its U.S. sales in Brazilian currency rather than U.S. dollars. However, at verification, we were able to confirm the accuracy of the Brazilian currency amounts reported by Minasligas because, in addition to the commercial invoice (denominated in U.S. dollars), Minasligas also issues a Brazilian-denominated invoice which we examined for selected U.S. sales. Further, for purposes of the preliminary results, we did convert the U.S. sales prices reported in Brazilian currency to U.S. dollars on the date of sale for purposes of calculating Minasligas' margin. We have continued this practice for these final results as Minasligas' U.S. dollar prices are not on the record.

Comment 13: Calculation of Depreciation for CBCC. The petitioners argue that in its preliminary results, the Department failed to take into account idle asset depreciation for a certain number of furnaces. The petitioners contend that record evidence indicates that the furnaces were idle during a portion of the POR. Therefore, petitioners maintain that the Department should include in COP/CV the total depreciation expenses for the furnaces for the periods during which those furnaces were idle.

CBCC claims that the furnaces which were idle during the POR are fully depreciated since they were built in 1934 and 1947. CBCC states that there is no factual justification for allocating depreciation expense for idle assets which were fully depreciated.

DOC Position: We agree with CBCC. At verification, we confirmed that the furnaces at issue were fully depreciated long before the POR. Accordingly, we determine that the adjustment to COP

proposed by the petitioners is not warranted here. Since we made only price-to-price adjustments or purposes of these final results, it was not necessary to address this issue with regards to CV.

Comment 14: Calculation of Interest Expense. The petitioners argue that in the preliminary results the Department incorrectly calculated CBCC's financial expenses based on the consolidated financial statement of its Belgian parent company, Solvay & Cie. The petitioners claim that it was incorrect to use the consolidated financial statements because Solvay & Cie's actual financial expense is less than one half of the financial expense actually incurred by CBCC. Therefore, the petitioners contend that calculating financial expenses using a ratio based on Solvay & Cie's consolidated financial statements resulted in a gross understatement of the financial expenses actually incurred by CBCC. Thus, for the final results, the petitioners assert that the Department should calculate financial expenses based on CBCC's financial statements.

DOC Position: We disagree with the petitioner. The Department's established policy is to calculate interest expense incurred on behalf of the consolidated group of companies to which the respondent belongs, based on consolidated financial statements, regardless of whether or not the respondent's financial expense is higher than that of the controlling entity. This practice recognizes two facts: (1) The fungible nature of invested capital resources such as debt and equity of the controlling entity within a consolidated group of companies, and (2) the controlling entity within a consolidated group has the power to determine the capital structure of each member country within its group. (See Aramid Fiber Formed of Poly ParaPhneylene Terephthalamide From the Netherlands; Final Results of Antidumping Administrative Review, 62 FR 136 (July 16, 1997), Silicon Metal From Brazil 97, Final Determination at Less Than Fair Value: Ferrosilicon from Brazil: 59 FR 732, 736 (January 6, 1994) and *Cambargo Correa Metais, S.A.* v. *United States,* Slip Op. 93–163 (CIT August 13, 1993.) Therefore, for these final results, we have calculated CBCC's net interest expense based on the consolidated financial statements of its parent company, Solvay & Cie.

Comment 15: Interest Income as an Offset to Interest Expenses. The petitioners argue that the Department should not make an adjustment to the reported interest expense for the amount of interest income reported on CBCC's financial statement. The petitioners claim that it is CBCC's responsibility to substantiate and document any adjustment or claim to the Department. Since CBCC provided no information in its questionnaire response regarding the interest income earned, the petitioners assert that the Department should calculate the financial expense ratio without any offset for interest income.

CBCC contends that in its questionnaire response CBCC calculated consolidated financial expenses based solely on interest expense without any deduction for interest income. CBCC argues that should the Department depart from its well-established practice of using consolidated financial expenses, CBCC requests the opportunity to submit all information needed to support its interest income.

DOC Position: As explained in our response to *Comment 14*, we have used CBCC's consolidated financial expenses. Therefore, we have made no adjustments to the reported consolidated interest for interest income as CBCC did not report interest income on a consolidated basis.

Comment 16: Alleged Errors in the Calculation of CV. Minasligas asserts that the Department did not make any price-to-CV comparisons in the preliminary results, but in the event that the Department resorts to the use of CV in the final results, Minasligas contends the following:

(1) That the Department incorrectly calculated the field CVTAX as equal to the greater of the VAT paid on inputs or the VAT collected on export sales in the computer margin program. Minasligas argues that the statute does not require that VAT collected on export sales be included in CV. Minasligas asserts that the Department's position, which is currently challenged in the Court of Appeals for the Federal Circuit (see *Aimcor et al.* v. *United States,* Slip Op. 95–130 (July 20, 1995) at 20 *et seq.*), is that only taxes on material inputs which are not remitted or refunded upon export are included in CV as a part of the cost of material. Minasligas argues that if tax collections on sales exceed payments on inputs, the Department should make the required adjustments in calculating the foreign unit price in dollars (FUPDOL).

(2) That the Department failed to deduct home market imputed credit expenses from the calculation of CV, resulting in an overstatement of the FUPDOL because the COS adjustment only added U.S. credit expenses.

(3) That the Department erred when it weight-averaged the profit rate based on sales quantity rather than sales value. Instead, Minasligas contends that the Department should have calculated the average home market profit using its normal methodology (*i.e.,* the sum of the total profit for each transaction divided by the total COP value for all the transactions). Morever, Minasligas argues that under its normal methodology, the Department calculates an overall profit rate for the transactions weighted on value rather than quantity.

With respect to the first issue, petitioners contend that the Department's margin calculations demonstrate that the Department included VAT paid on inputs in CV, not ICMS tax collected on export sales. Further, the petitioners claim that the Department properly included those taxes in CV because they are a cost of materials for the reasons presented in *Comment 4 (B).*

With respect to the third issue, the petitioners contend that a review of the profit margin calculation shows that the Department did not do what Minasligas claims the Department did and, in fact, did what Minasligas claims the Department should have done. The petitioners argue that the Department first determined the aggregate value of net home market prices for all of the above-cost sales and the aggregate COP for those sales. The Department then subtracted the aggregate COP from the aggregate value of net home market prices for above-cost sales, thereby determining the aggregate amount of profit for those sales. This aggregate profit amount was then divided by the aggregate COP to arrive at a profit ratio. Thus the petitioners assert that, contrary to Minasligas's claims, the Department properly calculated the profit ratio.

DOC Position: We made only price-to-price comparisons for purposes of these final results. Therefore, since we did not resort to the use of CV, it was not necessary to address the above issues.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period March 1, 1995 through February 29, 1997:

Manufacturer/exporter	Percent margin
CBCC	0.00
Minasligas	3.51

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated importer-specific *ad valorem* duty assessment rates for the merchandise based on the ratio of the

total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. This method has been upheld by the courts. (See e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 61 FR 2081, 2083 (January 15, 1997); FAG Kugelfischer Georg Schafer KgaAv. *United States, No. 92–07–00487,* 1995 Ct. Int'l Trade LEXIS 209, at CIT*10 (September 14, 1995), aff'd. No. 96–1074 1996 U.S. App. Lexis 11544 (Fed. Cir. May 1996).

The Department will issue appraisement instructions directly to the Customs Service. Individual differences between United States price and NV may vary from the percentages stated above. Furthermore, the following deposit requirements will be effective upon publication of these final results of review for all shipments of ferrosilicon from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act, and will remain in effect until publication of the final results of the next administrative review: (1) The cash deposit rates for the reviewed companies will be those rates listed above except for CBCC, which had a de minimis margin, and whose cash deposit rate is therefore zero; (2) for previously reviewed or 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, a prior review, or the original LTFV 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) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or in the LTFV investigation conducted by the Department, the cash deposit rate will be 91.06 percent, the ''all others'' rate established in the LTFV investigation.

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 also serves as a 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 the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations 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 (19 U.S.C. Sec. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 6, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–21583 Filed 8–13–97; 8:45am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; 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 May 5, 1997, the Department of Commerce (the Department) published the preliminary results of antidumping duty administrative review of the antidumping duty order on pure magnesium from Canada. The review covers one manufacturer/exporter, Norsk Hydro Canada Inc. (NHCI), of the subject merchandise to the United States for the period August 1, 1995 through July 31, 1996.

We gave interested parties an opportunity to comment on the preliminary results of review but received no comments. Therefore, these final results of review are the same as those presented in our preliminary results. The review indicates the existence of no dumping margins for NHCI during this period.

EFFECTIVE DATE: August 14, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act.

Background

On August 31, 1992, the Department published in the **Federal Register** (57 FR 39399) the antidumping duty order on pure magnesium from Canada. On May 5, 1997, the Department published in the **Federal Register** the preliminary results of antidumping duty administrative review of this antidumping duty order (62 FR 24417). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act.

Scope of the Review

The product covered by this review is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope currently classifiable under subheading 8104.11.0000 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

The review covers one Canadian manufacturer/exporter, NHCI, and the period August 1, 1995 through July 31, 1996.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results of review but received no comments. Therefore, these final results of review are the same as those presented in our preliminary results. We have determined that a margin of zero percent exists for NHCI for the period August 1, 1995 through July 31, 1996. The Department will issue appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for NHCI will be zero percent; (2) for manufacturers or exporters other than NHCI that were covered in the original less-than-fair-value investigation or a previous review, 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) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value 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 will continue to be 21 percent, the ''all others'' rate established in Pure Magnesium From Canada; Amendment of Final Determination of Sales At Less Than Fair Value and Order in Accordance With Decision on Remand, 58 FR 62643, November 29, 1993.

This notice also serves as a final reminder to importers of their responsibility under 19 C.F.R. 353.26 (1997) 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 also serves as a 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 C.F.R. 353.34(d) (1997). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22 (1997).

Dated: August 5, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–21580 Filed 8–13–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. In accordance with 19 CFR 353.22(h), we are initiating this administrative review.

EFFECTIVE DATE: August 14, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Zak Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0189 or 482–1279, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the ''interim'' regulations published in the **Federal Register**, May 11, 1995 (60 FR 25133).

SUPPLEMENTARY INFORMATION:

Background

On May 30, 1997, the Department of Commerce (''the Department'') received a timely request from Changshan Bearing Factory (''Changshan''), in accordance with 19 CFR 353.22(h), for a new shipper review of the antidumping duty order on tapered roller bearings (''TRBs'') from the People's Republic of China (''PRC'') which has a June anniversary date. Changshan has certified that it did not export tapered roller bearings to the U.S. during the period of investigation (POI) and that it is not affiliated with any exporter or producer which did export tapered roller bearings during the POI. This certification is in accordance with section 751(a)(2)(B)) of the Tariff Act of 1930 as amended, and 19 CFR 353.22(h). In addition, Changshan has certified that it is not controlled by the government of the PRC. Therefore, we are initiating the new shipper review as requested. It is the Department's usual practice with non-market economies to require information regarding *de jure* and *de facto* government control over a company's export activities to establish its eligibility for an antidumping duty rate separate from the country-wide rate. Accordingly we will issue a separate rates questionnaire to Changshan and seek additional information from the PRC government (as appropriate), allowing 30 days for response. If the responses from Changshan and the PRC government indicate adequately that Changshan is not subject to either *de jure* or *de facto* government control with respect to its exports of tapered roller bearings, the review will proceed. If, on the other hand, Changshan does not demonstrate its eligibility for a separate rate, Changshan will be deemed to be affiliated with other companies that exported during the POI that did not establish their entitlement to a separate rate, and the review will be terminated.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 353.22(h)(6), we are initiating a new shipper review of the antidumping duty order on tapered roller bearings from the PRC. Changshan has agreed to waive the time limits of 19 CFR 353.22(h)(7), in order that the Department may conduct this review concurrent with the administrative review of this order for the period 6/1/96–5/31/97 as requested pursuant to section 751(a) of the Act. See, Antidumping Duties, Countervailing Duties; Final rule, 62 FR 27295, 27395 (5/19/97). Therefore, we intend to issue the final results of review not later than 365 days after the last day of the anniversary month. In accordance with our practice, all other provisions of section 353.22(h) will apply to Changshan throughout the duration of this new shipper review. See *Id*.

Antidumping duty proceeding	Period to be reviewed
PRC: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, A–570–601:	
Changshan Bearing Factory	06/01/96–05/31/97

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or

security in lieu of a cash deposit for each entry of the merchandise exported by the above listed company, in accordance with 19 CFR 353.22(h)(4).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 353.22(h).

Dated: August 8, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Office of AD/CVD Enforcement.

[FR Doc. 97–21581 Filed 8–13–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080697E]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Regional Fishery Management Council (Council) will hold its 93rd meeting.

DATES: The meeting will be held August 18–21, 1997. See SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: The meeting will be held at the Ala Moana Hotel, Honolulu, Hawaii; telephone: (808) 955–4811.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION:

August 18, 1997, 9:00 a.m. to 12:00 p.m.

The Pacific Insular Areas Fishing Agreement (PIAFA) Working Group will meet.

August 18, 1997, 2:00 - 5:00 p.m.

The Fisheries Data Coordinating Committee will meet.

August 19, 1997, beginning at 7:30 a.m.

The Council's Standing Committees will meet.

August 20–21, 1997, beginning at 9:00 a.m. each day

The full Council will meet.

August 20 at 4:00 p.m.

A Fishermen's Forum

The Council will discuss and take possible action on the following agenda items:

1. Enforcement issues, including:
   a. Vessel Monitoring System (VMS) scoping report for American Samoa;
   b. Report on the Hawaii VMS Program;
   c. Progress with international VMS systems;
   d. VMS data confidentiality issues;
   e. Use of VMS data for fisheries research; and
   f. Standing committee recommendations;
2. Pelagic fishery issues, including:
   a. Status of the fishery;
   b. Pelagic fisheries research;
   c. Summaries of international meetings including possible participation in international management regime for tuna for the western and central Pacific Ocean;
   d. Bycatch/incidental take issues (albatross, turtles, sharks);
   e. American Samoa longline fishery management recommendations;
   f. Joint Advisory Panel/Plant Team recommendations;
   g. Scientific and Statistical Committee (SSC) recommendations; and
   h. Standing Committee recommendations;
3. Crustacean (lobster) fishery management issues, including:
   a. Report on 1997 lobster season for the Northwestern Hawaiian Islands (NWHI), including harvest guidelines;
   b. NMFS annual research cruise;
   c. NWHI lobster research program;
   d. Use of VMS for data transmission and catch reporting;
   e. Regulatory inconsistencies with Main Hawaiian Islands (MHI);
   f. Discussion of areas not included in the fishery management plan (Northern Mariana Islands (NMI), Palmyra, Johnston, Kingman);
   g. Hawaii Plan Team recommendations;
   h. SSC recommendations; and
   i. Standing Committee recommendations;
4. Bottomfish management issues, including:
   a. Status of the fishery and the State of Hawaii's plan for dealer reporting;
   b. Status report on Department of Land and Natural Resources' regulations for over-fished MHI onaga and ehu fisheries and Federal considerations;
   c. NWHI bottomfish management system including draft amendment for Mau Zone limited entry program, Task Force report, and status of new entry into the Hoomalu Zone;
   d. Armorhead fisheries;
   e. Public hearing;
   f. Hawaii Bottomfish Plan Team/ Advisory Panel recommendations;
   g. SSC recommendations; and
   h. Standing committee recommendations;
5. Native and Indigenous fishing issues, including:
   a. Report of the PIAFA Working Group;
   b. PIAFA marine conservations plans and the Western Pacific Sustainable Fisheries Fund Marine Conservation Plan;
   c. Status of the Advisory Panel for Western Pacific Demonstration Projects;
   d. Report on the NMI turtle study;
   e. Standing Committee recommendations; and
   f. Advisory Panel recommendations;
6. Ecosystems and Habitat management issues including:
   a. Final region-wide coral reef assessment;
   b. Report on progress with draft amendments for Essential Fish Habitat;
   c. Summary of recent activities in Hawaii, Guam and Commonwealth of the Northern Mariana Islands;
   d. Public hearing;
   e. Advisory Panel recommendations;
   f. SSC recommendations; and
   g. Standing Committee recommendations;
7. Precious Corals management including:
   a. Status of the fishery at Makapuu;
   b. Draft amendment for framework process;
   c. Advisory Panel/Ecosystem & Habitat recommendations;
   d. SSC recommendations; and
   e. Standing committee recommendations;
8. Program planning issues, including progress on Magnuson-Stevens Act requirements, including draft amendments to fisheries management plans regarding:
   a. Essential Fish Habitat;
   b. Bycatch;
   c. Overfishing;
   d. Fishing sectors; and
   e. Fishing communities; and
9. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: August 8, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–21457 Filed 8–11–97; 8:54 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080697C]

Endangered Species; Permits

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

ACTION: Issuance of scientific research permit 1052.

SUMMARY: Notice is hereby given that on August 5, 1997, NMFS issued scientific research permit 1052 to Joseph E. Hightower, of the North Carolina Cooperative Fish and Wildlife Research Unit (P647), to take listed shortnose sturgeon for the purpose of scientific research subject to certain conditions set forth therein.

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, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

SUPPLEMENTARY INFORMATION: Notice was published on June 3, 1997 (62 FR 31576) that an application had been filed by Joseph E. Hightower, of the North Carolina Cooperative Fish and Wildlife Research Unit(P647), to take listed shortnose sturgeon 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).

The applicant requested a two-year permit to capture, examine, tag, and take tissue samples of 25 juvenile and adult listed shortnose sturgeon annually within the Albemarle Sound estuarine system. A maximum of 25 shortnose sturgeon will be collected from the Albemarle Sound to determine the status of shortnose sturgeon in the estuary and to examine habitat selection and overlap for shortnose sturgeon and juvenile Atlantic sturgeon. The sturgeon will be examined, measured, photographed, and tagged. Sonic transmitters will be externally attached to the sturgeon to monitor their movement within the Sound. The sturgeon will be released immediately following the above procedures. All of these adult shortnose sturgeon may be fitted with a sonic transmitter. The applicant also has requested one incidental mortality per year. The purpose of the research is to determine the status of shortnose sturgeon migratory movements and to help identify spawning, feeding, and overwintering areas.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith, (2) will not operate to the disadvantage of the listed species that is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 8, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–21532 Filed 8–13–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080797A]

Marine Mammals; Public Display Permit (PHF# 852–1356)

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that The Dallas World Aquarium, Inc., 1801 North Griffin, Dallas, TX 75202, has applied in due form for a permit to import Amazon River dolphin (*Inia geoffrensis*), for purposes of public display.

DATES: Written comments must be received on or before September 15, 1997.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13130, Silver Spring, MD 20910, (301/713–2289); and

Regional Administrator, Southeast Region, NMFS, 9731 Executive Center Drive North, St. Petersburg, FL 33702, (206/526–6150).

Written data or views, or requests for a public hearing on this application, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Director, Office of Protected Resources.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authorization to import four Amazon River dolphins (*Inia geoffrensis*). The Venezuelan Service Agency for the Protection, Restoration, Promotion and Rational Utilization of the Wildlife and Aquatic life of the Country has issued a capture license to the applicant. The dolphins would be collected from the Apure River near San Fernando, Venezuela, and maintained at the J.V. Seijas Aquarium in Valencia, Venezuela, until the public display facility at the Dallas World Aquarium receives final approval from the Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). As any issues relating to the care and maintenance of captive marine mammals are within the purview of APHIS, under the Animal Welfare Act, copies of the application are also being sent to APHIS for review.

The Dallas World Aquarium is open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging an admission fee; and offers an educational program based upon the educational standards of the American Zoo and Aquarium Association.

The International Union for Conservation of Nature and Natural Resources (IUCN) has included this species in the 1996 IUCN Red List of Threatened Animals under the category ''vulnerable'', i.e., taxa believed likely to move into the Endangered category in the near future if causal factors continue operating. Population data concerning *Inia geoffrensis* in Venezuela is limited and the application states that no census has been taken of the subject wild population/stock. Therefore, NMFS has concerns about the status and conservation of the dolphins in the Orinoco river system and the potential

impacts of the permanent removal of four sub-adults from this population/stock.

Additionally, NMFS is concerned that holding this species in captivity may involve a significant risk to the health and welfare of the animals held. Historically, study results conclude that due to a number of factors this species has fared poorly in captivity in the United States, with an average longevity of 32.6 months for the 35 animals for which data was available. (See *Inia geofffensis in Captivity in the United States*, Melba C. Caldwell, David K. Caldwell and Randall L. Brill. 1989. Proc. Workshop on Biology and Conservation of the Platanistoid Dolphins, Wuhan, People's Republic of China. The World Conservation Union (IUCN), Occasional Papers of the IUCN Species Survival Commission, Number 3. 35–41.) The applicant has addressed, in part, some of the survivability factors raised in the Caldwell study, citing successful behavioral experiences with this species at the J.V. Seijas Aquarium in Valencia, Venezuela. The applicant submitted additional information on August 4, 1997, to address the concerns cited above; however, several aspects of these concerns persist. As a result, before decision is made to issue or deny issuance of a permit, NMFS is soliciting information that will assist the agency in determining whether: (1) The applicant meets the three public display criteria; (2) the proposed activity is humane and does not present any unnecessary risks to the health and welfare of the marine mammals; (3) the proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and (4) the applicant's expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application.

Dated: August 8, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–21464 Filed 8–13–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Romania; Correction

August 8, 1997.

In the letter to the Commissioner of Customs published in the **Federal Register** on July 23, 1997 (62 FR 39501), column 2, under the heading ''Adjusted twelve-month limit,'' the unit of measure for Category 410 should be corrected from ''dozen'' to ''square meters.''

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–21506 Filed 8–13–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Notice of Availability; Chicago Mercantile Exchange Proposed Amendments to the Standard & Poor's 500 Stock Price Index Futures and Futures Option Contracts and the E-Mini Standard and Poor's 500 Stock Price Index Futures and Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to the multiplier and minimum price fluctuation provisions in the Standard & Poor's 500 Stock Price Index futures and futures option contracts and the minimum price fluctuation provisions in the E-Mini Standard and Poor's 500 Stock Price Index futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME) has submitted proposed amendments to halve the multiplier in the Standard & Poor's 500 Stock Price Index (S&P 500) futures contract and to double the minimum price fluctuation in the S&P 500 futures and option contracts. The CME also has submitted proposed amendments to increase the minimum price fluctuation limit in the E-Mini Standard & Poor's 500 Stock Price Index (E-Mini S&P 500) futures and futures option contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before August 29, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the index multiplier and minimum tick provisions of the S&P 500 futures and futures option contracts and the minimum tick provisions of the E-Mini S&P 500 futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, telephone 202–418–5278. Facsimile number: (202) 418–5527. Electronic mail: tleahy@cftc.gov.

SUPPLEMENTARY INFORMATION: The CME proposes to halve the contract size of the S&P 500 futures contract by reducing the index multiplier to $250 times the S&P 500 from $500 times the S&P 500. The CME also proposes to increase the S&P 500 futures and option minimum price fluctuations to 0.10 index point from 0.05 index point, thus maintaining the dollar value of the minimum tick at $25.00 per contract. Under the proposal, the unit of trading in the S&P 500 futures option contract would be two S&P 500 futures contracts. Thus, the S&P 500 futures option would be exercisable into two futures contracts. The CME has represented that it intends to implement these amendments in October or November 1997 for application to existing and newly listed contract months beginning with the December 1997 contracts.

Separately, the CME proposes to increase the size of the minimum price fluctuation in the E-Mini S&P 500 futures and option contracts to 0.25 index point ($12.50 per contract) from 0.10 index point ($5.00 per contract). Those amendments would be implemented, for newly listed contract months only, at the time the E-Mini S&P 500 futures and option contracts are listed for trading.

In support of its proposal to apply the proposed S&P 500 futures and option contract amendments to existing contracts, the CME stated that sufficient advance notice would be provided to those who choose to offset their positions. Further, the CME stated that,

because of the nature of a competitive marketplace, ''commission and brokerage rates will fall to one half of their current levels,'' although ''the extent and rate of decline cannot be estimated with precision.'' Moreover, ''the users' all-in costs will be sufficiently reduced by the anticipated improvements in liquidity to more than offset any increases in commission and brokerage payments that may occur.''

The Division specifically requests comment with regard to the CME proposal to apply the proposed amendments to the S&P 500 futures and option contracts to currently listed contract months. In addition, the Division requests comment on the proposal to double the minimum tick in the S&P 500 futures and futures option contracts to 0.10 index point, and the proposal to increase the minimum tick in the E-Mini S&P 500 futures and option contracts to 0.25 index point.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CME in support of the proposals may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CME should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 8, 1997.

John Mielke,

Acting Director.

[FR Doc. 97–21520 Filed 8–13–97; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Applications of the NYMEX for Designation as a Contract Market in Futures and Options on the Hong Kong Stock Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The New York Mercantile (NYMEX or Exchange) applied for designation as a contract market in futures and futures options on the Hong Kong stock index. Comment on the proposed contracts was requested in a **Federal Register** notice dated November 19, 1996 (61 FR 58864). The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment on the NYMEX's proposals is warranted.

DATES: Comments must be received on or before August 29, 1997.

ADDRESSES: Interested persons should submit their views and commends to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the NYMEX Hong Kong stock index futures and options.

FOR FURTHER INFORMATION, CONTACT: Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW., Washington, 20581, telephone (202) 418–5278. Facsimile number: (202) 418–5527. Electronic mail: tleahy@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the NYMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYMEX should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 8, 1997.

John R. Mielke,

Acting Director.

[FR Doc. 97–21519 Filed 8–13–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Department of Defense Acquisition University.

ACTION: Board of Visitors Meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Defense Systems Management College (DSMC), 9000 Belvoir Road, Building 184, Fort Belvoir, Virginia on Wednesday, September 10, 1997 from 0830 until 1600. The purpose of this meeting is to report back to the BoV on continuing items of interest and discuss the DAU distance learning initiatives. The agenda will include continuing discussions concerning acquisition research, development of the continuing acquisition education policy, and the development of the DAU distance learning program plan and schedule.

The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mrs. Joyce Reniere at (703) 805–5134.

Dated: August 8, 1997.

L.M. Bynum,

Alternate, OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 97–21432 Filed 8–13–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on September 2, 1997; September 9, 1997; September 16, 1997; September 23, 1997; and September 30, 1997; at 10:00 in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: August 6, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–21433 Filed 8–13–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for the Relocation of Military Traffic Management Command (MTMC) CONUS Command Headquarters to Fort Eustis, Virginia

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Pub. L. 101–510, the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure of Military Ocean Terminal, Bayonne, New Jersey, and the Oakland Army Base, California, and relocation of MTMC Western Area and MTMC Eastern Area Headquarters to a location to be determined by the Army. The U.S. Army selected Fort Eustis, Virginia, as the preliminary site.

An Environmental Assessment (EA) examined the proposed transfer of 472 positions (approximately 35 military and 437 civilians) to Fort Eustis, Virginia, and the associated construction of the administrative facility. Plans for relocation include renovating existing space in Buildings 661 and construction of a 34,900 square foot addition.

MTMC CONUS Command Headquarters would be the sole occupant of the unified structure. Personnel currently working in the selected building will be permanently relocated to building 662. It is anticipated that 139 civilian personnel will transfer with their positions.

The EA found that no significant adverse environmental impacts would occur as a result of the proposed action. Therefore, based on the analysis found in the EA, which was incorporated into the FNSI, it has been determined that implementation of the proposed action will not have significant individual or cumulative impacts on the quality of the natural or human environment. Because no significant environmental impacts will result from implementation of the proposed action, an Environmental Impact Statement is not required and will not be prepared.

DATES: Public comments will be accepted for 30 days following publication of this Notice of Availability before the Army proceeds with the proposed action.

ADDRESSES: Copies of the EA/FNSI may be obtained by writing to, and any inquiries and comments concerning the same should be addressed to Mr. Richard Muller, U.S. Army Corps of Engineers, Norfolk District, ATTN: CENAO–PL–R, 803 Front Street, Norfolk, VA 23510–1096.

FOR FURTHER INFORMATION CONTACT:

Questions regarding this FNSI may be directed to the U.S. Army Corps of Engineers, ATTN: Mr. Richard Muller, at 757–441–7767.

Dated: August 8, 1997.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 97–21441 Filed 8–13–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for the Draft Environmental Impact Statement (DEIS) on the Disposal and Reuse of the Former Fitzsimons Army Medical Center, Now U.S. Army Garrison-Fitzsimons (USAG-F), Aurora, Colorado

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: The proposed action evaluated by this DEIS is the disposal of USAG–F, Aurora, Colorado, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510. The DEIS addresses the environmental consequences of the disposal and subsequent reuse of the 577-acre installation except for a 21.8 acre enclave for the McWhethy Army Reserve Center.

The DEIS analyzes three disposal alternatives: (1) The No Action Alternative, which entails maintaining the property in caretaker status after closure; (2) the Encumbered Disposal Alternative, which entails transferring the property to future owners with Army-imposed limitations, or encumbrances, on the future use of the property; and (3) the Unencumbered Disposal Alternative, which entails transferring the property to future owners with fewer or no Army-imposed limitations, or encumbrances, on the future use of the property. The impacts of reuse are evaluated in terms of land use intensities. The Fitzsimons Redevelopment Authority developed the reuse alternatives. The resource areas evaluated for potential impacts by the proposed action (disposal) and the secondary action (reuse) include: Land use; climate; air quality; noise; geology, soils, and topography; water resources; infrastructure; regulated substances; biological resources and ecosystems; cultural resources; sociological environment; quality of life; installation agreements, and permits and regulatory authorizations.

A public scoping meeting was held at the Fitzsimons Community Club on September 25, 1996. Public notices requesting input and comments from

the public were issued in the regional area surrounding the USAG–F.

Copies. Copies of the DEIS will be available for review at the Aurora Central Public Library, Aurora, CO and USAG–F, Aurora, CO.

DATES: Written public comments and suggestions received within 45 days of the publication of the Environmental Protection Agency's Notice of Availability for this action will be addressed in the Final Environmental Impact Statement.

ADDRESSES: Copies of the DEIS can be obtained by writing to the U.S. Army Corps of Engineers, Omaha District Office, ATTN: Mr. Gene Sturm, 215 North 17th Street, Omaha, NE 68102–4978, or by facsimile at (402) 221–4886. Written comments and suggestions should be sent to this address.

Dated: August 8, 1997.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 97–21442 Filed 8–13–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on May 28, 1996, an arbitration panel rendered a decision in the matter of *Leslie Lessard* v. *Washington Department of Services for the Blind (Docket No. R–S/95–6).* This panel was convened by the U. S. Department of Education pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner, Leslie Lessard.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U. S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

In 1978, after completing training, Leslie Lessard, complainant, was assigned to operate a vending facility at the Jackson Federal Building in Seattle, Washington, for a six-month period while the vendor at that location was away pursuing additional education.

In 1984, complainant learned of an opportunity to operate several vending machines at other Federal facilities in the Seattle area, including the Terminal Annex Building of the U.S. Postal Service. Mr. Lessard discussed with the Washington Department of Services for the Blind, the State licensing agency (SLA), the possibility of the SLA obtaining a permit to operate these vending machines. The SLA informed the complainant that, if a permit were to be obtained to operate the vending machines, complainant would need to supply the machines. The SLA secured the permit and subsequently the complainant purchased vending machines for the various locations.

In 1988, the complainant began informal discussions with the SLA concerning the SLA's purchase of the complainant's vending machines. On January 9, 1989, the complainant sent a letter to the SLA outlining an alleged agreement with it to purchase his vending machines. By letters dated May 3 and October 3, 1989, the SLA responded. The SLA acknowledged its awareness of the purchase option available to it, but stated that, due to lack of funds, it would be unable to purchase all of the machines.

By letter dated December 12, 1989, the SLA requested that the complainant provide it with invoices for two vending machines. In early 1990, the SLA purchased six machines from Mr. Lessard. Subsequently, by letter dated August 24, 1992, the complainant offered for sale to the SLA his remaining machines and equipment. By letter dated May 20, 1994, the SLA waived its purchase option. On September 24, 1994, a requested State fair hearing was held concerning this matter. A decision was rendered on April 24, 1995, by an Administrative Law Judge (ALJ).

The ALJ ruled that there was no contract between the complainant and the SLA for the sale of the machines, notwithstanding complainant's assertion of an existing oral agreement between himself and the SLA. The ALJ further ruled that the agreement in a transaction of this nature must be in writing and signed by the person against whom enforcement is being sought. The SLA adopted the ALJ's decision as final agency action. Mr. Lessard sought review of this decision by a Federal arbitration panel. A hearing of this case was held on May 28, 1996.

Arbitration Panel Decision

The issue before the arbitration panel was whether, pursuant to 20 U.S.C. 107 *et seq.* of the Randolph-Sheppard Act, the SLA had a contractual obligation to purchase Mr. Lessard's vending machines.

The majority of the panel ruled that the SLA never entered into an oral or written contractual agreement to acquire Mr. Lessard's vending machines. The majority of the panel further determined that the complainant and the SLA had never reached an understanding as to what would be purchased, when, or for how much, and, therefore, there was no meeting of the minds or agreement that was enforceable by law. According to the panel, the SLA had merely agreed to purchase vending machines from the complainant on a case-by-case basis as funds were available. Finally, the panel noted that Washington State law requires that a contract for the sale of goods with a value of more than $500 must be in writing and that the statute was applicable with respect to this complaint because the goods at issue were valued at more than $500. Therefore, the majority of the panel denied complainant's claim in its entirety.

One panel member dissented from the majority opinion.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: August 8, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–21437 Filed 8–13–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–645–000]

Bangor Hydro-Electric Company; Notice of Filing

August 8, 1997.

Take notice that on July 14, 1997, Bangor Hydro-Electric Company (Bangor) tendered for filing pursuant to Order No. 888–A Bangor's Pro Forma Open Access Transmission Tariff compliance filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy 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 21, 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. 97–21477 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–702–000]

Cambridge Electric Light Company; Notice of Filing

August 8, 1997.

Take notice that on July 14, 1997, Cambridge Electric Light Company (Cambridge) tendered for filing, in compliance with the Commission's Order No. 888–A, an open access transmission tariff (Tariff). The Tariff supersedes the open access transmission tariff accepted for filing in Docket No. OA96–178.

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 21, 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. 97–21471 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–679–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

August 8, 1997.

Take notice that on August 1, 1997, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed a prior notice request with the Commission in Docket No. CP97–679–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate an additional delivery point for firm transportation service to Commonwealth Gas Services, Inc. (COS) in the City of Chesapeake, Virginia, under Columbia's blanket certificates issued in Docket Nos. CP83–76–000 and CP86–240–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request that is open to the public for inspection.

Columbia proposes to construct and operate an additional delivery point to serve COS' commercial and residential customers in the Deep Creek area of Chesapeake. Columbia proposes to reassign up to 5,000 Dekatherms equivalents of natural gas per day (Dth/day) at the proposed Deep Creek delivery point and to reduce deliveries to COS by 5,000 Dth/day at the existing Portsmouth #1 delivery point. Columbia would deliver up to 1,825,000 Dth annually under its FERC Rate Schedule SST at the proposed Deep Creek delivery point and within certificated entitlements to COS. Columbia states that COS would reimburse Columbia approximately $187,200 for the construction cost of the proposed Deep Creek delivery point.

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 Procedural Rules (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. 97–21466 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–701–000]

Commonwealth Electric Company; Notice of Filing

August 8, 1997.

Take notice that on July 14, 1997, Commonwealth Electric Company (Commonwealth) tendered for filing, in compliance with the Commission's Order No. 888–A, an open access transmission tariff (Tariff). The Tariff supersedes the open access transmission tariff accepted for filing in Docket No. OA96–167.

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 21, 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21472 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–669–000]

IES Utilities Inc., Notice of Filing

August 8, 1997.

Take notice that on July 14, 1997, IES Utilities Inc., tendered for filing its Order No. 888–A 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 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 97–21476 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–441–000]

Iroquois Gas Transmission System, L.P., Notice of Proposed Changes in FERC Gas Tariff

August 8, 1997.

Take notice that on August 6, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective September 5, 1997:

First Revised Sheet No. 115

Iroquois states that the purpose of this filing is to implement a five year contract cap in its right-of-first-refusal tariff provision in compliance with the Commission's Order on Remand, 78 FERC ¶ 61,186 (February 27, 1997).

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 18 CFR 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. 97–21481 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–437–000]

Williams Natural Gas Company and Missouri Gas Energy, A Division of Southern Union Company; Notice of Petition for Declaratory Order

August 8, 1997.

Take notice that on August 1, 1997, pursuant to Rule 207 of the Rules and Practice and Procedure, Missouri Gas Energy, A Division of Southern Union Company (MGE) and Williams Natural Gas Company (Williams) filed a request for a Declaratory Order on the Right of First Refusal Mechanism.

MGE and Williams (the Parties) seek a declaratory order to resolve issues in controversy related to the right of first refusal (ROFR) mechanism bidding process. The Parties request a determination by the Commission that the current capacity holder, in order to retain such capacity, must either: (i) Submit a bid identical, in terms of amount and type of service, to the capacity that is posted; or (ii) compete with third parties pursuant to a bidding structure that is based on the overall economic value of each particular bid received. The parties respectfully request that the Commission make a determination as to the proper balance between these competing interests.

The parties states that they have served the foregoing document upon each person designated on the official service list compiled by the Secretary of the Commission.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 2, 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. 97–21483 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–679–000]

Montana Power Company; Notice of Filing

August 8, 1997.

Take notice that on July 14, 1997, Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission in compliance to FERC Order No. 888–A, its FERC Electric Tariff, First Revised Volume No. 5 (Open Access Transmission Tariff).

Montana requests that the Commission accept the tariff for filing, effective as of July 14, 1997; and allow the tariff to supersede Montana's FERC Electric Tariff, Original Volume No. 5.

A copy of the filing was served upon Basin Electric Power Cooperative; Billings Generation, Inc.; Bonneville Power Administration; Central Montana Electric Power Cooperative, Inc.; Electric Clearinghouse, Inc.; Enron Power Marketing, Inc.; Idaho Power Company; Montana Consumer Counsel; Montana Department of Environmental Quality; Montana Public Service Commission; Northwest Regional Transmission Association; Western Area Power Administration; Western Montana Electric Generating & Transmission Cooperative, Inc.; and Western Regional Transmission Association; Aquila Power Corporation; Arizona Public Service; Cinergy Services, Inc.; Electric Clearinghouse, Inc.; Enron Power Marketing, Inc.; LG&E Power Marketing, Inc.; Morgan Stanley Capital Group; MP Energy, Inc.; NorAm Energy Services, Inc.; PECO Energy Company; Platte River Power Authority; Public Service Commission of Colorado; Rainbow Energy Marketing Corporation; Sonat Power Marketing L.P.; and Southern Energy Trading and Marketing, Inc.; Vitol Gas & Electric Marketing LLC; Williams Energy Services Company under FERC Electric Tariff, Original Volume No. 5 (Open Access Transmission Tariff).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426,

in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 21, 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. 97–21475 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–3574–000; and OA97–608–000]

New England Power Pool; Notice of Filing

August 8, 1997.

Take notice that on July 1, 1997, as supplemented on July 7, 1997, New England Power Pool tendered for filing changes to the provisions of the NEPOOL Agreement.

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 385.214). All such motions or protests should be filed on or before August 21, 1997. Protests filed will be considered by the Commission 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 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. 97–21480 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–440–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 8, 1997.

Take notice that on August 5, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective August 1, 1997:

Eleventh Revised Sheet Number 156

Northern Border states that the revised Rate Schedule IT–1 Maximum Rate is being filed in compliance with the Commission's order issued August 1, 1997 in Docket No. RP96–45–004. Northern Border proposes to decrease the Maximum Rate from 5.201 cents per 100 Dekatherm-Miles to 3.744 cents per 100 Dekatherm-Miles.

Northern Border states that the herein proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and applicable state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.214 and Section 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. 97–21482 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–685–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

August 8, 1997.

Take notice that on August 6, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha Nebraska 68124–1000, filed in Docket No. CP97–685–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to upgrade the Rippey #2, an existing delivery point located in Greene County, Iowa, to accommodate increased interruptible natural gas deliveries to UtiliCorp United, Inc. (UCU) for redelivery to the Rippey Co-Op, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that it requests authorization to upgrade the existing delivery point to accommodate increased natural gas deliveries to UCU under Northern's currently effective throughput service agreement(s). Northern states that UCU has requested increased interruptible service to accommodate area growth.

Northern states that the proposed increase in volumes to be delivered to UCU at the Rippey #2 are 910 MMBtu on a peak day and 48,500 MMBtu on an annual basis. Northern estimates a cost of $56,000 for upgrading and UCU will reimburse Northern.

Northern states that the upgrading is not prohibited by its existing tariff and that is has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The proposed delivery point will not have an effect on Northern's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

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 Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a

protest to the request. If no protest is filed within the time allowed 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. 97–21569 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–591–000]

Oklahoma Gas and Electric Company; Notice of Filing

August 8, 1997.

Take notice that on May 13, 1997, as supplemented on July 30, 1997, Oklahoma Gas and Electric Company tendered for filing its Open Access Transmission Tariff filing in compliance with Order No. 888–A.

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 August 21, 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 the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21468 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–684–000]

Otter Tail Power Company; Notice of Filing

August 8, 1997.

Take notice that on July 14, 1997, Otter Tail Power Company (OTP) tendered for filing on behalf of itself a compliance filing reflecting tariff changes set forth in FERC Order No. 888–A issued March 3, 1997. The changes agreed to in a settlement with the FERC in Docket No. OA96–192–000 (approved March 25, 1997) are included in the compliance filing.

OTP states that copies of this filing have been served on the Minnesota Public Utilities Commission, the North Dakota Public Service Commission, the South Dakota Public Service Commission and the Wisconsin Public Service Commission and all customers which are requirements 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 18 CFR 385.214). All such motions or protests should be filed on or before August 19, 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. 97–21474 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–700–000]

Potomac Electric Power Company; Notice of Filing

August 8, 1997.

Take notice that on July 16, 1997, Potomac Electric Power Company submitted amended provisions to its standards of conduct in accordance with 18 CFR 37.4(c).

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 21, 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. 97–21473 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–694–000]

St. Joseph Power & Light Company; Notice of Filing

August 8, 1997.

Take notice that on July 9, 1997, St. Joseph Power & Light Company tendered for filing its Order No. 888–A 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 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 97–21470 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–671–000]

Tucson Electric Power Company; Notice of Filing

August 8, 1997.

Take notice that on July 14, 1997, Tucson Electric Power Company tendered for filing pursuant to Order No. 888–A Tucson's Transmission Tariff compliance filing.

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 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 97–21479 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3664–000]

Union Electric Company; Re-Notice of Filing [1]

August 8, 1997.

Take notice that on July 8, 1997, Union Electric Company (UE) filed with the Federal Energy Regulatory Commission an application for authority to charge market based rates and for certain waivers and authorizations. UE requested waiver of notice to permit its proposed rate schedule to become effective on July 9, 1997, one day after the date of filing.

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 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21467 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

[1] The filing is being re-noticed because as published in the **Federal Register** on July 31, 1997, (62 FR 41037, column 1, FR Doc. 97–20121) the docket number was incorrect and the second paragraph and signature block were omitted.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–439–000]

Virginia Electric and Power Company; Notice of Filing

August 8, 1997.

Take notice that on July 16, 1997, Virginia Electric and Power Company tendered for filing an amendment to its July 1, 1997, filing in this 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 385.214). All such motions or protests should be filed on or before August 21, 1997. Protests filed will be considered by the Commission 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 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. 97–21469 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–616–000]

The Washington Water Power Company; Notice of Filing

August 8, 1997.

Take notice that on July 9, 1997, The Washington Water Power Company, pursuant to the Commission's Order No. 888–A issued March 4, 1997, tendered for filing with the Commission a revised Open Access Transmission Tariff—FERC Electric Tariff, Second Revised Volume No. 8.

Copies of this filing were provided to the Idaho Public Utilities Commission, Washington Utilities Transportation Commission, and parties to this Docket.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 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 21, 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. 97–21478 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1517–008 Utah]

Monroe City Corporation; Notice of Availability of Final Environmental Assessment

August 8, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydroelectric Licensing has reviewed the application for a new license for the existing Upper Monroe Hydroelectric Project, and has prepared a Final

Environmental Assessment (FEA) for the project. The project, which is located near Monroe City, in Sevier, County, Utah, diverts water from three tributaries of Monroe Creek: Shingle Creek, First Lefthand Fork of Monroe Creek, and Serviceberry Creek.

In the FEA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21484 Filed 8–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of June 30 Through July 4, 1997

During the Week of June 30 through July 4, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: August 6, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 30 through July 4, 1997]

Date	Name and location of applicant	Case No.	Type of submission
July 1, 1997	David R. Berg, Washington, DC	VFA–0306	Appeal of an Information Request Denial. If Granted: The May 28, 1997 Freedom of Information Request Denial issued by the DOE would be rescinded, and David R. Berg would receive access to certain DOE information.
Do.	The Cincinnati Enquirer, Cincinnati, Ohio	VFA–0307	Appeal of an Information Request Denial. If Granted: The June 13, 1997 Freedom of Information Request Denial issued by the Ohio Field Office would be rescinded, and The Cincinnati Enquirer would receive access to certain DOE information.
Do.	The Times News, Twin Falls, Idaho	VFA–0305	Appeal of an Information Request Denial. If Granted: The June 12, 1997 Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded, and The Times News would receive access to certain DOE information.
July 2, 1997	Greenpeace, Washington, DC	VFA–0308	Appeal of an Information Request Denial. If Granted: The June 10, 1996 Freedom of Information Request Denial issued by the Office of General Counsel would be rescinded, and Greenpeace would receive access to certain DOE information.

[FR Doc. 97–21540 Filed 8–13–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of June 30 Through July 4, 1997

During the week of June 30 through July 4, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of this decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. The decision is also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system and on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 6, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 40

Week of June 30 Through July 4, 1997

Appeals

Information Focus on Energy, 7/3/97, VFA–0300

The Department of Energy (DOE) issued a Decision and Order (D&O) granting in part a Freedom of Information Act (FOIA) Appeal that was filed by Information Focus on Energy (IFOE). In its Appeal, IFOE requested that the DOE review a fee waiver determination issued by the FOIA Officer at the Ohio Field Office. In that determination, the Officer found that IFOE was a ''commercial use'' requester for purposes of assessing fees, and that the fee waiver request should be denied because IFOE's commercial interests outweighed the public interest in release of the requested material. In the Decision, the DOE found that IFOE should be classified as a ''representative of the news media'' for fee determination purposes. The DOE further concluded that because the commercial interest of a news media requester cannot be taken into account in fee waiver decisions, the Officer's determination cannot be upheld. The DOE therefore remanded the matter to the Ohio Field Office for a new waiver determination.

International Brotherhood of Electrical Workers, 6/30/97, VFA–0299

The International Brotherhood of Electrical Workers (IBEW) filed an Appeal from a determination issued to it on April 28, 1997, by the Savannah River Operations Office (SR) of the Department of Energy (DOE). That determination was issued in response to a request for information submitted by IBEW under the Freedom of Information Act. The request sought material regarding union-related activities at SR. SR issued two determinations regarding this request on October 10, 1996, and November 8, 1996, and IBEW appealed SR's final responses to the Office of Hearings and Appeals (OHA) on December 12, 1996. In those determinations, SR partially granted IBEW's request for information and released numerous documents responsive to IBEW's request. On Appeal, IBEW clarified its initial request and OHA remanded the clarified request back to SR for a further search for responsive documents. SR issued a determination which stated that it conducted a search of its files and found no additional documents responsive to IBEW's clarified request. This Appeal challenged the adequacy of the search conducted by SR. In considering the Appeal, the DOE found that SR conducted an adequate search which was reasonably calculated to discover documents responsive to IBEW's request. Accordingly, the Appeal was denied.

Personnel Security Hearing

Personnel Security Hearing, 7/3/97, VSO–0133

A Hearing Officer found that an individual had not successfully mitigated security concerns arising from his pattern of irresponsible behavior that tended to show that the individual was not honest, reliable, and trustworthy. Accordingly, the Hearing Officer recommended in the Opinion that the individual's access authorization not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

F. HURLBUT CO. LIQUIDATING PAR, ET AL	RK272–03407	6/30/97
LOIS A. SKALLERUD, ET AL	RK272–1967	7/2/97
RANDY CAPE, ET AL	RK272–04185	7/2/97
REGAL MARINE, INC,	RG272–608	6/30/97

Dismissals

The following submissions were dismissed.

Name	Case No.
DIAMOND SHAMROCK, INC	RF340–00150
ELITE AMBULANCE & MEDICAL COACH	RK272–04490

[FR Doc. 97–21539 Filed 8–13–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders During the Week of July 7 Through July 11, 1997

Office of Hearings and Appeals

During the week of July 7 through July 11, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 6, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Decision List No. 41, Week of July 7 Through July 11, 1997

Appeals

Mary J. Griffin Barnett, 7/8/97, *VFA–0303*

Mary J. Griffin Barnett filed an Appeal from a determination issued to her by the Oak Ridge Operations Office. In her Appeal, Barnett asserted that Oak Ridge failed to conduct an adequate search for medical records requested pursuant to the FOIA. After reviewing the matter, the DOE determined that Oak Ridge had performed an adequate search. Consequently, Barnetts's Appeal was denied.

Pedro Aponte Vazquez, 7/11/97, *VFA–0302*

Pedro Aponte Vazquez filed an Appeal from a determination issued to him by the Chicago Operations Office. In his Appeal, Aponte asserted that the operations office failed to conduct an adequate search for records related to total body irradiation experimentation conducted at Memorial Hospital (predecessor to Memorial Sloan-Kettering Institute) between 1945 and 1959. After reviewing the matter, the DOE determined that an adequate search had been performed. Consequently, Aponte's Appeal was denied.

Personnel Security Hearing

Personnel Security Hearing, 7/7/97, *VSO–0109*

A Hearing Officer issued an Opinion regarding the eligibility of an individual to retain an access authorization. A drug test administered to the respondent was positive for marijuana. The respondent alleged that there must have been some problem with the drug test because he had been taking a prescription medication at the time that contained codeine which was not detected by the drug test. The Hearing Officer found that the small amount of codeine in the medication might have been below the

amount that the test could detect. Consequently, the respondent did not demonstrate that the drug test was invalid. As the respondent offered no evidence in mitigation of his drug use, the Hearing Officer found that his access authorization should not be restored.

Interlocutory Order

EG&G Rocky Flats, Inc., 7/11/97, VWZ–0008

An OHA hearing officer issued a Decision and Order regarding a Motion for Partial Dismissal and Limitation on Scope of Complainant's Claims filed in a whistleblower proceeding under the provisions of 10 C.F.R. part 708. The hearing officer determined that DOE's whistleblower regulations do not apply to reprisals that occurred before April 2, 1992, the effective date of those regulations, and consequently dismissed those portions of the complaint that concerned those reprisals. The hearing officer specified, however, that protected disclosures made before April 2, 1992, may have led to reprisals that occurred after that date, and for that reason those disclosures are relevant to the proceeding and evidence concerning them will be received. The Motion to Dismiss was, therefore, granted in part.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ARCH MINERAL CORP. ET AL	RG272–00503	7/8/97
CHICAGO MILWAUKEE CORPORATION	RF272–69326	7/8/97
CHICAGO MILWAUKEE CORPORATION	RD272–69326	
GULF OIL CORPORATION/ASSOCIATED TRANSPORT	RF300–13114	7/11/97
LYLE BREDENKAMP	RF272–15943	7/11/97
STAR MANUFACTURING CO.	RF272–57065	
ST. JOSEPH CARE CENTER	RF272–98794	

Dismissals

The following submissions were dismissed.

Name	Case No.
A.W. STADLER, INC./DARLING INTRNTL	RK272–4489
ANDERSON CLAYTON FOODS/AC HUMKO	RK272–4401
ASHY-HUTCHISON ENT., INC.	RK272–4472

[FR Doc. 97–21541 Filed 8–13–97; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5874–6]

Proposed Settlement; Industrial Process Cooling Towers Emission Standard Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act (''Act''), notice is hereby given of a proposed settlement of *Libbey-Owens-Ford Company* v. *United States Environmental Protection Agency,* No. 95–1141 (D.C. Cir.).

The case involves a challenge to the rule entitled ''National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers,'' published in the **Federal Register** at 59 FR 46,339 on September 8, 1994. The proposed settlement provides for EPA to issue a revision to the rule allowing sources to demonstrate compliance through recordkeeping in lieu of water sample analysis.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Gwendolyn Jones, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7620. Written comments should be sent to Patricia A. Embrey at the above address and must be submitted on or before [insert date 30 days after publication].

Dated: August 4, 1997.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 97–21536 Filed 8–13–97; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, August 19, 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 21, 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.

Report of the Audit Division on Pete Wilson for President Committee (continued from meeting of July 31, 1997).

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. 97–21733 Filed 8–12–97; 3:11 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1185–DR]

Alabama; 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 Alabama (FEMA–1185–DR), dated July 25, 1997, and related determinations.

EFFECTIVE DATE: July 25, 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 25, 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 Alabama, resulting from severe storms, flooding, and high winds associated with Hurricane Danny on July 17–22, 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 Alabama.

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, Public Assistance, and Hazard Mitigation in the designated areas. 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 Paul W. Fay, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Baldwin, Choctaw, and Mobile Counties for Individual Assistance and Public Assistance.

All counties within the State of Alabama 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. 97–21558 Filed 8–13–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1186–DR]

Colorado; 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 Colorado (FEMA–1186–DR), dated August 1, 1997, and related determinations.

EFFECTIVE DATE: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, 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 August 1, 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 Colorado, resulting from severe storms, heavy rain, flash floods, other flooding, mudslides, landslides, and severe ground saturation on July 28, 1997, and continuing 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 Colorado.

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, Public Assistance, and Hazard Mitigation in the designated areas. 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 David P. Grier of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Colorado to have been affected adversely by this declared major disaster:

Larimer, Logan, and Morgan Counties for Individual Assistance.
Larimer County for Public Assistance.

All counties within the State of Colorado 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. 97–21559 Filed 8–13–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1186–DR]

Colorado; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Colorado, (FEMA–1186–DR), dated August 1, 1997, and related determinations.

EFFECTIVE DATE: August 6, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of

Colorado, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 1, 1997:

Logan and Morgan Counties for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–21560 Filed 8–13–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1183–DR]

Montana; 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 Montana (FEMA–1183–DR), dated July 25, 1997, and related determinations.

EFFECTIVE DATE: July 25, 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 25, 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 Montana, resulting from severe storms, ice jams, snowmelt, flooding, and extreme soil saturation on March 1, 1997, and continuing, 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 Montana.

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 Public Assistance and Hazard Mitigation in the designated areas. 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 David P. Grier of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Montana to have been affected adversely by this declared major disaster:

The counties of Broadwater, Carbon, Dawson, Deer Lodge, Flathead, Judith Basin, Lincoln, Meagher, Musselshell, Park, Ravalli, Richland, Sanders, Sweet Grass, Treasure, Wheatland, and Yellowstone, and the Flathead Indian Reservation of the Confederated Salish and Kootenai Tribes for Public Assistance.

All counties within the State of Montana 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. 97–21554 Filed 8–13–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1183–DR]

Montana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Montana (FEMA–1183–DR), dated July 25, 1997, and related determinations.

EFFECTIVE DATE: July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Dale R. Peterson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of David P. Grier as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–21555 Filed 8–13–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1183–DR]

Montana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Montana (FEMA–1183–DR), dated July 25, 1997, and related determinations.

EFFECTIVE DATE: August 6, 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 the incident period for this disaster is closed effective August 6, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–21556 Filed 8–13–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1183–DR]

Montana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Montana, (FEMA–1183–DR), dated July 25, 1997, and related determinations.

EFFECTIVE DATE: August 4, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency

Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Montana, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 25, 1997:

Prairie, Roosevelt, and Valley Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–21561 Filed 8–13–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1179–DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1179–DR), dated July 7, 1997, and related determinations.

EFFECTIVE DATE: July 29, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 1997:

Bandera, Blanco, Burnet, Eastland, Edwards, Guadalupe, Kendall, Llano, Mason, Medina, Real, and Uvalde Counties for Public Assistance (already designated for Individual Assistance).

Gillespie, Kimble, and San Saba Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–21562 Filed 8–13–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1184–DR]

Vermont; 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 Vermont (FEMA–1184–DR), dated July 25, 1997, and related determinations.

EFFECTIVE DATE: July 25, 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 25, 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 Vermont, resulting from excessive rainfall, high winds, and flooding on July 15–17, 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 Vermont.

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, Public Assistance, and Hazard Mitigation in the designated areas. 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 Robert S. Teeri of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared major disaster:

Caledonia, Franklin, Lamoille, Orleans, and Washington Counties for Individual Assistance and Public Assistance.

All counties within the State of Vermont 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. 97–21557 Filed 8–13–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Relogistics Worldwide, Inc., 6910 N. Shadeland Avenue, #230, Indianapolis, IN 46220, Officers: Bernd Kirbach, President, Deborah L. Milakis, Exec. Vice President

D&L International Freight Forwarding Company, 8244 Virgo Street, Jacksonville, FL 32216, Lizette Solomon, Maria Dolores Smith, Partnership

Gandhi International Shipping Inc., 2439 W. Devon Avenue, Chicago, IL 60659, Officer: Mohammed Gandhi, President

Monfreight, Inc., 425 Medford Street, Charlestown, MA 02129, Officers: Peter E. Awezec, President, Frank Lidano, Vice President

Pathfinder Logistics, 10406 8th Avenue So., Seattle, WA 98168–1503, Arthur L. Griffin, Sole Proprietor

Unlimited Logistics, 2395 Giltner Road, Smithfield, KY 40068, Martha A. Works, Sole Proprietor

Sunshine Worldwide Logistics, Inc., 8467 NW 74th Street, Miami, FL 33166, Officer: Laurence E. Hart, Jr., President

Dated: August 8, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–21438 Filed 8–13–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 28, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Sam J. Jacobsen, Middleton, Wisconsin; to acquire an additional 15 percent, for a total of 17.65 percent, of the voting shares of First Business Bancshares, Madison, Wisconsin, and thereby indirectly acquire First Business Bank, Madison, Wisconsin.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. W. Allen Gage, Houston, Texas; to acquire an additional 21.90 percent, for a total of 33.93 percent, of the voting shares of First Bancshares of Texas, Inc., Houston, Texas, and thereby indirectly acquire First Bank of Texas, Tomball, Texas.

Board of Governors of the Federal Reserve System, August 8, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–21455 Filed 8–13–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 29, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. E. David Locke, McFarland, Wisconsin; to acquire an additional 15.3 percent, for a total of 64.5 percent, of the voting shares of Northern Bancshares, Inc., McFarland, Wisconsin, and thereby indirectly acquire McFarland State Bank, McFarland, Wisconsin.

Board of Governors of the Federal Reserve System, August 11, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–21579 Filed 8–13–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 28, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Canadian Imperial Bank of Commerce, Toronto, Canada (''CIBC''), to acquire through its wholly owned subsidiary, CIBC Wood Gundy Securities Corp. (''CIBC Wood Gundy''), New York, New York, all the outstanding shares of Oppenheimer Holdings, Inc., New York, New York, and its subsidiaries, including Oppenheimer & Co., Inc., New York, New York, and thereby engage worldwide in certain nonbanking activities. CIBC proposes to engage in underwriting and dealing to a limited extent in all types of equity and debt securities that a state member bank may not underwrite and deal in (''bank-ineligible securities''), except ownership interests in open-end investment companies, *see Canadian Imperial Bank of Commerce*, 76 Fed. Res. Bull. 158 (1990) and *J.P. Morgan & Co., Inc.*, 75 Fed. Res. Bull. 192 (1989); in making loans or other extensions of credit, pursuant to § 225.28(b)(1) of the Board's Regulation Y (12 CFR 225.28(b)(1)); in activities related to extending credit, pursuant to § 225.28(b)(2) of the Board's Regulation Y (12 CFR 225.28(b)(2)); in providing financial and investment advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y (12 CFR 225.28(b)(6)); in providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactional services, pursuant to section § 225.28(b)(7) of the Board's Regulation Y (12 CFR 225.28(b)(7)); and in underwriting and dealing in government obligations and money market instruments (''bank-eligible securities''), providing investing and trading services, and buying and selling bullion and related activities, pursuant to § 225.28(b)(8) of the Board's Regulation Y (12 CFR 225.28(b)(8)).

In addition, CIBC proposes to establish and control numerous domestic and foreign private investment limited partnerships (''Partnerships''). CIBC Wood Gundy, its affiliates, or its subsidiaries would serve as general partner, or would participate with unaffiliated investment advisers in joint ventures that would serve as general partner, to the Partnerships. CIBC Wood Gundy, its affiliates, and its subsidiaries, either directly or through joint venture arrangements, also would provide administrative and investment advisory services to the Partnerships. To serve as general partner, CIBC Wood

Gundy, its affiliates, or its subsidiaries would register with the Commodities Futures Trading Commission as a commodity pool operator. *See, e.g., The Bessemer Group, Inc.*, 82 Fed. Res. Bull. 569 (1995); *Meridian Bancorp, Inc.*, 80 Fed. Res. Bull. 736 (1994). Limited partnership interests would be privately placed with accredited investors, as that term is defined in Regulation D of the Securities and Exchange Commission (17 CFR 230.501). CIBC has stated that all investments of the Partnerships would be made in accordance with the limitations in the Bank Holding Company Act and the Board's decisions and interpretations thereunder.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Bank of Montreal, Montreal, Canada; Bankmont Financial Corp., Chicago, Illinois; Harris Bankcorp, Inc., Chicago, Illinois; and Harris Bankmont, Inc., Chicago, Illinois; to acquire Cash Station, Inc., Chicago, Illinois, and thereby engage in certain data processing activities, consisting of electronic funds transfer services, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 8, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–21456 Filed 8–13–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Support Enforcement Program Financial Report, ACF–396.

OMB No.: New Request.

Description: Used by the States to report expenditures and estimates made under title IV–D for the purposes of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living; locating absent parents; establishing paternity; and assuring that assistance in obtaining support will be available to all children for whom such assistance is requested.

Respondents: States, Puerto Rico, Virgin Islands, Guam and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–396, Parts 1 and 2	54	4	4.25	918
OCSE–396, Part 3	54	2	2.0	216

Estimated Total Annual Burden Hours: 1,134.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 11, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–21530 Filed 8–13–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Temporary Assistance for Needy Families Financial Reporting Form, ACF–196.

OMB No.: New Request.

Description: The form provides specific data regarding claims and provides a mechanism for States to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. The following citations should be noted in regards to this collection: 405(c)(1); 409(a)(7); and 409(a)(1).

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196	54	4	8	1,728

Estimated Total Annual Burden Hours: 1,728.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 270 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 11, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–21535 Filed 8–13–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0321]

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 15, 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:

Advisory Opinions—21 CFR 10.85 (OMB Control No. 0910–0193—Reinstatement)

Section 10.85 (21 CFR 10.85), issued under section 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(a)), provides that an interested person may request an advisory opinion from the Commissioner of Food and Drugs (the Commissioner) on a matter of general applicability. Section 10.85 sets forth the format and instructions for making an advisory opinion request. When making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested and a full statement of the facts and legal points relevant to the request. An advisory opinion represents the formal position of FDA on a matter of general applicability.

Respondents to this collection of information are parties seeking an advisory opinion from the Commissioner on the agency's formal position for matters of general applicability.

FDA estimates the burden of the collection of information provisions for these regulations as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.85	8	1	8	16	128

There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on agency data received on this administrative procedure for the past 3 years. Agency personnel responsible for the processing of requests for an advisory opinion estimate approximately eight requests are received annually by the agency, each requiring an estimated 16 hours of preparation time.

Dated: August 8, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–21586 Filed 8–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0336]

General Electric Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that General Electric Co. has filed a petition proposing that the food additive regulations be amended to change the intrinsic viscosity specifications for poly(2,6-dimethyl-1,4-phenylene) oxide resins intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4551) has been filed by General Electric Co., One Lexan Lane, Mt. Vernon, IN 47620–9364. The petition proposes to amend the food additive regulations in § 177.2460 *Poly(2,6-dimethyl-1,4-phenylene) oxide resins* to change the intrinsic viscosity specifications for the poly(2,6-dimethyl-1,4-phenylene) oxide resins intended for use in contact with food from ''not less then 0.40 deciliter per gram'' to ''not less than 0.30 deciliter per gram'' as determined by ASTM method D1243–79.

The agency has determined under 21 CFR 25.24(9) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: July 31, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–21436 Filed 8–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0314]

Prescription Drug Products; Levothyroxine Sodium

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that orally administered drug products containing levothyroxine sodium are new drugs. There is new information showing significant stability and potency problems with orally administered levothyroxine sodium products. Also, these products fail to maintain potency through the expiration date, and tablets of the same dosage strength from the same manufacturer vary from lot to lot in the amount of active ingredient present. This lack of stability and consistent potency has the potential to cause serious health consequences to the public. Manufacturers who wish to continue to market orally administered levothyroxine sodium products must submit new drug applications (NDA's); manufacturers who contend that a particular drug product is not subject to the new drug requirements of the Federal Food, Drug, and Cosmetic Act (the act) should submit a citizen petition. FDA has determined that orally administered levothyroxine sodium products are medically necessary, and accordingly the agency is allowing current manufacturers 3 years to obtain approved NDA's.

EFFECTIVE DATE: August 14, 1997.

DATES: A citizen petition claiming that a particular drug product is not subject to the new drug requirements of the act should be submitted no later than October 14, 1997.

After August 14, 2000, any orally administered drug product containing levothyroxine sodium, marketed on or before the date of this notice, that is introduced or delivered for introduction into interstate commerce without an approved application, unless found by FDA to be not subject to the new drug requirements of the act under a citizen petition submitted for that product, will be subject to regulatory action.

ADDRESSES: All communications in response to this notice should be identified with Docket No. 97N–0314 and directed to the appropriate office named below:

Applications under section 505 of the act (21 U.S.C. 355): Documents and Records Section (HFA–224), 5600 Fishers Lane, Rockville, MD 20857.

Citizen petitions (see § 10.30 (21 CFR 10.30)) contending that a particular drug product is not subject to the new drug requirements of the act: Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

Requests for an opinion on the applicability of this notice to a specific product: Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, 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

Levothyroxine sodium is the sodium salt of the levo isomer of the thyroid hormone thyroxine (T_4). Thyroid hormones affect protein, lipid, and carbohydrate metabolism; growth; and development. They stimulate the oxygen consumption of most cells of the body, resulting in increased energy expenditure and heat production, and possess a cardiostimulatory effect that may be the result of a direct action on the heart.

Levothyroxine sodium was first introduced into the market before 1962 without an approved NDA, apparently in the belief that it was not a new drug. Orally administered levothyroxine sodium is used as replacement therapy in conditions characterized by diminished or absent thyroid function such as cretinism, myxedema, nontoxic goiter, or hypothyroidism. The diminished or absent thyroid function may result from functional deficiency, primary atrophy, partial or complete absence of the thyroid gland, or the effects of surgery, radiation, or antithyroid agents. Levothyroxine sodium may also be used for replacement or supplemental therapy in patients with secondary (pituitary) or tertiary (hypothalamic) hypothyroidism.

Hypothyroidism is a common condition. In the United States, 1 in every 4,000 to 5,000 babies is born hypothyroid. Hypothyroidism has a prevalence of 0.5 percent to 1.3 percent in adults. In people over 60, the prevalence of primary hypothyroidism

increases to 2.7 percent in men and 7.1 percent in women. Because congenital hypothyroidism may result in irreversible mental retardation, which can be avoided with early diagnosis and treatment, newborn screening for this disorder is mandatory in North America, Europe, and Japan.

In addition to the treatment of hypothyroidism, levothyroxine sodium may be used to suppress the secretion of thyrotropin in the management of simple nonendemic goiter, chronic lymphocytic thyroiditis, and thyroid cancer. Levothyroxine sodium is also used with antithyroid agents in the treatment of thyrotoxicosis to prevent goitrogenesis and hypothyroidism.

II. Levothyroxine Sodium Products Must Be Consistent in Potency and Bioavailability

Thyroid replacement therapy usually is a chronic, lifetime endeavor. The dosage must be established for each patient individually. Generally, the initial dose is small. The amount is increased gradually until clinical evaluation and laboratory tests indicate that an optimal response has been achieved. The dose required to maintain this response is then continued. The age and general physical condition of the patient and the severity and duration of hypothyroid symptoms determine the initial dosage and the rate at which the dosage may be increased to the eventual maintenance level. It is particularly important to increase the dose very gradually in patients with myxedema or cardiovascular disease to prevent precipitation of angina, myocardial infarction, or stroke.

If a drug product of lesser potency or bioavailability is substituted in the regimen of a patient who has been controlled on one product, a suboptimal response and hypothyroidism could result. Conversely, substitution of a drug product of greater potency or bioavailability could result in toxic manifestations of hyperthyroidism such as cardiac pain, palpitations, or cardiac arrhythmias. In patients with coronary heart disease, even a small increase in the dose of levothyroxine sodium may be hazardous.

Hyperthyroidism is a known risk factor for osteoporosis. Several studies suggest that subclinical hyperthyroidism in premenopausal women receiving levothyroxine sodium for replacement or suppressive therapy is associated with bone loss. To minimize the risk of osteoporosis, it is advisable that the dose be titrated to the lowest effective dose (Refs. 1 and 2).

Because of the risks associated with overtreatment or undertreatment with levothyroxine sodium, it is critical that patients have available to them products that are consistent in potency and bioavailability. Recent information concerning stability problems (discussed in section V of this document) shows that this goal is not currently being met.

III. Adverse Drug Experiences

Between 1987 and 1994, FDA received 58 adverse drug experience reports associated with the potency of orally administered levothyroxine sodium products. Forty-seven of the reports suggested that the products were subpotent, while nine suggested superpotency. Two of the reports concerned inconsistency in thyroid hormone blood levels. Four hospitalizations were included in the reports; two were attributed to product subpotency and two were attributed to product superpotency. More than half of the 58 reports were supported by thyroid function blood tests. Specific hypothyroid symptoms included: Severe depression, fatigue, weight gain, constipation, cold intolerance, edema, and difficulty concentrating. Specific hyperthyroid symptoms included: Atrial fibrillation, heart palpitations, and difficulty sleeping.

Some of the problems reported were the result of switching brands. However, other adverse events occurred when patients received a refill of a product on which they had previously been stable, indicating a lack of consistency in stability, potency, and bioavailability between different lots of tablets from the same manufacturer.

Because levothyroxine sodium products are prescription drugs marketed without approved NDA's, manufacturers are expressly required, under 21 CFR 310.305, to report adverse drug experiences that are unexpected and serious; they are not required, as are products with approved applications (see 21 CFR 314.80) periodically to report all adverse drug experiences, including expected or less serious events. Some adverse drug experiences related to inconsistencies in potency of orally administered levothyroxine sodium products may not be regarded as serious or unexpected and, as a result, may go unreported. Reports received by FDA, therefore, may not reflect the total number of adverse events associated with inconsistencies in product potency.

IV. Formulation Change

Because orally administered levothyroxine sodium products are marketed without approved applications, manufacturers have not sought FDA approval each time they reformulate their products. In 1982, for example, one manufacturer reformulated its levothyroxine sodium product by removing two inactive ingredients and changing the physical form of coloring agents (Ref. 6). The reformulated product increased significantly in potency. One study found that the reformulated product contained 100 percent of stated content compared to 78 percent before the reformulation (Ref. 7). Another study estimated that the levothyroxine content of the old formulation was approximately 70 percent of the stated value (Ref. 8).

This increase in product potency resulted in serious clinical problems. On January 17, 1984, a physician reported to FDA: ''I have noticed a recent significant problem with the use of [this levothyroxine sodium product]. People who have been on it for years are suddenly becoming toxic on the same dose. Also, people starting on the medication become toxic on 0.1 mg [milligram] which is unheard of.'' On May 25, 1984, another physician reported that 15 to 20 percent of his patients using the product had become hyperthyroid although they had been completely controlled up until that time. Another doctor reported in May 1984 that three patients, previously well-controlled on the product, had developed thyroid toxicity. One of these patients experienced atrial fibrillation.

There is evidence that manufacturers continue to make formulation changes to orally administered levothyroxine sodium products. As discussed in section V of this document, one manufacturer is reformulating in order to make its product stable at room temperature. In a 1990 study (Ref. 5), one manufacturer's levothyroxine sodium tablets selected from different batches showed variations in chromatographs suggesting that different excipients had been used.

V. Stability Problems

FDA, in conjunction with the United States Pharmacopeial Convention, took the initiative in organizing a workshop in 1982 to set the standard for the use of a stability-indicating high-performance liquid chromatographic (HPLC) assay for the quality control of thyroid hormone drug products (Ref. 3). The former assay method was based on iodine content and was not stability-indicating. Using the HPLC method, there have been numerous reports indicating problems with the stability of orally administered levothyroxine sodium products in the past several years. Almost every manufacturer of

orally administered levothyroxine sodium products, including the market leader, has reported recalls that were the result of potency or stability problems.

Since 1991, there have been no less than 10 firm-initiated recalls of levothyroxine sodium tablets involving 150 lots and more than 100 million tablets. In all but one case, the recalls were initiated because tablets were found to be subpotent or potency could not be assured through the expiration date. The remaining recall was initiated for a product that was found to be superpotent. During this period, FDA also issued two warning letters to manufacturers citing stability problems with orally administered levothyroxine sodium products.

At one firm, potency problems with levothyroxine sodium tablets resulted in destruction of products and repeated recalls. From 1990 to 1992, the firm destroyed 46 lots of levothyroxine sodium tablets that failed to meet potency or content uniformity specifications during finished product testing. In August 1989, this firm recalled 21 lots due to subpotency. In 1991, the firm recalled 26 lots in February and 15 lots in June because of subpotency.

An FDA inspection report concerning another manufacturer of levothyroxine sodium showed that 14 percent of all lots manufactured from 1991 through 1993 were rejected and destroyed for failure to meet the assay specifications of 103 to 110 percent established by the firm.

In March 1993, FDA sent a warning letter to a firm stating that its levothyroxine tablets were adulterated because the expiration date was not supported by adequate stability studies. Five lots of the firm's levothyroxine sodium tablets, labeled for storage within controlled room temperature range, had recently failed stability testing when stored at the higher end of the range. The warning letter also objected to the labeled storage conditions specifying a nonstandard storage range of 15 to 22 °C. FDA objected to this labeling because it did not conform to any storage conditions defined in United States Pharmacopeia (USP) XXII. In response, the firm changed the labeling instruction to store the product at 8 to 15 °C. The firm informed FDA that it would reformulate its levothyroxine sodium tablets to be stable at room temperature.

The five failing lots named in FDA's warning letter were recalled in April 1994. Previously, in December 1993, a lot of levothyroxine sodium tablets was recalled by the same firm because potency was not assured through the expiration date. In November 1994, the renamed successor firm recalled one lot of levothyroxine sodium tablets due to superpotency.

Another firm recalled six lots of levothyroxine sodium tablets in 1993 because they fell below potency, or would have fallen below potency, before the expiration date. The USP specifies a potency range for levothyroxine sodium from 90 percent to 110 percent. Analysis of the recalled tablets showed potencies ranging from 74.7 percent to 90.4 percent. Six months later, this firm recalled another lot of levothyroxine sodium tablets when it fell below labeled potency during routine stability testing. Content analysis found the potency of the failed lot to be 85.5 percent to 86.2 percent. Subsequently, an FDA inspection at the firm led to the issuance of a warning letter regarding the firm's levothyroxine sodium products. One of the deviations from good manufacturing practice regulations cited in that letter was failure to determine by appropriate stability testing the expiration date of some strengths of levothyroxine sodium. Another deviation concerned failure to establish adequate procedures for monitoring and control of temperature and humidity during the manufacturing process.

In April 1994, one manufacturer recalled seven lots of levothyroxine sodium products because potency could not be assured through the expiration date. In February 1995, the same manufacturer initiated a major recall of levothyroxine sodium affecting 60 lots and 50,436,000 tablets. The recall was initiated when the product was found to be below potency at 18-month stability testing.

In December 1995, a manufacturer recalled 22 lots of levothyroxine sodium products because potency could not be assured through the expiration date.

In addition to raising concerns about the consistent potency of orally administered levothyroxine sodium products, this pattern of stability problems suggests that the customary 2-year shelf life may not be appropriate for these products because they are prone to experience accelerated degradation in response to a variety of factors. Levothyroxine sodium is unstable in the presence of light, temperature, air, and humidity (Ref. 4). One study found that some excipients used with levothyroxine sodium act as catalysts to hasten its degradation (Ref. 5). In addition, the kinetics of levothyroxine sodium degradation is complex. Stability studies show that levothyroxine sodium exhibits a biphasic first order degradation profile, with an initial fast degradation rate followed by a slower rate (Ref. 4). The initial fast rate varies depending on temperature. To compensate for the initial accelerated degradation, some manufacturers use an overage of active ingredient in their formulation, which can lead to occasional instances of superpotency.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) Paul, T. L. et al., ''Long-term L-Thyroxine Therapy Is Associated with Decreased Hip Bone Density in Premenopausal Women,'' *Journal of the American Medical Association*, 259:3137–3141, 1988.

(2) Kung, A. W. C., and K. K. Pun, ''Bone Mineral Density in Premenopausal Women Receiving Long-term Physiological Doses of Levothyroxine,'' *Journal of the American Medical Association*, 265:2688–2691, 1991.

(3) Garnick, R. I. et al., ''Stability Indicating High-Pressure Liquid Chromatographic Method for Quality Control of Sodium Liothyronine and Sodium Levothyroxine in Tablet Formulations,'' in ''Hormone Drugs,'' edited by J. L. Gueriguian, E. D. Bransome, and A. S. Outschoorn, United States Pharmacopeial Convention, pp. 504–516, Rockville, 1982.

(4) Won, C. M., ''Kinetics of Degradation of Levothyroxine in Aqueous Solution and in Solid State,'' *Pharmaceutical Research*, 9:131–137, 1992.

(5) Das Gupta, V. et al., ''Effect of Excipients on the Stability of Levothyroxine Sodium Tablets,'' *Journal of Clinical Pharmacy and Therapeutics*, 15:331–336, 1990.

(6) Hennessey, J. V., K. D. Burman, and L. Wartofsky, ''The Equivalency of Two L-Thyroxine Preparations,'' *Annals of Internal Medicine*, 102:770–773, 1985.

(7) Stoffer, S. S., and W. E. Szpunar, ''Potency of Levothyroxine Products,'' *Journal of the American Medical Association*, 251:635–636, 1984.

(8) Fish, L. H. et al., ''Replacement Dose, Metabolism, and Bioavailability of Levothyroxine in the Treatment of Hypothyroidism; Role of Triiodothyronine in Pituitary Feedback in Humans,'' *The New England Journal of Medicine*, 316:764–770, 1987.

VII. Legal Status

Levothyroxine sodium is used as replacement therapy when endogenous thyroid hormone production is deficient. The maintenance dosage must be determined on a patient-by-patient basis. Levothyroxine sodium products are marketed in multiple dosage strengths, that may vary by only 12 micrograms, thus permitting careful titration of dose. Because of levothyroxine sodium's narrow therapeutic index, it is particularly important that the amount of available active drug be consistent for a given tablet strength.

Variations in the amount of available active drug can affect both safety and effectiveness. Patients who receive superpotent tablets may experience angina, tachycardia, or arrhythmias. There is also evidence that overtreatment can cause osteoporosis. Subpotent tablets will not be effective in controlling hypothyroid symptoms or sequelae.

The drug substance levothyroxine sodium is unstable in the presence of light, temperature, air, and humidity. Unless the manufacturing process can be carefully and consistently controlled, orally administered levothyroxine sodium products may not be fully potent through the labeled expiration date, or be of consistent potency from lot to lot.

There is evidence from recalls, adverse drug experience reports, and inspection reports that even when a physician consistently prescribes the same brand of orally administered levothyroxine sodium, patients may receive products of variable potency at a given dose. Such variations in product potency present actual safety and effectiveness concerns.

In conclusion, the active ingredient levothyroxine sodium is effective in treating hypothyroidism and is safe when carefully and consistently manufactured and stored, and prescribed in the correct amount to replace the deficiency of thyroid hormone in a particular patient. However, no currently marketed orally administered levothyroxine sodium product has been shown to demonstrate consistent potency and stability and, thus, no currently marketed orally administered levothyroxine sodium product is generally recognized as safe and effective. Accordingly, any orally administered drug product containing levothyroxine sodium is a new drug under section 201(p) of the act (21 U.S.C. 321(p)) and is subject to the requirements of section 505 of the act.

Manufacturers who wish to continue to market orally administered levothyroxine sodium products must submit applications as required by section 505 of the act and part 314 (21 CFR part 314). FDA is prepared to accept NDA's for these products, including section 505(b)(2) applications. An applicant making a submission under section 505(b)(2) of the act may rely upon investigations described in section 505(b)(1)(A) that were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted. For example, such an application may include literature supporting the safety and/or the effectiveness of levothyroxine sodium. A bioavailability study must be completed and submitted as part of an NDA, including a 505(b)(2) application, in order to evaluate the safety and efficacy of these products.

If the manufacturer of an orally administered drug product containing levothyroxine sodium contends that the drug product is not subject to the new drug requirements of the act, this claim should be submitted in the form of a citizen petition under § 10.30 and should be filed to Docket No. 97N–0314 no later than October 14, 1997. Sixty days is the time allowed for such submissions in similar proceedings. (See § 314.200(c) and (e).) Under § 10.30(e)(2), the agency will provide a response to each petitioner within 180 days of receipt of the petition. A citizen petition that contends that a particular drug product is not subject to the new drug requirements of the act should contain the quality and quantity of data and information set forth in § 314.200(e). Note especially that a contention that a drug product is generally recognized as safe and effective within the meaning of section 201(p) of the act is to be supported by the same quantity and quality of scientific evidence that is required to obtain approval of an application for the product. (See § 314.200(e)(1).)

Levothyroxine sodium products are medically necessary because they are used to treat hypothyroidism and no alternative drug is relied upon by the medical community as an adequate substitute. Accordingly, FDA will permit orally administered levothyroxine sodium products to be marketed without approved NDA's until August 14, 2000, in order to give manufacturers time to conduct the required studies and to prepare and submit applications, and to allow time for review of and action on these applications. This provision for continuation of marketing, which applies only to levothyroxine sodium products marketed on or before the publication of this notice, is consistent with the order in *Hoffmann-La Roche, Inc.* v. *Weinberger*, 425 F. Supp. 890 (D.D.C. 1975), reprinted in the **Federal Register** of September 22, 1975 (40 FR 43531) and March 2, 1976 (41 FR 9001).

After August 14, 2000 any orally administered drug product containing levothyroxine sodium, marketed on or before the date of this notice, that is introduced or delivered for introduction into interstate commerce without an approved application will be subject to regulatory action, unless there has been a finding by FDA, under a citizen petition submitted for that product as described above, that the product is not subject to the new drug requirements of the act.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505 (21 U.S.C. 352, 355)) and under authority delegated to the Deputy Commissioner for Policy (21 CFR 5.20).

Dated: August 7, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–21575 Filed 8–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

National Consumer Forum; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA), Office of Consumer Affairs (OCA), is announcing the first in a series of National Consumer Forums. These forums are an opportunity to engage in open dialog with consumers on health issues and agency actions.

DATES: The meeting will be held on Tuesday, September 23, 1997, from 1 p.m. to 3 p.m. Due to space limitations, preregistration is recommended

ADDRESSES: The meeting will be held in the Truman Room of the White House Conference Center, 726 Jackson Pl. NW., Washington, DC 20006. Use Metro Stop Farragut North, K Street Exit on the Red Line, and Farragut West on Blue/Orange Line.

FOR FURTHER INFORMATION CONTACT: Carol M. Lewis, Office of Consumer

Affairs (HFE–1), Food and Drug Administration, Parklawn Bldg., 5600 Fishers Lane, rm. 16–85, Rockville, MD 20857, 301–827–4404, FAX 301–827–3052, or e-mail ''clewis@bangate.fda.gov''.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to provide an opportunity for consumers to discuss their concerns and thereby participate in agency decision and policymaking on key health care and consumer protection issues. To register for the meeting and obtain directions, please call, fax, or e-mail the contact person (address above). Include the name, title, telephone and fax numbers of the person attending, and the name of the organization being represented.

If special accommodations are required due to a disability, please contact Carol M. Lewis at least 7 days in advance of the meeting.

Dated: August 8, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–21573 Filed 8–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of public advisory committees of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Joint meeting of the Nonprescription Drugs Advisory Committee and Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on September 19, 1997, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Andrea G. Neal or Leander B. Madoo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 12541 and 12545. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committees will jointly consider new drug application (NDA) 20–840, Beconase® Allergy Nasal Spray (belcomethasone dipropionate 0.042%, monohydrate, Glaxo Wellcome, Inc.) for over-the-counter treatment and prevention of the symptoms of seasonal allergic rhinitis in patients 12 years of age and older.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 5, 1997. Oral presentations from the public will be scheduled between approximately 8:30 a.m. to 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 5, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 7, 1997.

William B. Schultz,

Acting Lead Deputy Commissioner for the Food and Drug Administration.

[FR Doc. 97–21571 Filed 8–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Nonprescription Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on September 18, 1997, from 8:30 a.m. to approximately 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Andrea G. Neal, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Committee will discuss issues relating to the labeling and dosing of over-the-counter (OTC) pediatric analgesic/antipyretic drug products. The Committee will discuss topics such as: (1) What is an appropriate lower age limit for the dosing of OTC analgesic/antipyretic drug products; and (2) the safety implications of the OTC availability of children's analgesic/antipyretic suspension products and double concentrated infant drops with overlapping age directions.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 12, 1997. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 12, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C., app. 2).

Dated: August 7, 1997.

William B. Schultz,

Acting Lead Deputy Commissioner for the Food and Drug Administration.

[FR Doc. 97–21574 Filed 8–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on September 18 and 19, 1997, 8 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballrooms II and III, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Jannette O'Neill-Gonzalez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 18, 1997, the committee will discuss: (1) New drug application (NDA) 20–817, Rivizor™ Tablets (vorozole, Janssen Research Foundation), indicated for ''the treatment of advanced breast cancer in postmenopausal women (natural or artificially-induced menopause) with disease progression following antiestrogen therapy''; and (2) NDA Supplement 20–451/S002, Photofrin® (porfimer sodium, QLT Photo Therapeutics Inc.), indicated for: ''a) reduction of obstruction and palliation of symptoms in patients with completely or partially obstructing endobronchial nonsmall cell lung cancer (NSCLC), and b) treatment of endobronchial carcinoma in situ or microinvasive NSCLC in patients for whom surgery and radiotherapy are not indicated.'' On September 19, 1997, the committee will discuss: (1) NDA 20–826, Paxene® (paclitaxel, Baker-Norton Pharmaceuticals, Inc.), ''indicated after failure of first line or subsequent systemic chemotherapy for the treatment of advanced AIDS-related Kaposi's Sarcoma''; and (2) NDA Supplement 16–295/S029, Droxia® (hydroxyurea, Bristol-Myers Squibb), ''indicated in the treatment of sickle cell anemia in adult patients to prevent painful crises and to reduce the need for blood transfusions.''

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 4, 1997. Oral presentations from the public will be scheduled between approximately 8:05 a.m. and 9:05 a.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 4, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 7, 1997.

William B. Schultz,

Acting Lead Deputy Commissioner for the Food and Drug Administration.

[FR Doc. 97–21572 Filed 8–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0158]

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 ''Petition for Generally Recognized As Safe Affirmation'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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 the **Federal Register** of May 9, 1997 (61 FR 25632), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). OMB has now approved the information collection and has assigned OMB control number 0910–0132. The approval expires on July 31, 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: August 7, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–21435 Filed 8–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0135]

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 ''Animal Proteins Prohibited in Ruminant Feed'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 5, 1997 (62 FR 30936), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). OMB has now approved the information collection and has assigned OMB control number 0910–0339. The approval expires on July 31, 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: August 8, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–21563 Filed 8–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[ORD–102–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: June 1997

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: One new proposal for Medicaid demonstration projects was submitted to the Department of Health and Human Services during the month of June 1997 under the authority of section 1115 of the Social Security Act. No proposals were approved, disapproved, or withdrawn during that time period. (This notice can be accessed on the Internet at http://www.hcfa.gov/ord/sect1115.htm.)

COMMENTS: We will accept written comments on this proposal. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson, (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified: (1) The principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, Disapproved, and Withdrawn Proposals for the Month of June 1997

A. Comprehensive Health Reform Programs

1. New Proposals

No new proposals were received during the month of June.

2. Pending Proposal

Pending proposals for the month of May 1997 referenced in the **Federal Register** of July 17, 1997 (62 FR 38314) remain unchanged, except for the addition of the following proposal.

Demonstration Title/State: ARKids First Program—Arkansas Description: The State is proposing to expand Medicaid eligibility and access to health care services for children age 18 and under with gross family income at or below 200 percent of the Federal poverty level. The intent of the waiver is to cover all children not otherwise Medicaid eligible at this income level statewide and to expand access to preventative health care.

Date Received: May 16, 1997.

State Contact: Binnie Alberius, Arkansas Department of Human Services, Division of Medical Services, Donaghey Plaza South, P.O. Box 1437, Little Rock, AK 72203–1437, (501) 682–8361.

Federal Project Officer: Joan Peterson, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Office of State Health Reform Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were approved during the month of June.

4. Approved, Disapproved, and Withdrawn Proposals

No proposals were approved, disapproved, or withdrawn during the month of June.

B. Other Section 1115 Demonstration Proposals

1. New Proposal

The following proposal was received during the month of June.

Demonstration Title/State: Maine-Net—Integrated Managed Health Care Plans—Maine.

Description: The Maine-Net project is a two-site demonstration designed to test the efficiency and effectiveness of financing and delivery systems which integrate primary, acute, and long-term care services under a combination of Medicaid capitation payments, Medicare fee-for-service, and/or primary care case management. Participants will be both Medicaid only and dually eligible Medicare/Medicaid beneficiaries who are 65 or older or physically disabled. Enrollment will be mandatory.

Date Received: June 2, 1997.

State Contact: Christine Gianopoulos, Bureau of Elder and Adult Services, Maine Department of Human Services, 35 Anthony Avenue, State House Station 11, Augusta, Maine 04333–0011, (207) 624–5335.

Federal Project Officer: Kay Lewandowski, Health Care Financing Administration, Office of Strategic Planning, Mail Stop C3–23–04, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Mass Health Senior Care Options—Massachusetts.

Description: The Massachusetts Division of Medical Assistance submitted a demonstration waiver application for both Medicare (Section 222) and Medicaid (Section 1115) programs. The application would establish integrated care to persons 65 years of age and older who are eligible for both Medicare and Medicaid through voluntary enrollment in Senior Care Organizations (SCO). SCOs are expected to be available statewide. In addition to Federal demonstration waivers, enabling legislation in Massachusetts is also necessary.

Date Received: June 12, 1997.

State Contact: Kate Willrich, Managed Care Program Development, Division of Medical Assistance, 600 Washington Street, Boston, Massachusetts 02111, (617) 210–5466.

Federal Project Officer: William D. Clark, Health Care Financing Administration, Office of Strategic

Planning, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

2. Pending, Approved, Disapproved, and Withdrawn Proposals

No proposals approved, disapproved, or withdrawn during the month of June.

Pending proposals for the month of May 1997 referenced in the **Federal Register** of July 17, 1997 (62 FR 38314) remain unchanged.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments)

Dated: August 6, 1997.

Barbara Cooper,

Acting Director, Office of Research and Demonstrations.

[FR Doc. 97–21439 Filed 8–13–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Application Form—0915–0038—Extension, No Change

The Health Education Assistance Loan (HEAL) program provides federally-insured loans to students in schools of allopathic medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, or chiropractic, and graduate students in health administration or clinical psychology. Eligible lenders, such as banks, savings and loan associations, credit unions, pension funds, State agencies, HEAL schools, and insurance companies, make HEAL loans which are insured by the Federal Government against loss due to borrowers' death, disability, bankruptcy, and default. The basic purpose of the program is to assure the availability of funds for loans to eligible students who need to borrow money to pay for their educational costs.

The HEAL program is being phased out and no new loans will be made after September 30, 1998 unless reauthorization is enacted. We are, however, requesting a 3-year extension of the OMB approval of the HEAL Application Form HRSA–700 because lenders will continue to use this form for consolidation loans through FY 2000. Students use the application to apply for HEAL loans (through FY 98) and consolidation of loans, schools use the application to determine a student's eligibility and maximum approval amount of each loan (through FY 98 only), and lenders use the application to determine student eligibility and the amount of the installment or disbursement to be given to the borrower, and to process consolidation loans.

The estimate of burden for the application form for FY 98 is as follows:

Type of respondent	Number of respondents	Responses per respondent	Total number of responses	Burden per response (minutes)	Total burden (hours)
Applicants	8,230	1	8,230	25	3,429
Schools	190	41	7,730	32	4,123
Lenders	11	748	8,230	35	4,801
Total	8,431	.....	24,190	.....	12,353

The estimate of burden for the application form for FY 1999 and 2000 (for consolidation loans only) is as follows:

Type of respondent	Nunber of respondents	Responses per respondent	Total number of responses	Burden per hour response (minutes)	Total burden (hours)
Applicants	500	1	500	25	208
Lenders	11	45	500	35	292
Total	511	.....	1,000	.....	500

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD, 20857. Written comments should be received within 60 days of this Notice.

Dated: August 8, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–21564 Filed 8–13–97; 8:45 am]

BILLING CODE 4160–15–P

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:

The Health Education Assistance Loan (HEAL) Program: Forms— 0915–0043—Extension, No Change. This clearance request is for extension of approval for 3 HEAL forms: The Repayment Schedule is used by lenders to inform the borrower of the cost of a HEAL loan, the number and amount of payments, and the Truth-in-Lending requirements; the Promissory Note is used by the lender to provide the borrower with the legally binding terms of the loan; and the Lender's Report (also known as the Call Report) is used by the lender to provide the Department with information on the status of all loans outstanding. The forms are needed to provide borrowers with information on their responsibilities and to determine which lenders may have excessive delinquencies and defaulted loans. The estimates of burden for the forms are as follows:

Form and number	Number of respondents	Responses per respond.	Number of responses	Burden per response (hours)	Total burden hours
Disclosure:					
Repayment Schedule HRSA 501–1,2	11	1,090	12,000	.5	6,000
Promissory Note, HRSA 500–1&2	9	758	6,818	.5	3,409
Promissory Note, HRSA 500–3	11	455	5,000	.5	2,500
Disclosure Subtotal	11	2,165	23,818	.5	11,909
Reporting:					
Call Report, HRSA 512	32	4	128	.75	96
Total Reporting and Disclosure	32	748	23,946	.5	12,005

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 8, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–21565 Filed 8–13–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HIV Early Intervention Services Grants; Notice of Pre-Application Technical Assistance Workshops

AGENCY: Health Resources and Services Administration.

ACTION: Notice of Pre-Application Technical Assistance Workshops.

SUMMARY: The Health Resources and Services Administration will hold two pre-application technical assistance workshops for organizations which will compete for HIV Early Intervention Services grants under sections 2651–5 of the Public Health Service Act, 42 U.S.C. 300 ff–51–5, commonly referred to as Title III of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Public Law 101–381, as amended by Public Law 104–146.

Eligible applicants are public entities and nonprofit private entities that are: migrant health centers under Section 330(g) of the Public Health Service (PHS) Act; community health centers under Section 330 of the PHS Act; health care for the homeless grantees under Section 330(h) of the PHS Act; family planning grantees under Section 1001 of the PHS Act other than States; comprehensive hemophilia diagnostic and treatment centers; federally-qualified health centers under section 1905(l)(2)(B) of the Social Security Act; or public and private nonprofit entities that currently provide comprehensive primary care services to populations at risk of HIV disease.

PURPOSE: The purpose of the technical assistance workshops is to provide information about the Ryan White CARE Act Early Intervention Services program and application procedures. Eligible entities will have an opportunity to review the program guidance and to receive technical assistance pertaining to all aspects of writing a grant application.

If you would like to receive an application kit prior to the meeting, please contact the HRSA Grants Application Center at 1–888–300–4772.

FOR FURTHER INFORMATION CONTACT: Anyone interested in attending the meetings should contact Ms. Elina Gross, Professional and Scientific Associates, Inc., 8180 Greensboro Drive, Suite 1050, McLean, VA 22102. Her telephone number is 703–442–9824. Room reservations should be made directly with the hotels. Costs of attending the workshop are the sole responsibility of the attendee. For information about the Ryan White Title

III program, contact Deborah Parham at 301–594–4444.

DATES, TIMES, LOCATIONS:

Saturday, August 16, 1997, 9:00 a.m.–5:00 p.m., Hyatt Regency Hotel, 265 Peachtree Street, NE, Atlanta, Georgia, 404–577–1234

Monday, August 18, 1997, 9:00 a.m.–5:00 p.m., Hyatt Regency Crown Center, 2345 McGee Street, Kansas City, Missouri, 816–421–1234

The OMB *Catalog of Federal Domestic Assistance* number for this program is 93.918.

Dated: August 12, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–21717 Filed 8–12–97; 2:39 pm]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for 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.*):

Applicant: Charles Salzhauer, Oxford, NC, PRT–831582.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: David Tuttle, Coeurd Alene, ID, PRT–831856.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Howard Coker, Jacksonville, FL, PRT–833026.

The applicant requests a permit to import the sport-hunted trophy of a cheetah (*Acinonyx jubatus*) taken in Zimbabwe for the purpose of enhancement of the survial of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

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: USGS–BRD, Alaska Science Center, Anchorage, AK, PRT–801652.

Type of Permit: Take for Scientific Research.

Name and Number of Animals: Walrus (*Odobenus rosmarus*), up to 7 or remaining takes.

Summary of Activity to be Authorized: The applicant has requested an amendment to their current permit to allow for the use of new drugs or new drug combinations as they become available, provided that the OMA is notified in advance. The applicant states that new drugs for wildlife immobilization are constantly being developed and the amendment to their permit will allow them to test the new drugs and drug combinations in a timely manner.

Source of Marine Mammals for Scientific Research: Alaska and surrounding waters.

Period of Activity: From issuance date of the permit to 12/31/00, if issued.

Applicant: Karl Nothdurft, Grosse Pointe Farms, MI, PRT–832907.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Foxe Basin polar bear population, Northwest Territories, Canada for personal use.

Applicant: Ron Brunsfeld, Northbrook, IL, PRT–832897.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Gerald Bader, Federal Dam, MN, PRT–832625.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Foxe Basin 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 8, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–21450 Filed 8–13–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Kokia Cookei for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for *Kokia cookei.* This species is known only from the island of Molokai and is federally listed as endangered. There are no naturally occurring populations of *Kokia cookei.* It currently exists only in cultivation at two locations and in managed outplantings at three sites. The total number of individual plants remaining is 28.

DATES: Comments on the draft recovery plan must be received on or before October 14, 1997, to receive consideration by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, Room 3108, 300 Ala Moana Boulevard, P.O. Box 50088, Honolulu, Hawaii 96850 (phone: 808/541–3441). A copy will also be available for inspection at the Molokai Public Library, 15 Ala Malama Street, Kaunakakai, Hawaii 96748 (phone: 808/553–5483). Requests for copies of the draft recovery plan and written comments and materials regarding the plan should be addressed to Field Supervisor-Ecological Services, U.S. Fish and Wildlife Service, Pacific

Islands Ecoregion at the Honolulu address given above.

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Assistant Field Supervisor-Endangered Species, at the Honolulu address given above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystem 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, its Territories and Commonwealths. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), 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 a 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. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan is *Kokia cookei.* Known only from the island of Molokai, *Kokia cookei* has been described as the rarest plant in the world. When first discovered in the 1860s, three trees of this species were known. By the twentieth century, only a single wild tree remained. The species became extirpated from the wild in 1918. Currently, only 28 cloned individuals of *Kokia cookei* exist. These individuals were produced by grafting to root stocks of the two related *Kokia* species, *Kokia kauaiensis* and *Kokia drynarioides.* Seven individuals are in artificial cultivation facilities on the islands of Maui and Oahu. The remaining 21 individuals are in small (10,000 square feet or less) outplanting sites on privately owned Molokai Ranch lands, at Puu Nana, about 365 meters (1200 feet) elevation.

The destruction of dryland habitats throughout the Hawaiian Islands, which began 1,500 years ago with the coming of the Polynesians to Hawaii and increased greatly with the arrival of the Europeans a little over 200 years ago, has led to the elimination of *Kokia cookei* in the wild. *Kokia cookei* was directly impacted by browsing, bark stripping, and soil trampling by domestic and feral cattle, goats, and sheep. Currently, this species is most threatened by the extremely low number of individuals remaining, the lack of naturally rooted plants, and the lack of viable seed production by the remaining individuals.

The objective of this plan is to provide a framework for the recovery of *Kokia cookei* so that its protection by the Act is no longer necessary. Recovery efforts will focus on increasing the numbers of cloned individuals while pursuing research into other methods, such as embryo culture methodology, for the production of individuals capable of setting viable seed. Suitable sites for outplanting of individuals on Molokai, Maui, and Lanai will be located and steps taken to manage these lands for the perpetuity of *Kokia cookei* and other native components of the dryland forest.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 8, 1997.

Thomas J. Dwyer,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 97–21545 Filed 8–13–97; 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 Jon Ziegler, Rapid City, SD (PRT–830065) for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Notice is hereby given that on July 21, 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.

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 8, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–21449 Filed 8–13–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–7122–03–821G]

Proposed Expansion of the Santa Rita Pit and Land Exchange in Grant County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of scoping meeting.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM), Las Cruces District Office, will be directing the preparation of an EIS to be prepared by a third party contractor. The EIS will describe the potential impacts of the Phelps Dodge Corporation-Chino Mines Company (CMC) proposed Santa Rita Pit Expansion and Land Exchange Project, located approximately 7 miles north-northeast of the town of Hurley, in Grant County, New Mexico. The proposed development would occur partially on patented CMC land and partially on Federal land administered by the BLM.

The public is invited to participate in the planning process. A public scoping meeting will be held at the following time and location:

Time/Date	Location
7:00 p.m. September 3, 1997	Bayard Community Center, 300 Hurley Avenue, Bayard, New Mexico.

DATES: Written comments on the scoping process will be accepted through September 15, 1997.

ADDRESSES: Comments should be sent to Tom Custer, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Tom Custer, BLM Las Cruces District Office, at (505) 525–4328.

SUPPLEMENTARY INFORMATION: CMC is proposing to expand its current copper mining operation at the Santa Rita Mine onto land administered by the BLM. An economic ore deposit lies within the southeastern end of the mine pit on patented land. Removing the overburden and extracting the ore safely will require constructing access roads and laying the pit walls back onto BLM land. It will also include expanding existing stockpiles and locating new stockpiles.

In 1995, BLM required CMC to prepare an amendment to a 1981 Plan of Operations (POO) for the Santa Rita Mine for certain proposed new activities on public land. The amended POO described proposed mining activities for 1995 through 1998 that would be necessary to meet ore production schedules. The amendment was submitted to the BLM in November 1995. The BLM determined that an Environmental Assessment (EA) of the potential environmental impacts associated with activities proposed in the amendment (the Proposed Action) was required. The EA was completed, and the BLM provided a Finding of No Significant Impact (FONSI) in November 1996. Additionally, as a prerequisite to allowing the interim amendment, the BLM required development of a new long-term POO and preparation of an EIS. The long-term POO describes future expansion of the mine onto BLM land, from 1999 to 2018.

The Santa Rita Mine is an open pit copper mine owned by the CMC, a partnership between Phelps Dodge Mining Company and Heisei Minerals Company, a subsidiary of Mitsubishi Corporation. CMC also owns and operates a copper concentrator, solution extraction and electrowinning facility, copper smelter, and ancillary support facilities near the Santa Rita Mine. Phelps Dodge owns a two-thirds interest and is the operator of the property, and Heisei owns a one-third interest. In 1995, CMC produced a total of 168,700 tons of copper metal along with by-products molybdenum, gold, and silver. Chino ranks fifth largest in the United States and sixteenth largest in the world in terms of annual copper production. In 1995, Chino mined a total of 116 million tons of rock from the Santa Rita open pit.

The Proposed Action considered in the POO describes mining activities related to continuing the advance of the open pit and rock stockpiles to the south of existing operations onto Federal land administered by the BLM.

The Santa Rita open pit mine presently covers an area of approximately one square mile at the perimeter, with additional areas on the perimeter used as rock stockpiles. The upper most level in the pit is located on the east side at the 6,750 foot elevation and the lowest level in the pit is currently at the 5,400 foot elevation. Mining takes place on a 3-shift-per-day, 7-day-per-week basis at a rate of about 290,000 tons per day. Up to 60,000 tons of ore per day are delivered to the crusher.

Blasthole drilling is about 8,430 feet per day, approximately 130 holes per day. Drill hole cuttings are sampled and assayed for determination of material type. Material is designated as sulfide ore, leach ore, or low-grade leach ore. Blasting is done only during day-shift on a 5-day-per-week basis. Blasting agents in use at Chino include emulsions, ANFO (ammonium nitrate and fuel oil), and aluminized ANFO. Loading of the materials in the Santa Rita Pit is accomplished with electric shovels varying from 17 cubic yard to 56 cubic yard dipper capacity. The size of dipper used is dependent on whether the shovel is operating in high or low density material.

The existing haulage truck fleet moves approximately 60,000 tons per day of ore, 151,000 tons per day of leach rock, and 228,000 tons per day of waste rock. A fleet of 190- to 240-ton haul trucks is utilized to move this material. Ore is delivered to the concentrator primary crusher; leach ore and no-leach rock are delivered to stockpiles on the perimeter of the pit. Haul distances are currently averaging about 13,000 feet with 600 feet of lift.

The POO provides detailed descriptions of the CMC facility including ancillary facilities, supporting structures, and proposed action.

Reclamation bonding and analyses will be determined through the development of a reclamation plan with the New Mexico Mining and Minerals Division (MMD). The goal of reclamation of the Santa Rita Mine will be to effectively mitigate impacts to the natural, human, and cultural environment. Implementation of the Reclamation Plan will require that CMC comply with all applicable rules and standards set forth by the BLM and the New Mexico Mining Act. A Closeout Plan will be submitted to the New Mexico MMD as part of the mine permitting process. The Closeout Plan will include a description of the reclamation plan and specific mitigation measures that CMC will commit to research and development. These mitigation measures will serve to reduce short-term and long-term environmental impacts associated with the implementation of one of the action alternatives. The intent of the reclamation plan and its implementation will be to satisfy both BLM and State of New Mexico guidelines.

The proposed land exchange will involve approximately 5,390 acres of Federal land in Grant County managed by the BLM (Selected Land) and approximately 463 acres of land owned by CMC (Offered Land). In exchange for the Federal land, CMC is offering land in the Organ Mountains about 14 miles northeast of Las Cruces, New Mexico.

Township	Range	Section	Acres
Selected Land			
17 South	12 West	Portions of Sections 22, 26, 28, 34, 35	7.66
18 South	11 West	Portions of Sections 7, 18, 19, 20	722.68
18 South	12 West	Portions of Sections 1, 3, 4, 5, 6, 7, 8, 12, 17, 20, 21	2,579.24
19 South	11 West	Section 7	86.02

Township	Range	Section	Acres
19 South	12 West:	Section 12	160
21 South	12 West:	Sections 13, 14, 23, 24	1,520
21 South	11 West	Section 19	314.44
Offered Land			
22 South	4 East	Section 5	463

The EIS will address water resources, geology and minerals, air quality, soils, vegetation resources, wildlife resources, special-status species, range resources, land use and access, recreation, visual resources, social and economic values, cultural resources, transportation, noise, climate and reclamation.

The BLM has identified the following resources as requiring emphasis during analysis:

Mimbres Figwort

Although this plant is not protected by Federal or State endangered species laws, it is sufficiently rare (State of New Mexico List 2, R–E–D code 2–1–3) that impacts to the local population could decrease genetic variability in the species.

Peregrine Falcon

Two peregrine falcons and a peregrine falcon eyrie were identified near the Santa Rita pit in July 1996.

Visual Resources

Scenic resources near the Santa Rita pit include the Kneeling Nun and Kneeling Nun ridge. The Kneeling Nun is a rock monolith which is a well-known locallandmark. (The Kneeling Nun will be retained in Federal ownership.)

Air Quality

Potential impacts to air quality will need to be emphasized during analysis.

Water Resources

Potential impact to ground water and surface water quality and quantity, including acid rock drainage, will need to be emphasized during analysis.

Cumulative Impacts

Mining in the region has occurred since the late 1880's. Analysis of cumulative impacts related to past mining activity, present activity, and planned future expansions will need to be emphasized.

BLM's scoping process for the EIS will include: (1) Identification of issues to be addressed; (2) identification of viable alternatives, and (3) notifying interested groups, individuals, and agencies so that additional information concerning these issues can be obtained. The scoping will consist of a news release announcing the start of the EIS process; letters of invitation to participate in the scoping process; and a scoping packet which further clarifies the proposed action and significant issues being considered to be distributed to those on the mailing list and made available upon request.

Dated: August 6, 1997.

Richard T. Watts,

Acting District Manager.

[FR Doc. 97–21542 Filed 8–13–97; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Changes in Military Warning Areas for the Western Gulf of Mexico

ACTION: Notice of changes in Military Warning Areas for the Western Gulf of Mexico.

SUMMARY: The Department of Defense (DOD) has recently issued a document describing changes in Military Warning Areas in the Gulf of Mexico. The MMS is giving notice of these changes to existing lessees and to potential bidders in Outer Continental Shelf Lease Sale 168, Western Gulf of Mexico.

CONTACT: Charles Hill, Gulf of Mexico Regional Office (504) 736–2795.

SUPPLEMENTARY INFORMATION:

I. General

The Minerals Management Service (MMS) is giving notice to lessees and to potential bidders in Sale 168, Western Gulf of Mexico, of the existence of Military Warning Areas. The Department of Defense (DOD) established these Warning Areas in the Flight Information Publication ''Area Planning—Special Use Airspace—North and South America'' (NIMA reference number PLANXAP1A). This document is published by the National Imagery and Mapping Agency, 3200 South Second Street, St. Louis, Missouri 63118–3399. The DOD published the most recent version of this document on July 17, 1997; the next issue is expected to be published on June 18, 1998. The DOD will reissue it from time to time in the future.

Three Warning Areas currently are established in the Western Gulf of Mexico Planning Area: W–147, W–228, and W–602. W–147 is newly established by this July 17, 1997, issue of the document; the Federal Aviation Administration (FAA) controls this airspace (a portion of this warning area extends into the Central Gulf of Mexico Planning Area). W–228 has long been in existence and the July 7, 1997, document did not change it; the Navy controls this airspace. W–602 is also a long-established area, but the DOD changed it significantly; the Navy also controls this airspace.

Certain restrictions on flights and radio communications in the Warning Areas will require close coordination between lessees (and their operators and agents) and the appropriate military commander or the FAA in charge of the specific Warning Area. It is the responsibility of lessees to establish and maintain contact and coordination with the military commander(s) or the FAA in any Warning Area in which operations or flights would be expected in the course of occupying and developing any leases; this could include flights through a Warning Area traveling to a leased block which is not in a Warning Area.

Lessees should establish and maintain contact and coordination with the appropriate military commander(s) or the FAA whether or not there is a military stipulation in their lease(s).

II. Oil and Gas Lease Sale 168

Potential bidders in Oil and Gas Lease Sale 168 in the Western Gulf of Mexico (to be held in New Orleans on August 27, 1997) should note that in the July 17, 1997, document DOD changed the area of W–602. Therefore, the map referred to in Stipulation No. 2—Military Areas, paragraph 13 of the Final Notice of Sale for Oil and Gas Lease Sale 168 (62 FR 39863–39871), is outdated. MMS is advising potential bidders of the newly configured W–602. The blocks in W–602 are listed in Appendix 1 of this notice, and a revised map showing the Warning Areas is available as noted below. The area to

which the stipulation for leases in W-228 applies has not been changed. The FAA controls the new W–147; lessees and operators should coordinate operations in W–147 with the FAA.

III. Addresses and Contacts

A list of the Warning Areas in the Western Gulf of Mexico planning area follows, indicating the military commander or FAA office with operational responsibilities in each Warning Area. A map of the Western Gulf showing the Warning Areas and lease blocks is available from the MMS Gulf of Mexico Regional Office Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394; or call (504) 736–2519 or (800) 200–GULF.

CONTACTS FOR OIL AND GAS ACTIVITIES WITHIN THE GULF OF MEXICO, WESTERN GULF OF MEXICO

Warning areas	Command headquarters
W–147	Federal Aviation Administration, Houston Air Route Traffic Control (ARTC) Center, 16600 John F. Kennedy Boulevard, Houston, Texas 77032, Telephone: (281) 230–5536/5630.
W–228	Chief, Naval Air Training, Naval Air Station, Office No. 206, Corpus Christi, Texas 78419–5100, Telephone: (512) 939–3862/2621.
W–602	Strategic Command Wing 1, Fleet Area Reconnaissance 4, Operations Department, Tinker Air Force Base, Oklahoma City, Oklahoma 73145–8704, Telephone: (405) 739–5700/4527.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

Appendix 1—Blocks Within Military Warning Area W–602; Leases From Sale 168 on These Blocks Will Include Stipulation 2

Garden Banks

749	837–838	925–926
793	881–882	969–971

Keathley Canyon

1–3	353–358	705–714
45–48	397–403	749–758
89–92	441–447	793–801
133–136	485–492	837–844
177–181	529–536	881–887
221–225	573–580	925–930
265–270	617–625	969–973
309–314	661–669	

East Breaks

388–390	598–612	807–833
430–435	640–657	849–877
472–479	682–701	892–921
514–523	724–745	935–965
556–568	765–789	979–1009

Alaminos Canyon

10–41	358–393	706–745
54–85	402–437	750–789
97–129	445–481	793–833
141–173	489–525	837–877
184–217	532–569	881–921
228–261	576–613	925–965
271–305	619–657	992–1009
315–349	663–701	

Port Isabel

924
968

[FR Doc. 97–21578 Filed 8–13–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Columbia River System Operation Review; Signing of 1997 Pacific Northwest Coordination Agreement, Record of Decision

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of Record of Decision.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, Reclamation is issuing this notice to announce the availability of a Record of Decision (ROD) which was signed on July 18, 1997. The ROD documents the decision of the Regional Director of the Pacific Northwest Regional Office of the Bureau of Reclamation (Reclamation) to sign the 1997 Pacific Northwest Coordination Agreement (PNCA). Under this agreement, Reclamation will continue to coordinate the power production of its Federal Columbia River Power System (FCRPS) projects with other Federal and non-Federal electric utility systems in the Columbia River Basin.

ADDRESSES: Copies of the ROD may be requested from: Regional Director, Bureau of Reclamation, Attention: Evelyn Dunbar, Lower Columbia Area Office, 825 NE Multnomah Street, Suite 1110, Portland OR 87232–2145; telephone (503) 872–2795.

Copies of the ROD are available for inspection and review at the following Reclamation offices:

- Commissioner's Office, 1849 C Street NW, Room 7627, Washington, DC
- Pacific Northwest Regional Office, 1150 North Curtis Road, Boise, Idaho
- Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington
- Grand Coulee Power Office, Grand Coulee, Washington
- Hungry Horse Field Office, Hungry Horse, Montana

FOR FURTHER INFORMATION CONTACT: Evelyn Dunbar at (502) 872–2795.

SUPPLEMENTARY INFORMATION: The System Operations Review Final Environmental Impact Statement (FEIS), signed in January 1996, required a decision to be made on whether to continue coordinating hydropower production with non-Federal parties and, if so, to select a preferred alternative to replace the existing PNCA. Reclamation believes that a renewed coordination agreement is needed in order to maintain mutually beneficial arrangements among the Federal and non-Federal project operators to achieve Columbia River treaty benefits and to return the Canadian entitlement. The preferred alternative, as described in the FEIS, is reflected in the 1997 Pacific Northwest Coordination Agreement (1997 PNCA) that has been developed and negotiated by Reclamation and the other parties to the existing PNCA. For the purposes of the ROD, Reclamation's FCRPS projects include Grand Coulee Dam and Hungry Horse Dam.

Dated: July 31, 1997.

John W. Keys, III,

Regional Director, Pacific Northwest Region.

[FR Doc. 97–21460 Filed 8–13–97; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–389]

Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement; In the Matter of Certain Diagnostic Kits for the Detection and Quantification of Viruses

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 14) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on July 29, 1996, on behalf of complainant Hoffmann-LaRoche, Inc. (Roche) of Nutley, New Jersey. 61 FR 39468. The

complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain diagnostic test kits for the detection and quantification of viruses that allegedly are covered claims 1, 2, 5–9, 11–12, 15, and 19 of U.S. Letters Patent 5,476,774. The notice of investigation named Organon Teknica B.V. of the Netherlands and Organon Teknika Corp. of Delaware (collectively ''Teknica'') as respondents.

On April 23, 1997, complainant and respondents to the investigation filed a joint motion to terminate the investigation as to all issues based upon a settlement agreement. On July 14, 1997, the presiding ALJ granted the joint motion and issued an ID (Order No. 14) terminating the investigation on the basis of the settlement agreement. The ALJ found that there is no indication that termination of the investigation would have an adverse impact on the public interest and that termination based on settlement is generally in the public interest. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 C.F.R. 210.42.

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: August 11, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–21576 Filed 8–13–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–391]

Notice of Commission Determinations Not To Review Three Initial Determinations Terminating the Investigation as to Respondents MAS Marketing, Inc. and Lollipop Imports & Exports on the Basis of Consent Orders and Terminating the Investigation as to Respondents Shumei Industrial Co., Ltd. and Shummi Enterprise Co., Ltd. on the Basis of a Finding of Violation of Section 337; Issuance of Consent Orders

In the matter of Certain Toothbrushes and the Packaging Thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review three initial determinations (IDs) of the presiding administrative law judge (ALJ) in the above-captioned investigation (Orders Nos. 6, 7, and 8). Orders Nos. 6 and 7 granted motions to terminate the investigation as to respondents MAS Marketing, Inc. (MAS) and Lollipop Imports & Exports (Lollipop) on the basis of consent orders. Order No. 8 terminated the investigation as to respondents Shumei Industrial Co., Ltd. (Shumei) and Shummi Enterprise Co., Ltd. (Shummi) on the basis of a finding of violation of section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: Anjali K. Hansen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3117.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 22, 1996, based on a complaint filed by The Procter & Gamble Company (P&G) concerning allegations of unfair acts in violation of section 337 in the importation and sale of certain toothbrushes covered by U.S. Letters Patent Des. 328,392 ('392 patent). The complaint, as amended, also alleged copyright infringement by certain respondents, but those allegations were subsequently withdrawn from the investigation.

On March 27, 1997, P&G and respondent Lollipop moved jointly to terminate the investigation as to Lollipop on the basis of a consent order. The Commission investigative attorney (IA) supported Lollipop's motion after certain amendments were made at the IA's suggestion to the proposed consent order and consent order stipulation. On July 2, 1997, the presiding ALJ issued an ID granting complainant's motion, as amended (Order No. 7). On May 6, 1997, respondent MAS filed a motion to terminate the investigation with respect to MAS on the basis of a consent order. Complainant P&G did not oppose the motion. The IA filed a response in support of the motion. On July 2, 1997, the ALJ issued an ID granting the motion (Order No. 6).

On April 8, 1997, P&G and respondents Shumei and Shummi filed a joint motion for entry of a limited exclusion order against Shumei and Shummi. On April 18, 1997, the IA filed a response in support of complainant's motion. On July 2, 1997, the ALJ issued an ID granting the joint motion (Order No. 8), which he deemed to be a motion for summary determination of violation of section 337 by Shumei and Shummi. On July 2, 1997, the ALJ also issued a recommended determination on remedy and bonding. The ALJ recommended that the Commission issue a limited exclusion order prohibiting the importation of infringing toothbrushes made by Shumei or Shummi, and that the Commission set a bond in the amount of 100 percent of the entered value of the infringing articles during the Presidential review period.

No petitions for review of any of the IDs were received.

The Commission will decide the issues of remedy, the public interest, and bonding in this investigation at a later date when the status of the sole remaining respondent, Giftline International Corporation, has been resolved.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.42).

Copies of the nonconfidential versions of the IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: August 8, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–21577 Filed 8–13–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Action

Notice is hereby given that a consent decree in *United States et al.* v. *ALCOA et al.,* Civil Action No. 89–7421, was lodged with the United States District Court for the Eastern District of Pennsylvania on August 5, 1997.

On October 16, 1989, the United States filed a complaint against 18 generator and owner/operator defendants under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9607(a), for response costs incurred and to be incurred by the United States at the Moyer Landfill Superfund Site in Collegeville, Pennsylvania (the ''Site''). The Commonwealth of Pennsylvania joined the action as plaintiff seeking reimbursement of its response costs incurred and to be incurred at the Site. The proposed consent decree resolves the liability of twenty-two municipalities and one municipal solid waste hauler, subject to reopeners for new information and new site conditions. The settlors agree to design and construct an on-site leachate treatment plant as part of the remedy at the Site.

The Department of Justice will accept written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States et al.* v. *ALCOA et al.,* DOJ No. 90–11–3–145. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1300, Philadelphia, PA 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892. Copies of the Consent Decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892). When requesting a copy by mail, please enclose a check in the amount of $39.00 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 97–21461 Filed 8–13–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 31, 1997, a proposed partial consent decree in *United States* v. *The North American Group Ltd., et al.,* Civil Action No. 3:97–CV–191–H was lodged with the United States District Court for the Western District of North Carolina.

The partial consent decree resolves claims under 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, as to the State of North Carolina, Noble Oil Services, Federal Agencies and the 58 settling defendants listed in Attachment A to the Partial Consent Decree, for response costs that were incurred by the United States Environmental Protection Agency in connection with responding to the release and threatened release of hazardous substances at the Cherokee Site (''Site'') in Charlotte, North Carolina.

The proposed consent decree provides that to resolve their liability to the United States for the response costs described above, the aforementioned entities will make the following payments: (1) The State of North Carolina will pay $27,118; (2) the Federal Agencies will pay $367,882; (3) Noble Oil Services will pay $10,000 within thirty days of the entry of the partial consent decree and will make seven quarterly installment payments of $14,533.50, the last of which will be paid on or before July 15, 1999; the remaining settling defendants will pay $3,657,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the partial consent decree. 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. *The North American Group Ltd., et. al,* D.J. Ref. 90–11–2–1173.

The partial consent decree may be examined at the Office of the United States Attorney, Suite 1700 Carillon Building, 227 West Trade St., Charlotte, North Carolina, at U.S. EPA Region IV, 61 Forsythe St., N.E., Atlanta, GA 30303, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the partial 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. When requesting a copy, please enclose a check in the amount of $22.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–21462 Filed 8–13–97; 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—Infotest International

Correction

In notice document 97–4376 appearing on page 8276 in the issue of Monday, February 24, 1997, make the following correction:

In the first line, ''July'' should read ''January''.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–21463 Filed 8–13–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJJDP)–1141]

RIN 1121–ZA87

Title IV Missing and Exploited Children's Fiscal Year 1997 Program Plan

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Proposed program plan for public comment.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing its Title IV Missing and Exploited Children's Fiscal Year (FY) 1997 Proposed Program Plan and soliciting public comment on the proposed plan and priorities. After analyzing the public comments on this Proposed Program Plan, OJJDP will issue its final FY 1997 Title IV Program Plan.

DATES: Comments must be submitted by October 14, 1997.

ADDRESSES: Public comments should be mailed to Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue N.W., Room 742, Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Ronald C. Laney, Director, Missing and Exploited Children's Program, 202–616–3637. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Missing and Exploited Children's Program is a program of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Pursuant to the Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974, as amended, section 406(a)(2), 42 U.S.C. 5776, the Administrator of OJJDP is publishing for public comment a Proposed Program Plan for activities authorized by Title IV, the Missing Children's Assistance Act, 42 U.S.C. 5771 *et seq.*, that OJJDP proposes to initiate or continue in FY 1997. Taking into consideration comments received on this Proposed Program Plan, the Administrator will develop and publish a Final Program Plan that describes the program activities OJJDP plans to fund during FY 1997 using Title IV funds.

The actual solicitation of any competitive grant applications under the Final Program Plan will be published at a later date in the **Federal Register**. No proposals, concept papers, or other types of applications should be submitted at this time.

Background

The Nature of the Problem of Missing and Exploited Children

The issues involving missing and exploited children can be divided into four categories: family abduction, nonfamily abduction, child exploitation, and the impact these events have on children and families. These issues are summarized below, using data drawn from the 1988 National Incidence Study of Missing, Abducted, Runaway, or Thrownaway Children (NISMART).

Family Abduction

An estimated 354,100 family abductions occur each year. Forty-six percent of these abductions (163,200) involve concealment of the child, transportation of the child out of State, or intent by the abductor to keep the child indefinitely or to permanently alter custody. Of this more serious subcategory of family abductions, a little more than half are perpetrated by men who are noncustodial fathers and father figures. Most victims are children between the ages of 2 and 11. Half involve unauthorized takings, and half involve failure to return the child after an authorized visit or stay. Fifteen percent of these abductions involve the use of force or violence, and 75 to 85 percent involve interstate transportation of the child. About half of family abductions occur before the relationship ends. Half do not occur until 2 or more years after a divorce or separation, usually after parents develop new households, move away, develop new relationships, or become disenchanted with the legal system. More than half occur in the context of relationships with a history of domestic violence. An estimated 49 percent of abductors have criminal records, and a significant number have a history of violent behavior, substance abuse, or emotional disturbance. It is not uncommon for child victims of family abduction to have their names and appearances altered; to experience medical or physical neglect, unstable schooling, or homelessness; or to endure frequent moves. These children are often told lies about the abduction and the left-behind parent, even that the left-behind parent is dead.

Nonfamily Abduction

An estimated 3,200 to 4,600 short-term nonfamily abductions are known to law enforcement each year. Of these, an estimated 200 to 300 are stereotypical kidnapings where a child is gone overnight, is killed, or is transported a distance of 50 miles or more or where the perpetrator intends to keep the child permanently. Young teenagers and girls are the most common victims. Two-thirds of short-term abductions involve a sexual assault. A majority are abducted from the street. More than 85 percent of nonfamily abductions involve force, and more than 75 percent involve a weapon. Most episodes last less than a day. Most researchers and practitioners consider the number of short-term abductions to be an underestimate because of police reporting methods and lack of reporting on the part of victims. Federal Bureau of Investigation (FBI) data support estimates of 43 to 147 stranger abduction homicides of children annually between 1976 and 1987. An estimated 114,600 nonfamily abductions are attempted each year, most involving strangers and usually involving an attempt to lure a child into a car. In a majority of these cases, the police were not contacted.

Child Exploitation

Children are also at risk of being victimized as a result of a range of circumstances that fall into three categories: running away; being expelled from the home, or ''thrownaway,'' by parents or guardians; or being otherwise lost or missing.

An estimated 446,700 children run away from households each year. In addition, an estimated 12,800 children run from juvenile facilities each year. Many children who run from households also run from facilities. About one-third of these runaways left home or a juvenile facility more than once. Of all runaways, 133,500 are without secure and familiar places to stay during their episodes. More than a third of runaways run away more than once during the year. One in ten travels a distance of more than 100 miles. Of the runaways from juvenile facilities, almost one-half leave the State. Runaways are mostly teenagers, but almost 10 percent are 11 years old and younger. They tend to come disproportionately from households with stepparents. Family conflict seems to be at the heart of most runaway episodes. Between 60 and 70 percent of runaways report being seriously abused physically. It is estimated that from 25 to 80 percent of all runaways are sexually abused. Runaways, particularly chronic runaways, are at higher risk for physical and sexual victimization, substance abuse, sexually transmitted diseases, unintended pregnancies, violence, and suicide.

There are an estimated 127,100 thrownaway children who are directly told to leave their households, who have been away from home and are not allowed back by their caretakers, whose caretakers make no effort to recover them when they have run away, or who have been abandoned or deserted. By comparison, for every child who is a thrownaway, there are four runaway children. An estimated 59,200 thrownaway children are without secure and familiar places to stay during the episodes. Most thrownaways are older teenagers, but abandoned children tend to be young (half under the age of 4). Thrownaways are concentrated in low-income families and families without

both natural parents. Compared to runaways, thrownaways experience more violence and conflict within their families and are less likely to return home.

An estimated 438,200 children are lost, injured, or otherwise missing each year. Of these, 139,100 cases are serious enough for the police to be called. Almost half involve children under 4. Most of these episodes last less than a day. A fifth of the children experience physical harm. Fourteen percent of the children are abused or assaulted during the episodes.

Impact on Children and Families

The majority of families of missing children experience substantial psychological consequences and emotional distress. The level of emotional distress equals or exceeds the emotional distress for other groups of individuals exposed to trauma, such as combat veterans and victims of rape, assault, or other violent crime, with families where the missing child is subsequently recovered deceased exhibiting the highest level of emotional distress. Once home, a third of abducted children live in constant fear of a reabduction. Many child victims of family abduction experience substantial psychological consequences and emotional distress. Trauma symptoms may be evident for up to 4 or 5 years after recovery. More than 80 percent of recoveries of missing children are concluded in less than 15 minutes with no psychological or social service support. Almost four-fifths of victims and families of missing children do not receive mental health or counseling services. In most cases, the only nonfamily person present is a police officer.

Introduction to the Fiscal Year 1997 Program Plan

According to the most recent FBI National Crime Information Center statistics, approximately 2,200 children are reported missing to law enforcement each day. Many of these children are runaways, others are taken by noncustodial parents and used as pawns in custody battles between their parents. Some wander away and are unable to find their way home, and still others represent a parent's worst nightmare, the loss of a child to a predator. In 1984, Congress recognized the necessity of a national response to missing children and enacted the Missing Children's Assistance Act to establish a Missing and Exploited Children Program within the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The Missing Children's Assistance Act authorizes assistance for research, demonstration, and service programs and for establishment and support of a national resource center and clearinghouse dedicated to missing and exploited children.

In FY 1997, OJJDP will continue to concentrate on programs that are national in scope, promote awareness, and enhance the Nation's response to missing children and their families.

The Office will continue to support the National Center for Missing and Exploited Children (NCMEC), which serves as the national resource center and clearinghouse.

In FY 1996, NCMEC's toll-free hotline received 107,052 calls that ranged from citizens reporting investigative leads to requests for publications and advice from parents, law enforcement, prosecutors, and other professionals working on issues of missing children. The NCMEC Web site, which provides missing children posters and publications available for downloading, registered more than 1 million requests for information. In addition, NCMEC, using OJJDP funds, completed an upgrade of the State Missing Clearinghouse online communications network with the installation of new computers, scanners, software, and printers. This upgrade has substantially enhanced the clearinghouses' capacity to share information and disseminate missing children posters.

As the competitively awarded Title IV Training and Technical Assistance grantee, Fox Valley Technical College (FVTC) of Appleton, Wisconsin, will continue to offer training courses pertaining to investigation of child abuse and missing and exploited children cases and will provide technical assistance upon request. In FY 1996, 1,522 individuals attended FVTC's 40-hour courses that provided information about investigative techniques, interview strategies, offender and victim profiles, and an overview of available resources to assist State and local law enforcement to investigate cases of missing, exploited, and abused children. FVTC also facilitated OJJDP's national training workshop for State clearinghouses and nonprofit organizations working on missing and exploited children's issues.

The workshop, attended by representatives from every State and Canada, fostered communication and networking; offered information about programs, activities, and services; and provided tools for professionals returning to their communities to work on missing children issues.

Several new initiatives began in FY 1996. The Federal Agency Task Force for Missing and Exploited Children released the publication Federal Resources on Missing and Exploited Children: A Directory for Law Enforcement and Other Public and Private Agencies. The Directory contains information regarding services ranging from the immediate delivery of specialized forensic and investigative services at the scene of an abducted child investigation to longer term training and prevention programs that improve community safety and enhance investigative resources of Federal, State, and local law enforcement agencies.

To help investigators determine if a child is abused or exploited and collect the evidence necessary for effective prosecution, OJJDP developed four new portable guides for police officers, medical professionals, and social services professionals investigating child abuse and exploitation cases. These guides, which provide ''on the scene'' guidance to law enforcement officers investigating suspected crimes against children, were the first in an 11-part series. In FY 1996, OJJDP released Recognizing When a Child's Injury or Illness Is Caused by Abuse, Sexually Transmitted Diseases and Child Sexual Abuse, Photodocumentation in the Investigation of Child Abuse, and Diagnostic Imaging of Child Abuse. The remaining seven guides on topics such as child homicide, burn injuries, pedophiles, and interviewing child witnesses will be released in FY 1997. Because the guides have been well received, OJJDP is considering expanding the series to other topics on which it would be helpful for law enforcement and other child-serving professionals to have information immediately available.

In FY 1996, OJJDP played a major role in the implementation of the Presidential memorandum regarding the posting of missing children's posters in Federal buildings. OJJDP and NCMEC assisted the General Services Administration and other Federal agencies to develop procedures and guidelines to make information about specific missing children available to Federal workers and the general public.

Also in FY 1996, OJJDP—working with the Attorney General—sent letters to all State Attorneys General, State Missing Children Clearinghouses, and United States Attorneys to share information about Federal programs, services, and activities to support law enforcement and other professionals working on missing children issues. In addition, the Attorney General presented NCMEC's Law Enforcement Officer of the Year Award to Detective Sheila Jenkins of Pascagoula,

Mississippi, in a ceremony commemorating National Missing Children's Day. In FY 1997, OJJDP and its grantees will build on these efforts in order to enhance the response to missing, exploited children and their families.

Fiscal Year 1997 Programs

The Title IV continuation programs for FY 1997 are summarized below. The available funds, implementation sites, and other descriptive information are subject to change based on the plan review process, grantee performance, application quality, fund availability, and other factors. Additional programs may be added to the plan based on the review and comment process.

Continuation Programs

National Center for Missing and Exploited Children ($3,444,000)

This 3-year cooperative agreement funds the operation of a national resource center and clearinghouse as established in section 404(b), 42 U.S.C. 5773, of the JJDP Act. The Clearinghouse operates a 24-hour toll-free telephone line through which individuals may report information regarding the location of a child who is missing or who is age 13 or younger and whose whereabouts are unknown to the child's legal custodian or request information pertaining to procedures necessary to reunite the child with the legal guardian. The Clearinghouse is responsible for providing a wide range of assistance to State and local governments, public and private nonprofit agencies, and individuals. This assistance includes coordinating public and private programs that locate, recover, or reunite missing children with their legal guardians; providing training and technical assistance; disseminating information about innovative and model missing children's programs; and facilitating the lawful use of school records to identify and locate missing children.

Under a triparty agreement with the U.S. Department of State, OJJDP, and NCMEC, NCMEC is assisting the State Department to carry out this Nation's responsibilities under the Hague Convention. NCMEC assists in locating children illegally removed from other countries to the United States and facilitates access for visitation or their return to the custodial parent. In FY 1997, NCMEC is enhancing services to American parents whose children have been wrongfully taken to or retained in other countries. NCMEC will provide technical assistance on legal matters, administrative support, translation services, poster dissemination, international organization liaison, and advocacy.

NCMEC will also coordinate four State Missing Children Clearinghouse Coalition meetings in FY 1997. These meetings will include State clearinghouse activity reports, information about Federal and NCMEC programs and activities, and current policy discussions that impact on missing children issues.

In addition, OJJDP and NCMEC are developing an informational brochure pertaining to case-specific public service announcements (PSA's) for dissemination to the television media. The brochures will contain guidelines and information for local television stations producing PSA's about specific children abducted under life threatening circumstances.

For more information about the wide range of NCMEC services for parents; missing children organizations; Federal, State, and local law enforcement; prosecutors; and other professionals working to reunite missing children and their families, please contact NCMEC at 800–843–5678.

Alzheimer's Disease and Related Disorders Association's Safe Return Program ($900,000)

OJJDP oversees this program, under which NCMEC serves as the clearinghouse and operates the hotline for the Alzheimer's program. In FY 1996, with an additional 8,850 registrants, the Safe Return Program increased the registration data base to 26,101 individuals and assisted in the return of 702 wanderers to their caregivers. In addition, the program implemented an image data base consisting of more than 25,500 photographs, produced and disseminated a training video for law enforcement, developed a Safe Return Handbook for the Alzheimer's Association chapters, and implemented an awards program to acknowledge individuals who play a vital role in the return home of a Safe Return registrant. In FY 1997, the program will continue to expand the national registry of memory-impaired persons, support the toll-free telephone service, provide a Fax Alert System, conduct a ''train the trainers'' program for law enforcement and emergency personnel, develop information and educational materials, launch a national public awareness campaign, and transition current ''wandering persons'' programs into the national Safe Return Program. For more information about the Safe Return Program, please contact the National Alzheimer's and Related Disease Association at 312–335–8700.

Title IV Training and Technical Assistance ($1,500,000)

The Title IV Training and Technical Assistance Program assists OJJDP and missing children grantees in raising the awareness of missing children services and improving system capabilities to meet the needs of missing and exploited children. This is accomplished by developing and implementing quality training and technical assistance for Federal, State, and local governments; nonprofit organizations; and Title IV grantees.

In FY 1997, the Title IV Training and Technical Assistance Program will provide training and technical assistance related to the Missing and Exploited Children's Comprehensive Action Program (M/CAP). M/CAP is a national demonstration project to promote the implementation of multiagency community approaches to respond to missing and exploited children cases. Through a broad program of technical assistance and training, M/CAP has helped agencies develop an effective multiagency team to deal with missing and exploited children cases and provided training and technical assistance to build specialized skills to handle these cases. Existing M/CAP sites will be encouraged to serve as regional technical assistance sites and, using information and knowledge gained from experienced M/CAP jurisdictions, FVTC will provide training and technical assistance to communities interested in developing M/CAP programs in their neighborhoods.

In addition to delivering Title IV training and technical assistance, FVTC will develop written protocols to coordinate service delivery to missing children and their families. These protocols will be developed through working groups composed of representatives from all members of the missing children community. Once developed, these protocols will be offered for adoption by entities working to reunite missing children and their families. Also in FY 1997, FVTC will update the Federal Resource Directory and develop a child fatality review team training course for law enforcement, prosecutors, medical, and child services professionals. In addition, OJJDP, working with FVTC, will develop a 1-day training course on information sharing as it relates to missing children. Based on the availability of funds, technical assistance will also be available to jurisdictions upon request.

National Missing Children Data Archive ($25,000)

This agreement continues funding for the Missing Children Data Archive. Through a cooperative agreement with the University of Michigan Consortium for Political and Social Research, staff process and archive OJJDP missing children data into a readily understandable, standard format (this includes data sets produced through OJJDP missing children projects). In FY 1996, six data sets were processed by the University and made publicly available. In addition to being available on magnetic tape, these studies are also available for downloading through the Internet (http://www.icpr.umich.edu). In FY 1997, the University will continue to receive studies for processing and will prepare a CD–ROM to make research data sets more accessible.

National Crime Information Center (NCIC) ($100,000)

FY 1997 funds will be awarded to continue NCMEC's online access to the FBI National Crime Information Center's (NCIC) Wanted and Missing Persons files. NCMEC's ability to verify NCIC entries, communicate with law enforcement through the Interstate Law Enforcement Telecommunication System, and be notified of life threatening cases through the NCIC flagging system, is crucial to its mission of providing advice and technical assistance to law enforcement.

NISMART II ($350,000)

Temple University Institute for Survey Research was awarded a grant in FY 1995 to conduct the second National Incidence Studies of Missing, Exploited, Abducted, Runaway, and Thrownaway Children (NISMART II). This project builds on the strengths and addresses some of the weaknesses of NISMART I. Temple has assembled a team of experts in the field of child victimization and survey research capabilities, particularly surveys involving children and families concerning sensitive topics. Temple is contracting with the University of New Hampshire Survey Research Lab and Westat, Inc., to carry out specific components of the study and provide extensive background knowledge about the particulars of NISMART I. Specifically, the project will: (1) Revise NISMART definitions, (2) conduct a household survey that interviews both caretaker and child, (3) conduct a police records study, (4) conduct a juvenile facilities study, (5) analyze National Incidence Study-3 Community Professionals Study, (6) develop a single estimate of missing children, and (7) conduct analyses and prepare reports. An additional $350,000 will be awarded to this project in FY 1997. The project is scheduled for completion in FY 1999.

Effective Community-Based Approaches for Dealing With Missing and Exploited Children ($250,000)

In FY 1995, the American Bar Association (ABA) was awarded an 18-month grant to study effective community-based approaches for dealing with missing and exploited children. The objectives of Phase I of this study are to (1) conduct a national search for communities that have implemented a multiagency response to missing and exploited children and their families, (2) select five communities with a working multiagency response that holds promise for replication, (3) evaluate these five communities, and (4) prepare a final report. In FY 1996, the ABA drafted a survey instrument and obtained Paper Work Reduction Act clearance for dissemination. In Phase II, the ABA will design and develop a modular training curriculum to help communities plan, implement, and evaluate a multiagency response to missing and exploited children and their families. In FY 1997, $250,000 will be awarded to the ABA to complete Phase II of the project.

Obstacles to the Recovery and Return of Parentally Abducted Children: International Child Abduction Attorney Network ($32,629)

This project, initially funded in FY 1994, established the International Child Abduction Attorney Network (ICAAN), composed of attorneys who are willing to represent parents on a pro bono basis in legal actions under the Hague Convention on the Civil Aspects of International Child Abduction and who are knowledgeable about the Hague Convention and its implementing status in the United States. NCMEC uses this referral network to resolve incoming Hague Convention cases. In FY 1996, the ABA recruited more than 250 attorneys and established an ICAAN data base and mentoring system. In FY 1997, in addition to ongoing recruiting efforts and dissemination of legal materials to volunteer attorneys, the ABA will conduct a training institute for judges and attorneys at the Hague Child Abduction Convention at the Second World Congress on Family Law and the Rights of Children in June 1997 on the subject of the Hague Convention on the Civil Aspects of International Child Abduction. The ABA will also continue to provide technical assistance to the National Conference of Commissioners on Uniform State Laws in the development of the Uniform Child Custody and Enforcement Act.

Issues in Resolving Cases of International Parental Abductions of Children ($32,946)

In FY 1996, the ABA completed a survey of left-behind parents whose children were taken from the United States. The survey results guided OJJDP funding and program decisions; were made available to the U.S. State Department, NCMEC, and other interested persons; and will be presented at the spring 1997 meeting at the Hague meeting for signatory countries. The ABA also completed research that identified six abductor risk profiles and some promising intervention strategies. This project, initially funded in FY 1994, will build on the original ABA research and will increase the practical usefulness of the research for parents, lawyers, judges, missing children's organizations, and responsible agencies in signatory countries by documenting specific actions parents take when planning an abduction; identifying best practices, procedures, and material related to resolving cases of international child abductions that leading professionals use and others could adopt; providing dissemination and technical assistance to allow the findings to reach specific audiences in a timely and appropriate way; and incorporating the new research findings into the final research report and research summary. This information will be disseminated in calendar year 1997. For more detailed information regarding the ABA research and parental abduction activities, please contact the ABA at 202–662–1000.

Parent Resource Support Network ($125,000)

OJJDP solicited FY 1996 competitive proposals for an assistance award to a nonprofit organization to develop and maintain a parent support network. The need for victim parents to speak with other victim parents has emerged as a constant theme in several OJJDP focus groups. The goal of this project is to stimulate development of a network of screened and trained parent volunteers who will provide assistance and advice to other victim parents. No new funds will be awarded in FY 1997.

Criminal Parental Kidnaping Training and Technical Assistance ($250,000)

In FY 1996, the American Prosecutors Research Institute (APRI) provided training to more than 70 prosecutors representing communities seeking to enhance their response to parental

kidnaping cases and delivered case-specific technical assistance to prosecutors in more than 100 cases. APRI also gave presentations regarding parental kidnaping issues to the 24th National Conference on Juvenile Justice, which was sponsored by the National Council of Juvenile and Family Court Judges and the National District Attorneys Association. APRI continued to analyze and report on emerging legislative trends and disseminate publications ranging from the 46-page Investigation and Prosecution of Parental Abduction to the Directory of Parental Kidnaping Prosecutors and Investigators to prosecutors. In FY 1997, APRI will receive funding to continue training and technical assistance for prosecutors working on parental abduction cases. In addition to delivering training, APRI will disseminate a quarterly newsletter, maintain a parental kidnaping data base that includes a statutory compilation and case law summaries, and offer technical assistance to prosecutors on an as-needed basis. In addition, APRI will develop a child exploitation training and technical assistance program for prosecutors. For more information, please contact APRI at 703–739–0321.

New Programs

For FY 1997, Congress set aside $1.5 million in Title II, Part C, of the Juvenile Justice and Delinquency Prevention Act to establish the Jimmy Ryce Law Enforcement Training Center (JRLETC), and related activities, at the National Center for Missing and Exploited Children. These funds will be used to enhance the overall response to nonparental abductions by providing training and technical assistance to Federal, State, and local law enforcement. Specifically, OJJDP proposes to allocate the funds as described in the next four paragraphs.

In FY 1997, $750,000 will be awarded to NCMEC to implement a new national law enforcement training seminar program for law enforcement executives. The seminar will highlight the most current research and practices and provide information pertaining to comprehensive response protocols and NCMEC and Federal resources to assist State and local law enforcement. These funds will also be used to reimburse travel and lodging expenses of seminar attendees at the JRLETC.

$500,000 would be awarded to FVTC to accelerate delivery of the Responding to Missing and Exploited Children Course. This course, which targets State and local law enforcement, offers modules providing investigative information on all aspects of missing children cases and complements the CEO training conducted at the JRLETC. FVTC will also assist NCMEC in the scheduling and logistics associated with the JRLETC CEO training.

The FBI Criminal Justice Information Services Division would receive $150,000 to provide training for National Crime Information Center (NCIC) Control Terminal Officers in the new NCIC flagging system, Federal resources to assist State and local law enforcement investigating missing children cases, and NCIC Missing Person File definitions.

The FBI Child Abduction Serial Killer Unit (CASKU) would receive $100,000 to provide training and technical assistance to State and local law enforcement agencies investigating difficult missing children cases. CASKU and the Hardiman Task Force will assess incident response for the purposes of curriculum development and will assist in the CEO training at JRLETC.

Judicial Teleconference on Interstate and Intrastate Child Abduction

Law enforcement, prosecutors, and judges do not have sufficient information or knowledge regarding the laws pertaining to interstate and international parental abduction. This lack of information impedes effective resolution of jurisdictional conflicts between States and implementation of the Hague Convention on the Civil Aspects of International Child Abduction. A teleconference on interstate and international child custody jurisdiction and parental abduction will provide an opportunity for interested individuals around the country to access information in an affordable, convenient forum. Conference proceedings can be used to develop a guidebook for judges. OJJDP proposes to fund this teleconference through a supplement to the existing Part C video conference support grant to Eastern Kentucky University.

Dated: August 8, 1997.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 97–21507 Filed 8–13–97; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1142]

RIN 1121–ZA88

Notice of Meeting of the Coalition for Juvenile Justice

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing the meeting of the Coalition for Juvenile Justice.

DATES: This conference will begin at 9:00 a.m. on September 3, 1997, and end at 12:00 noon on September 7, 1997.

FOR FURTHER INFORMATION CONTACT: Freida Thomas, 202/307–5924, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW, Room 543, Washington, DC 20531.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. app. I), the Office of Juvenile Justice and Delinquency Prevention (OJJDP) announces the meeting of the Coalition for Juvenile Justice. This conference will begin at 9:00 a.m. on September 3, 1997, and end at 12:00 noon on September 7, 1997. This advisory committee, chartered as the Coalition for Juvenile Justice, will meet at the Sands Regency Hotel Casino, 345 N. Arlington Avenue, Reno, Nevada 89501. The purpose of this meeting is to discuss and adopt recommendations from members regarding the committee's responsibility to advise the OJJDP Administrator, the President and the Congress about State perspectives on the operation of the OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention.

This meeting will be open to the public.

Dated: August 12, 1997.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 97–21452 Filed 8–13–97; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for a Series of Forums on Issues Affecting Urban Design and Development

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts will request proposals leading to the award of a Cooperative Agreement for the continuation of the project titled: ''The Urban Forum.'' The Urban Forum is a series of symposia and lectures on issues affecting the design and development of American cities. Responsibilities under the Cooperative Agreement will include the development, coordination, administration, and evaluation of the sessions. Available funding for the Cooperative Agreement is limited to $50,000, which is expected to support three or four forums. Additional private or public funding or in-kind contributions will be welcomed. Those interested in receiving the Solicitation should reference Program Solicitation PS 97–04 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 97–04 is scheduled for release approximately September 2, 1997 with proposals due on October 2, 1997.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., N.W. Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Grants & Contracts Office, National Endowment for the Arts, 1100 Pennsylvania Ave., N.W. Washington, D.C. 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 97–21459 Filed 8–13–97; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Survey of Steel Mills: Support for a Risk Assessment of General- and Specific-Licensed Devices.

2. Current OMB approval number: None.

3. How often the collection is required: The survey requires a one-time response.

4. Who is required or asked to report: Steel mills in the United States.

5. The number of annual respondents: 300 steel mills.

6. The number of hours needed annually to complete the requirement or request: Each questionnaire is expected to take about 3 hours to complete. The total burden for the industry is 900 hours. An additional 40 hours will be expended by trade organizations in distributing and collecting the questionnaires.

7. Abstract: NRC is conducting a survey to obtain information for a comprehensive assessment of the risk associated with radioactive material which has entered the scrap stream due to loss of control of the material by licensed users. Steel mills that have accidentally smelted the radioactive material that has been found in the metal recycling stream have incurred large expenses to decontaminate plants and unnecessary exposures also have occurred due to handling the radioactive material. The information from the survey will assist NRC in determining the probability of identifying radioactive material in the scrap stream and the likely radiation exposures to members of the public.

Submit, by October 14, 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 draft supporting statement 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 Advance 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 about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T6F33, Washington, DC, 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 1st day of August, 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–21518 Filed 8–13–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Houston Lighting & Power Company; City Public Service Board of San Antonio; Central Power and Light Company; City of Austin, Texas; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket Nos. 50–498 and 50–499]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–76 and NPF–80 issued to Houston Lighting & Power Company, et. al., (the licensee) for operation of the South Texas Project, Units 1 and 2, located in Matagorda County, Texas.

The proposed amendment would revise Technical Specification (TS)

Table 2.2–1 and 3/4.2.5 to allow the reactor coolant system (RCS) total flow to be determined using cold leg elbow tap differential pressure measurements. The proposed amendment was initially submitted via letter dated July 16, 1997. The July 16, 1997, submittal contained proprietary information that had not been properly identified. The July 16, 1997, submittal was retrieved and discarded from all NRC files by the NRC staff. Notification of the July 16, 1997, submittal was made in the **Federal Register** on July 30, 1997, (62 FR 40850). This notice supersedes the one previously published on July 30, 1997.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10[]CFR[]50.92 each application for amendment to an operating license must be reviewed to determine if the proposed change involves a Significant Hazards Consideration. The amendment, as defined below, describing the Technical Specification change associated with the change has been reviewed and determined to not involve Significant Hazards Considerations. The basis for this determination follows.

Proposed Change: The current Technical Specification Table 2.2–1 (page 2–4) ''Reactor Trip System Instrumentation Trip Setpoints,'' provides the Trip Setpoint and Allowable Value for the RCS Flow-Low trip. The Allowable Value will be changed to reflect the increased uncertainty associated with the correlation of the elbow taps to a previous baseline calorimetric. In addition, Technical Specification 3.2.5 (page 3/4.2–11), ''Power Distribution Limits, DNB Parameters,'' will be changed to allow the RCS total flow to be measured by the elbow tap delta p method. These changes will include the modification of surveillance requirement 4.2.5.3, which currently requires performance of a precision heat balance every 18 months, to allow use of the elbow tap delta p method for RCS flow measurement. Appropriate Technical Specification Bases sections will also be revised to reflect use of the elbow tap delta p method for flow measurement and to provide clarification. The revised Technical Specifications are in Appendix C.

Background: The 18-month total RCS flow surveillance is typically satisfied by a secondary power calorimetric-based RCS flow measurement. In recent cycles, South Texas Project has experienced apparent decreases in flow rates which have been attributed to variations in hot leg streaming effects. These effects directly impact the hot leg temperatures used in the precision calorimetric, resulting in the calculation of low RCS flow rates. The apparent flow reduction has become more pronounced in fuel cycles which have implemented aggressive low leakage loading patterns. Evidence that the flow reduction was apparent, but not actual, was provided by elbow tap measurements. The results of this evaluation, including a detailed description of the hot leg streaming phenomenon, are documented in Westinghouse report SAE/FSE–TGX–0152, ''RCS Flow Verification Using Elbow Taps.''

South Texas Project intends to begin using an alternate method of measuring RCS flow using the elbow tap delta p measurements. For this alternate method, the RCS elbow tap measurements are correlated to precision calorimetric measurements performed during earlier cycles which decreased the effects of hot leg streaming.

The purpose of this evaluation is to assess the impact of using the elbow tap delta p measurements as an alternate method for performing the 18-month RCS flow surveillance on the licensing basis and demonstrate that it will not adversely affect the subsequent safe operation of the plant. This evaluation supports the conclusion that implementation of the elbow tap delta p measurement as an alternate method of determining RCS total flow rate does not represent a significant hazards consideration as defined in 10[]CFR[]50.92.

Evaluation: Use of the elbow tap delta p method to determine RCS total flow requires that the delta p measurements for the present cycle be correlated to the precision calorimetric flow measurement which was performed during the baseline cycle(s). A calculation has been performed to determine the uncertainty in the RCS total flow using this method. This calculation includes the uncertainty associated with the RCS flow baseline calorimetric measurement, as well as uncertainties associated with delta p transmitters and indication via QDPS [qualified display processing system] or the plant process computer. The uncertainty calculation performed for this method of flow measurement is consistent with the methodology recommended by the Nuclear Regulatory Commission (NUREG/CR–3659, PNL–4973, 2/85). The only significant difference is the assumption of correlation to a previously performed RCS flow calorimetric. However, this has been accounted for by the addition of instrument uncertainties previously considered to be zeroed out by the assumption of normalization to a calorimetric performed each cycle. Based on these calculations, the uncertainty on the RCS flow measurement using the elbow tap method is 2.6% flow which results in a minimum RCS total flow of 391,500 gpm and must be measured via indication with QDPS or the plant process computer at approximately 100% power.

The specific calculations performed were for Precision RCS Flow Calorimetrics for the specified baseline cycles, Indicated RCS Flow (either QDPS or the plant process computer), and the Reactor Coolant Flow—Low reactor trip. The calculations for Indicated RCS Flow and Reactor Coolant Flow—Low reactor trip reflect correlation of the elbow taps to baseline precision RCS Flow Calorimetrics. As discussed above, additional instrument uncertainties were included for this correlation.

The uncertainty associated with the RCS Flow—Low trip increased slightly. It was determined that due to the availability of margin in the uncertainty calculation, no change was necessary to either the Trip Setpoint (91.8% flow) or to the current Safety Analysis Limit (87% flow) to accommodate this increase. The Allowable Value is to be modified to allow for the increased instrument uncertainties associated with the delta p to flow correlation.

Since the flow uncertainty did not increase over the currently analyzed value, no additional evaluations of the reactor core safety limits must be performed. In addition, it was determined that the current minimum Measured Flow (MMF) assumed in the safety analyses (389,200 gpm) bounds the required MMF calculated for the elbow tap method (391,500 gpm).

Based on these evaluations, the proposed change would not invalidate the conclusions presented in the UFSAR [Updated Final Safety Analysis Report].

1. Does the proposed modification involve a significant increase in the probability or consequences of an accident previously evaluated?

Sufficient margin exists to account for all reasonable instrument uncertainties; therefore, no changes to installed equipment or hardware in the plant are required, thus the probability of an accident occurring remains unchanged.

The initial conditions for all accident scenarios modeled are the same and the conditions at the time of trip, as modeled in the various safety analyses, are the same. Therefore, the consequences of an accident will be the same as those previously analyzed.

2. Does the proposed modification create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change revises the method for RCS flow measurement, and therefore does not introduce any new accident indicators or failure mechanisms.

No new accident scenarios have been identified. Operation of the plant will be consistent with that previously modeled, i.e., the time of reactor trip in the various safety analyses is the same, thus plant response will be the same and will not introduce any different accident scenarios that have not been evaluated.

3. Does the proposed modification involve a significant reduction in a margin of safety [?]

There are no changes to the Safety Analysis assumptions. Therefore, the margin of safety will remain the same.

The proposed change does not impact the results from any accidents analyzed in the safety analysis.

Conclusion: Based on the preceding information, it has been determined that this proposed change to allow an alternate RCS total flow measurement based on elbow tap delta p measurements does not involve a Significant Hazards Consideration as defined by 10 CFR 50.92(c).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 15, 1997 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or

may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 6, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX.

Dated at Rockville, Maryland, this 8th day of August 1997.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV/1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–21517 Filed 8–13–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–29]

Office of Nuclear Reactor Regulation, Yankee Atomic Electric Co., Yankee Nuclear Power Station; Notice of Receipt of and Availability for Comment on the Facility License Termination Plan

The U.S. Nuclear Regulatory Commission (NRC) is in receipt of and is making available for public inspection and comment the facility License Termination Plan (LTP) for the Yankee Nuclear Power Station (YNPS or the plant). A meeting on the LTP at which the public will be able to make comments or question the NRC or Yankee Atomic Power Company attendees will be the subject of a future notice. A proposed time period for this meeting is fall 1997 and to be held in the vicinity of the plant. The plant is located in Rowe Township, Franklin County, Massachusetts. In addition to the future notice in the **Federal Register**, the NRC will place advance notices in local newspapers identifying the date, time, and place of the meeting.

YNPS was permanently shut down on October 1, 1991. Since that time, the licensee has performed substantial decontamination and dismantlement at the plant with the intent to restore the site to ''greenfield'' conditions. The LTP was submitted in conformance to NRC regulations 10 CFR 50.82(a) (9) and (10). The LTP would be approved by the NRC through a license amendment; this process will offer an opportunity for a hearing.

The LTP is available for public inspection at the YNPS Local Public Document Room (LPDR), located in the Library of the Greenfield Community College Library, 1 College Drive, Greenfield, Massachusetts, 01301 and at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20037. The YNPS LTP is dated May 15, 1997, and can be located in the public document rooms under Accession Number 9705210388.

Comments regarding the LTP or a proposed meeting date may be submitted within the 45 day from the issuance of this notice, in writing, to Mr. Morton B. Fairtile, MS: O11–B20, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. He can be reached at 301–415–1442.

Dated at Rockville, Maryland, this 8th day of August 1997.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–21516 Filed 8–13–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 94th meeting on September 23 and 25, 1997, at the Mirage Hotel, Grand Ballroom B and C, 3400 Las Vegas Boulevard South, Las Vegas, Nevada.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows: *Tuesday, September 23, 1997—8:30 a.m. until the conclusion of business.*

Preparation of ACNW Reports—The Committee will discuss proposed reports including NRC high-level waste performance assessment capability, application of probabilistic methods to performance assessment, and approaches to implement multiple barriers and defense-in-depth in 10 CFR 60.

Thursday, September 25, 1997—8:30 a.m. until the conclusion of business.

A. *Viability Assessment*—The Committee will discuss the status of the Viability Assessment including design options, total systems performance assessment, cost estimates, and schedule. The Committee may also hear an update on the progress of the Preliminary Integrated Safety Assessment (PISA).

B. *Enhanced Site Characterization*—The Committee will discuss the progress of the enhanced site characterization program, including the status of Cl–36 sampling, and description of the east-west drift. Additional topics may include the Amargosa Valley population survey, waste retrievability, and DOE's interim High Level Waste Disposal Standard.

C. *Public Comments*—The Committee will hear comments from members of the public, representatives from the State of Nevada and affected local counties, and Tribal Nations on concerns related to nuclear waste disposal.

D. *Preparation of ACNW Reports*—The Committee will discuss proposed reports including NRC high-level waste performance assessment capability, application of probabilistic methods to performance assessment, and approaches to implement multiple barriers and defense-in-depth in 10 CFR 60.

E. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

F. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 8, 1996 (61 FR 52814). In accordance with these procedures, oral or written statements may be presented

by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301–415–7366), between 8:00 a.m. and 5:00 p.m. edt.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' The Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: August 8, 1997.

Andrew L. Bates,

Advisory Committee Management Office.

[FR Doc. 97–21515 Filed 8–13–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request Review of a Revised Information Collection; Presidential Management Intern Program Application (3206–0082)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of a revised information collection. The Office of Personnel Management is requesting OMB to authorize emergency procession of collection of information associated with the Presidential Management Intern Program Application. Emergency processing and approval of the 1997 Presidential Management Intern Program Application is necessary to facilitate the timely nomination, selection and placement of Presidential Management Intern Finalists in Federal agencies.

We estimate 2000 applications will be received and processed in 1997. Each application takes approximately 2 hours to complete (one hour for applicants (nominees) and one hour for nominating school officials). The annual estimated burden is 4000 hours. For copies of this proposal, contact Jim Farron on (202) 418–3208 or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before August 21, 1997.

ADDRESSES:

Kathleen A. Keeny, Presidential Management Intern Program, U.S. Office of Personnel Management, William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, PA 19106

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Kathleen A. Keeney, (215) 597–1920.

Office of Personnel Management.

James B. King,

U.S. Office of Personnel Management.

[FR Doc. 97–21716 Filed 8–13–97; 8:45 am]

BILLING CODE 0325–01–M

POSTAL RATE COMMISSION

Postal Facility Visit

AGENCY: Postal Rate Commission.

ACTION: Notice of postal facility visit.

SUMMARY: Arrangements have been made for members of the Commission and certain advisory staff members to visit the Postal Service's Merrifield, Va facility. The purpose is to observe mail processing, including management operating data system (MODS) data collection. Information obtained during the visit will assist Commissioners and staff in the execution of their duties.

DATES: The tour is scheduled for Thursday, August 14, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, (202) 789–6820.

SUPPLEMENTARY INFORMATION: A report of the visit will be filed in the Commission's docket room.

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662.

Dated: August 8, 1997.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 97–21451 Filed 8–13–97; 8:45 am]

BILLING CODE 7710–FW–M

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on August 20, 1997, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Proposed Fiscal Year 1999 Budget
(2) Washington, DC Branch Office—Potential Option for Co-Location (Westbury)
(3) Proposed Flexitime/Variable Workweek Changes
(4) Draft Annual Performance Plan for Fiscal Year 1999
(5) Draft Proposal to Improve Telephone Service Provided to Medicare Beneficiaries
(6) Coverage Determinations:
  A. Request for Reconsideration—Dardanelle and Russellville Railroad, Inc.
  B. Rail Management and Consulting Corporation
(7) Employee Suggestion 1448 Recommending Revising the Agency Letterhead Stationery to Show the Web Site Address
(8) Federal Ban on Smoking on Federal Property
(9) Year 2000 Issues
(10) Labor Member Truth in Budgeting Status Report

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: August 11, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–21652 Filed 8–12–97; 10:56 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 30d–1, SEC File No. 270–21, OMB Control No. 3235–0025

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 30d–1, under the Investment Company Act of 1940, ''Reports to Stockholders of Management Companies'' prescribes the minimum content of reports to shareholders that every registered investment company must send at least semi-annually, containing the information specified by the statute or its equivalent as the Commission may determine to be in the interest of the investors. The reports are required in order to inform current shareholders of the status of the company. The rule requires approximately 602 hours annually for each of the 3,850 respondents equalling 2,317,700 total annual burden hours.

The estimates of burden hours set forth above are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

Dated: August 7, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–21447 Filed 8–13–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22784; 812–10546]

Alliance All-Market Advantage Fund, Inc.; Notice of Application

August 8, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant requests an order under section 6(c) of the Act granting an exemption from section 19(b) of the Act and rule 19b–1 to permit it to make up to five distributions of long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy calling for quarterly distributions of a fixed percentage of its net asset value.

FILING DATE: The application was filed on March 7, 1997, and amended on July 8, 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 September 3, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney-Advisor, at (202) 942–0569, or Mary Kay French, 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 5th Street NW., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company organized as a Maryland corporation. Applicant's investment objective is to seek long-term growth of capital through all market conditions.

2. Applicant currently has a ''Quarterly Distribution Policy'' pursuant to which it makes quarterly distributions of 2% of applicant's net asset value, determined as of the beginning of the quarter, for each of the first three calendar quarters of each year. Applicant's fourth calendar quarter distribution for each year is an amount equal to at least 2% of applicant's net asset value determined as of the beginning of that quarter. If, with respect to any quarterly distribution, net investment income and net realized short-term capital gains are less than the amount of the distribution, the difference is distributed from other assets. Applicant's final distribution for each calendar year includes any remaining net investment income and net realized short-term capital gains deemed, for federal income tax purposes, undistributed during the year, as well as any net long-term capital gains realized during the year. If, for any fiscal year, the total distributions exceed net investment income and net realized capital gains, the excess, distributed from other assets, is treated as a return of capital.

3. Applicant's fiscal year ends on September 30. To avoid the excise tax under Section 4982 of the Internal Revenue Code of 1986, as amended, (the ''Code'') applicant may need to make a fifth distribution of net long term capital gains in a taxable year.[1]

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the SEC may

[1] Section 4982 of the Code requires an investment company each year to distribute 98% of its capital gain net income for the one-year period ending on October 31 of that year. Because applicant's fiscal year ends on September 30, it is possible that applicant may need to make a distribution of net long-term capital gains realized during October in a given year in order to avoid the excise tax under Section 4982.

prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Code. Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicant asserts that the limitation on the number of net long-term capital gains distributions in rule 19b–1 in effect prohibits applicant from including available net long-term capital gains in certain of its quarterly distributions. As a result, applicant must fund these quarterly distributions with returns of capital (to the extent net investment income and realized short-term capital gains are insufficient to cover a quarterly distribution). Applicant further asserts that, in order to distribute all of its long-term capital gains within the limits on the number of long-term capital gains distributions in rule 19b–1, applicant may be required to make certain of its quarterly distributions in excess of the fixed percentage called for by its policy. Alternatively, applicant states that it may be forced to retain long-term capital gains and pay the applicable taxes.

3. Applicant asserts that the application of rule 19b–1 to its Quarterly Distribution Policy may cause anomalous results and create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals. Applicant requests relief to permit it to make up to five distributions of long-term capital gains in any one taxable year, provided applicant maintains in effect a distribution policy calling for quarterly distributions of a fixed percentage of applicant's net asset value. Applicant represents that a fifth distribution will be made only if necessary to avoid the excise tax under Section 4982 of the Code.

4. Applicant believes that the concerns underlying section 19(b) and rule 19b–1 are not present in applicant's situation. One of these concerns is that shareholders might not be able to distinguish frequent distributions of capital gains and dividends from investment income. Applicant states that the Quarterly Distribution Policy has been fully and repeatedly described in applicant's communications to its shareholders, including annual reports and its prospectus. In addition, a statement showing the amount and source of distributions received during the year is included with applicant's IRS Form 1099–DIV report sent to each shareholder who received distributions during the year (including shareholders who sold shares during the year). Applicant believes that its shareholders fully understand that their distributions are not tied to applicant's net investment income and realized capital gains and do not represent yield or investment return.

5. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper sales practices, including in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution (''selling the dividend''), when the distribution would result in an immediate corresponding reduction in net asset value and would be, in effect, a return of the investor's capital. Applicant believes that this concern does not apply to closed-end investment companies, such as applicant, which do not continuously distribute shares.

6. Applicant states that increased administrative costs also are a concern underlying section 19(b) and rule 19b–1. Applicant asserts that it will continue to make quarterly distributions regardless of whether capital gains are included in any particular distribution.

7. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicant believes that the requested exemption meets the standards set forth in section 6(c).

Applicant's Condition

Applicant agrees that the order granting the requested relief shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by applicant of its shares other than: (i) A non-transferable rights offering to shareholders of applicant, provided that such offering does not include solicitation by brokers or the payment of any commissions or underwriting fee; and (ii) an offering in connection with a merger, consolidation, acquisition, or reorganization; unless applicant has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–21566 Filed 8–13–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22783; File No. 812–10680]

Mutual Fund Variable Annuity Trust, et al.

August 7, 1997.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order of exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Mutual Fund Variable Annuity Trust (the ''Trust''), The Chase Manhattan Bank (the ''Adviser'') and certain life insurance companies and their separate accounts that do now or may in the future purchase shares of capital stock (''Shares'') in the Trust.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order of exemption to the extent necessary to permit Shares of the Trust to be sold to and held by: (i) Variable annuity and variable life insurance separate accounts (''Separate Accounts'') of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''), and (ii) certain qualified pension and retirement plans outside of the separate account context.

FILING DATE: The application was filed on May 22, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. September 2, 1997, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the

request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017, Attention: Robert M. Kaner, Esq.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Staff Attorney, or Mark C. Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Trust is a Massachusetts business trust organized on April 14, 1994, and is registered under the 1940 Act as an open-end, management investment company. The Trust currently consists of, and offers Shares in, six separate investment portfolios, each of which has its own investment objective and policies, and may in the future issue shares of additional portfolios and/or multiple classes of Shares of each portfolio (such existing and future portfolios and/or classes of shares of each are referred to collectively as the ''Portfolios'').

2. The Trust has retained the Adviser as an investment adviser of each of the Portfolios. The Adviser is a bank chartered under the laws of New York and is a wholly-owned subsidiary of The Chase Manhattan Corporation, a bank holding company. The adviser serves as the overall investment manager of and maintains responsibility for investment decisions of the Portfolios, subject to the general direction and supervision of the Board of Trustees of the Trust (the ''Board of Trustees''). The Adviser has entered into investment subadvisory agreements with two sub-advisers that make investment decisions for their respective Portfolios on a day-to-day basis (the ''Sub-Advisers''). Chase Asset Management, Inc. (''CAM''), a Delaware corporation and a wholly-owned subsidiary of the Adviser, is the Sub-Adviser to each of the Portfolios other than the International Equity Portfolio. Chase Asset Management (London) Limited (''CAM London''), an indirect wholly-owned subsidiary of the Adviser, is the Sub-Adviser to the International Equity Portfolio. CAM and CAM London are registered as investment advisers under the Investment Advisers Act of 1940.

3. Shares of the Trust are currently offered only to the Variable Annuity Account Two, a separate account of Anchor National Life Insurance Company (''Anchor National''), and FS Variable Annuity Account Two, a separate account of First SunAmerica Life Insurance Company (''First SunAmerica''). Variable Annuity Account Two and FS Variable Annuity Account Two are registered as unit investment trusts under the 1940 Act.

4. The Trust may determine to offer Shares of its Portfolios to Separate Accounts of additional insurance companies, including insurance companies that are not affiliated with Anchor National or First SunAmerica in order to serve as the investment vehicle for various types of insurance products, which may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively referred to herein as ''Contracts''). Participating Insurance Companies will establish their own Separate Accounts and design their own Contracts.

5. The Trust also may offer Shares to the trustees (or custodians) of certain qualified pension and retirement plans (the ''Plans''). Neither the Advisor nor the Sub-Adviser will act as an investment adviser to any of the Plans which will purchase Shares of the Trust.

6. The Trust's role with respect to the Separate Accounts and the Plans will be limited to that of offering its Shares to the Separate Accounts and the Plans and fulfilling any conditions the Commission may impose upon granting the order requested in the application.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company'' (emphasis supplied). Therefore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.''

2. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common management company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as ''shared funding.''

3. The relief granted by Rule 6e–2(b)(15) also is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to Plans.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(T)(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis supplied). Therefore, Rule 6e–3(T)(b)(15) grants the exemptions if the underlying fund engages in mixed funding, but not if it engages in shared funding or sells its shares to Plans.

5. Applicants state that the current tax law permits the Trust to increase its asset base through the sale of Shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code'') imposes certain diversification requirements on the underlying assets of the Contracts invested in the Trust. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not adequately diversified as prescribed by Treasury regulations. To meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817–5. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their contracts. Treas. Reg. § 1–817–5(f)(3)(iii).

6. The promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Treasury regulations. Applicants state that given the then-current tax law, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Accordingly, Applicants hereby request an order of the Commission exempting the variable life insurance Separate Accounts of Participating Insurance Companies (and, to the extent necessary, any principal underwriter and depositor of such a Separate Account) and the other Applicants from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T) thereunder (and any permanent rule comparable to Rule 6e–3(T)), to the extent necessary to permit Shares of the Trust to be offered and sold to, and held by: (i) Both variable annuity Separate Accounts and variable life insurance Separate Accounts of the same life insurance company or of affiliated life insurance companies (*i.e.*, mixed funding); (ii) Separate Accounts of unaffiliated life insurance companies (including both variable annuity Separate Accounts and variable life insurance Separate Accounts) (*i.e.*, shared funding); and (iii) trustees of Plans.

Disqualification

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). Rule 6e–2(b)(15) (i) and (ii) and Rule 6e–3(T)(b)(15) (i) and (ii) provide partial exemptions from Section 9(a), subject to the limitations discussed above on mixed and shared funding. These rules provide: (i) That the eligibility restrictions of Section 9(a) shall not apply to persons who are officers, directors or employees of the life insurer or its affiliates who do not participate directly in the management or administration of the underlying fund; and (ii) that an insurer shall be ineligible to serve as an investment adviser or principal underwriter of the underlying fund only if an affiliated person of the life insurer who is disqualified by Section 9(a) participates in the management or administration of the fund.

9. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9 when the life insurer serves as investment adviser to or principal underwriter for the underlying fund. Applicants state that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to many individuals in a typical insurance company complex, most of whom will have no involvement in matters pertaining to underlying investment companies.

10. Applicants submit that there is no regulatory purpose in denying the partial exemptions because of mixed and shared funding and sales to Plans. Applicants further assert that sales to those entities do not change the fact that the purposes of the 1940 Act are not advanced by applying the prohibitions of Section 9(a) to persons in a life insurance complex who have no involvement in the underlying fund.

Pass-Through Voting

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through voting privileges will be provided with respect to all Contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract owners.

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations discussed above on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(15)(b)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority and subject to certain requirements. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in such insurance company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T)).

13. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts, and is subject to extensive state regulation of insurance. applicants assert that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary to ''assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Applicants state that in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Applicants assert that the corresponding provisions of Rule 6e–3(T) undoubtedly were adopted in recognition of the same factors.

14. Applicants further represent that the offer and sale of Shares of the Trust

to Plans will not have any impact on the relief requested in this regard. Shares of the Trust sold to Plans would be held by the trustees of the Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), or applicable provisions of the Code. Section 403(a) of ERISA also provides that trustee(s) must have exclusive authority and discretion to manage and control the Plan investments with two exceptions: (a) When the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, ERISA permits but does not require pass-through voting to the participants in Plans. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to plans because they are not entitled to pass-through voting privileges.

15. Applicants explain that some Plans, however, may provide participants with the right to give voting instructions. Applicants note, however, that there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Applicant submit that, therefore, the purchase of the Shares of the Trust by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

Conflicts of Interest

16. Applicants submit that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

17. Applicants submit that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Applicants state that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions proposed in the application, which are adapted from the conditions included in Rule 6e–3(T)(b)(15), are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulatory decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the Trust.

18. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners under certain circumstances. Applicants assert that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Applicants submit that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

19. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. The insurer's action possibly could be different from the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the Trust's election, to withdraw its Separate Account's investment in the Trust, with the result that no charge or penalty would be imposed as a result of such withdrawal.

20. Applicants submit that investment by the Plans in any of the Portfolios will similarly present no conflict. The likelihood that voting instructions of insurance company Separate Account holders will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Plan choosing to invest in the Trust. Moreover, Applicants state that even if a material irreconcilable conflict involving Plans were to arise, the Plans may simply redeem their shares and make alternative investments.

21. Applicants also submit that there is no reason why the investment policies of the Portfolios would or should be materially different from what these policies would or should be if the Portfolios funded only variable annuity contracts or variable life insurance contracts, whether flexible premium or scheduled premium contracts. Each type of insurance product is designed as a long-term investment program. Similarly, the investment objectives of Plans—as long-term investments—coincides with that of the Contracts and should not increase the potential for conflicts. Applicants represent that each Portfolio will be managed to attempt to achieve the investment objective of the Portfolio and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

22. Applicants note that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of the Trust. In addition, permitting mixed and shared funding also will facilitate the establishment of additional Portfolios serving diverse goals.

23. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of

variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Therefore, neither the Code, nor the Treasury Regulations, nor the revenue rulings thereunder, recognize or proscribe any inherent conflicts of interests if Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

24. While there may be differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants assert that the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Plan cannot net purchase payments to make the distributions, the Separate Account or the Plan will redeem Shares of the Trust at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

25. Applicants state that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. Applicants represent that the Portfolios will inform each shareholder, including each Separate Account and each Plan, of its respective share of ownership in the respective Portfolio. Applicants further represent that, at that time, each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

26. Applicants assert that the ability of the Portfolios to sell their respective shares directly to qualified plans does not create a ''senior security,'' as that term is defined in Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. As noted above, regardless of the rights and benefits of participants under the Plans or Contract owners under the Contracts, the Plans and the Separate Accounts have rights only with respect to their respective Shares of the Trust. They can only redeem such Shares at their net asset value. No shareholder of any of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants assert that there are no conflicts between the Contract owners of the separate accounts and the participants under the Plans with respect to state insurance commissioners' veto powers over investment objectives. A basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants submit that, on the other hand, trustees of Plans can make the decision quickly and implement the redemption of their Shares from a Portfolio and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable reinvestment. Based on the foregoing, Applicants maintain that even if there should arise issues where the interests of Contract owners and the interests of participants in Plans are in conflict, the issues can be resolved almost immediately because the trustees of the Plans can, on their own, redeem the Shares out of the Portfolio.

28. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. According to the Applicants, these factors include the cost of organizing and operating a fund medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Applicants submit that the use of the Trust as a common investment medium for variable Contracts would reduce or eliminate these concerns. Applicants argue, in addition, that mixed and shared funding should provide several benefits to Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Adviser and the Sub-Advisers, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets available for investment by the Trust, thereby promoting economies of scale, by permitting increased safety through greater diversification, and by making the addition of new Portfolios more feasible. Applicants assert that, therefore, making the Trust available for mixed and shared funding will encourage more insurance companies to offer variable Contracts, and this should result in increased competition with respect to both variable Contract design and pricing, which can be expected to result in more product variation and lower charges to investors. Applicants further note that the sale of Shares of the Trust to Plans also can be expected to increase the amount of assets available for investment by the Trust and thus promote economies of scale and greater diversification.

29. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to Plans, will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions if the order requested in the Application is granted.

1. A majority of the Board of Trustees shall consist of persons who are not ''interested persons'' of the Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Trustee or Trustees, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the remaining Trustees; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board of Trustees will monitor the Trust for the existence of any material irreconcilable conflict between the interests of the Contract owners of all Separate Accounts investing in the Trust and of the Plan participants investing in the Trust. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory

authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Portfolio are being managed; (e) a difference in voting instructions given by variable annuity Contract owners, variable life insurance Contract owners and trustees of Plans; (f) a decision by an insurer to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of Plan participants.

3. Participating Insurance Companies, the Adviser or any other primary investment adviser of the Portfolios, and any Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the assets of the Trust (collectively, the ''Participants'') will report any potential or existing conflicts to the Board of Trustees. Participants will be responsible for assisting the Board of Trustees in carrying out its responsibilities under these conditions by providing the Board of Trustees with all information reasonably necessary for the Board of Trustees to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board of Trustees whenever voting instructions of Contract owners are disregarded and, if pass-through voting is applicable, an obligation by each Plan to inform the Board of Trustees whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board of Trustees will be contractual obligations of all Participating Insurance Companies investing in the Trust under their respective agreements governing participation in the Trust, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Contract owners. The responsibility to report such information and conflicts and to assist the Board of Trustees will be contractual obligations of all Plans with participation agreements, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Plan participants.

4. If it is determined by a majority of the Board of Trustees, or by a majority of the disinterested Trustees, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans will, at their own expense and to the extent reasonably practicable (as determined by a majority of the disinterested Trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Trust or any Portfolio and reinvesting such assets in a different investment medium, including another Portfolio of the Trust, or submitting the question as to whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed Separate Account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, then that insurer may be required, at the Trust's election, to withdraw the insurer's Separate Account investment in the Trust or relevant Portfolio(s) and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the Trust's election, to withdraw its investment in the Trust or relevant Portfolio(s) and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a determination by the Board of Trustees of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing participating in the Trust, and these responsibilities will be carried out with a view only to the interests of Contract owners and Plan participants.

5. For purposes of Condition 4, a majority of the disinterested Trustees will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Trust or the Adviser be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Contract if any offer to do so has been declined by vote of a majority of the Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Plan shall be required by Condition 4 to establish a new funding medium for such Plan if (a) a majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

6. The determination of the Board of Trustees of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, Participating Insurance Companies will vote Shares of the Trust held in their Separate Accounts in a manner consistent with voting instructions timely-received from Contract owners. Each Participating Insurance Company will also vote shares of the Trust held in its Separate Accounts for which no voting instructions from Contract owners are timely-received, as well as Shares of the Trust which the Participating Insurance Company itself owns, in the same proportion as those Shares of the Trust for which voting instructions from Contract owners are timely-received. Participating Insurance Companies will be responsible for assuring that each of their Separate Accounts participating in the Trust calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in the Trust will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in the Trust. Each Plan will vote as required by applicable law and governing Plan documents.

8. All reports of potential or existing conflicts received by the Board of Trustees, and all action by the Board of Trustees with regard to determining the existence of a conflict, notifying Participants of a conflict, and

determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the Board of Trustees or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. The Trust will notify all Participating Insurance Companies that separate account disclosure in their respective Separate Account prospectuses may be appropriate to advise accounts regarding the potential risks of mixed and shared funding. The Trust shall disclose in its prospectus that: (a) The Trust is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for Plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in the Trust and the interests of Plans investing in the Trust may conflict; and (c) the Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. The Trust will comply with all provisions of the 1940 Act that require voting by shareholders (which, for these purposes, will be the persons having a voting interest in the Shares of the Trust), and, in particular, the Trust will either provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Trustees and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent that Rule 6e–2 or 6e–3(T) under the 1940 Act is amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Trust and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with such Rules 6e–2 and 6e–3(T), as amended, or proposed Rule 6e–3 as adopted, to the extent that such Rules are applicable.

12. The Participants, at least annually, will submit to the Board of Trustees such reports, materials, or data as the Board of Trustees may reasonably request so that the Board of Trustees may fully carry out the obligations imposed upon it by the conditions contained in the application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board of Trustees. The obligations of the Participants to provide these reports, materials, and data to the Board of Trustees, when the Board of Trustees so reasonably requests, shall be a contractual obligation of all Participants under their agreements governing participation in the Trust.

13. If a Plan should ever become a holder of ten percent or more of the assets of the Trust, such Plan will execute a participation agreement with the Trust. A Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the Shares of the Trust.

Conclusion

For the reasons set forth above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–21567 Filed 8–13–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38907; File No. SR–NASD–97–34]

Order of Granting Approval; Notice of Filing and Order Granting Accelerated Approval

August 6, 1997.

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3 and 4 to Proposed Rule Change Relating to Miscellaneous Amendments to Arbitration Procedures and Clarifications of the Code of Arbitration Procedure.

I. Introduction

On May 5, 1997,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend and clarify its arbitration procedures.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38692 (May 29, 1997), 62 FR 30920 (June 5, 1997). No comments were received on the proposal. The NASD subsequently filed Amendment Nos. 3 and 4 on July 15, 1997[4] and July 25, 1997, respectively.[5]

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[1] The NASD filed Amendment Nos. 1 and 2 with the Commission on May 13, 1997, and May 22, 1997, respectively, the substance of which was incorporated into the notice. See letters from Elliott R. Curzon, Assistant General Counsel, NASDR, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated May 8, 1997 (''Amendment No. 1'') and May 20, 1997 (''Amendment No. 2).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Amendment No. 3 amends Rule 10330 to state that the Director will serve a copy of the award by using any method available and convenient to the parties and the Director, and that is reasonably expected to cause the award to be delivered to all parties, or their counsel, on the same day. Methods available include, but are not limited to, registered or certified mail, hand delivery, and facsimile or other electronic means. Amendment No. 3 also amends the purpose section of the proposed rule change to state that it is important to permit service by means other than registered mail or personal service, because the Office is frequently asked to provide arbitration awards by facsimile, and could be asked to provide service by other alternative means. In addition, Amendment No. 3 states that it is important that all parties be served with arbitration awards at approximately the same time so that there is no confusion about when the time to seek review of an award begins to run, and parties all have approximately the same amount of time to prepare for and seek review of an award. Also, Amendment No. 3 states that parties should not be required to accept service of awards through means that are inconvenient or unavailable to them, nor should the Office be required to serve an award in a manner that is not readily available. See letter from Elliott R. Curzon, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated July 14, 1997 (''Amendment No. 3'').

[5] Amendment No. 4 states that NASDR's Office of Dispute Resolution intends to modify its case tracking system to add a status code that will show when a claim, defense, or proceeding has been dismissed with prejudice and whether the dismissal was a sanction for failing to comply with an order. In order to allow for sufficient time to implement this change to the system, NASDR will make the proposed rule changes in this rule filing effective within forty-five days following Commission approval. See letter from Elliott Curzon, Assistant General Counsel, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated July 23, 1997 (''Amendment No. 4'').

II. Description

NASD Regulation, Inc. (''NASDR'') is proposing to amend the Code of Arbitration Procedure (''Code'') to make certain minor procedural changes designed to enhance the arbitration process.[6] Specifically, NASDR is proposing to amend: (1) Rule 10305 (formerly Section 16), to permit arbitrators to dismiss claims with and without prejudice; (2) Rule 10310 (formerly Section 21), to extend the time periods for notice of selection of arbitrators and further inquiries concerning an arbitrator; (3) Rule 10311 (formerly Section 22), to permit the Director of Arbitration to grant additional peremptory challenges of arbitrators; (4) Rule 10313 (formerly Section 24), to extend the time in which a party can exercise its right to challenge a replacement arbitrator; and (5) Rule 10330 (formerly Section 41), to permit awards to be served by means other than registered mail or personal service.[7]

NASDR is proposing to amend Rule 10305 of the Code (formerly Section 16), which relates to dismissal of arbitration proceedings, to clarify that the arbitrators may dismiss a proceeding without prejudice to the claims or defenses of the parties and refer the parties to their judicial remedies and, in addition, to any other dispute resolution forum agreed to by the parties. The Code does not specify the grounds for dismissals without prejudice; however, such dismissals would generally occur only when appropriate and in the interest of justice, such as where the parties have agreed to the dismissal (especially if they have agreed to proceed in another forum), or where an indispensable party cannot be jointed in the arbitration.

NASDR is also proposing to amend Rule 10305 by adding a new subsection (b) granting arbitrators the express authority to dismiss a claim, defense, or proceeding with prejudice as a sanction for willful and intentional material failure to comply with an order of the arbitrator(s), but only if lesser sanctions have proven ineffective.[8] This provision is intended to establish clearly that arbitrators have the power to issue orders in aid of the arbitration process and to enforce those orders by use of the ultimate sanction of dismissal with prejudice. Such a sanction would be used, for example, where a party refused to produce documents necessary for another party's claim or defense. In such instances, after the arbitrators have imposed lesser sanctions that have not induced compliance with the order, the arbitrators may dismiss a claim, defense, or the entire arbitration proceeding, with prejudice.[9]

NASDR is proposing to amend Rules 10310, 10311, and 10313 of the Code (formerly Sections 21, 22, and 23), which relate to arbitrator selection, peremptory challenges and arbitrator disclosures, to extend the time limitations on a party to (1) seek additional information under Rules 10310 and 10313 about replacement arbitrators, and (2) exercise a peremptory challenge under Rule 10311, from 5 days to 10 business days after notification of the identity of the person(s) proposed as arbitrators.[10] In addition, Rule 10310 is proposed to be amended to extend the Arbitration Department's obligation to provide the parties with the names and histories of the arbitrators from 8 to 15 days prior to the date of the first hearing. The proposed rule change further amends Rule 10310 to replace ''the Director of Arbitration'' with ''the Director'' whenever it occurs.

NASDR is also proposing to amend Rule 10311 to permit the Director to grant additional peremptory challenges under certain circumstances. Currently, the rule permits the Director to grant additional peremptory challenges in multi-party cases when the Director, ''in the interests of justice,'' determines that additional peremptory challenges are warranted by the circumstances of the case. For example, on occasion a party will discover grounds for a cause challenge to one arbitrator after the party has used its peremptory challenge against that arbitrator. In such an instance, the party may argue that it would have used its peremptory challenge differently had it known of the information. Under the current rule, if that circumstance arose in a multi-party case, the Director may, ''in the interests of justice,'' grant additional challenges. NASDR believes that similar circumstances may arise in single-party cases and, therefore, is seeking to amend the rule to permit the Director to grant such additional challenges.

NASDR is also proposing to amend Rule 10330 of the Code (formerly Section 41) to permit the Office of Dispute Resolution to serve arbitration awards by means other than registered mail or personal service.[11] The Office frequently is asked to provide arbitration awards to parties by facsimile. Because the Code does not provide for this method of service, the Office serves the award by facsimile and also duplicate service by one of the other methods specified in the Code. In addition, the Office may be asked to provide arbitration awards by methods other than registered, facsimile, or personal service.[12] By amending the Code to permit facsimile service, the Office will not be required to serve duplicates by another approved method.

Also, it is important that all parties be served with arbitration awards at approximately the same time so that there is no confusion about when the time to seek review of an award begins to run, and parties all have approximately the same amount of time to prepare for and seek review of an award. Finally, parties should not be required to accept service of awards through means that are inconvenient or unavailable to them; nor should the Office be required to serve an award in a manner that is not readily available. Thus, if Party A does not have access to a facsimile machine, the Office may serve other parties by facsimile as long as the Office serves the award on Party A in a manner that is reasonably expected to secure delivery to Party A on the same day.[13]

The proposed rule change also amends references to numbers, such as ''eight (8)'' or ''fifteen (15)'', throughout the proposed rule change to delete the

[6] While NASDR does not believe that the changes proposed in this filing will conflict with amendments to the Code to be proposed in response to the recommendations of the NASD's Arbitration Policy Task Force, some of the changes proposed herein will ultimately be replaced or superseded by those amendments and are, therefore, temporary in nature. For example, the proposed change to the peremptory challenge provision discussed below will be superseded when the Association's list selection rule is filed with and approved by the Commission. Nevertheless, NASDR believes that the rule changes in this proposed rule filing are important enough to be made now even if some of them will eventually be superseded.

[7] See Amendment No. 3, supra note 4.

[8] While the NASD believes that arbitrators currently have plenary power to issue such dismissal orders, this power is rarely exercised because it is not expressly provided for in the Code and arbitrators appear to be reluctant to wield such sanctioning power without express authority.

[9] The Commission notes that NASDR has stated its intention to modify its case tracking system in order to show when a claim, defense, or proceeding has been dismissed with prejudice, and whether the dismissal was a sanction for failing to comply with an order of the arbitrators. See Amendment No. 4, supra note 5.

[10] Although the notice prepared by the NASD stated in the purpose section describing the proposed rule change that the time limitation to exercise a peremptory challenge under Rule 10311 was extended from 5 to 10 days prior to the hearing, the actual language of the rule under the proposed rule change states that the time limitation to exercise a peremptory challenge is 10 business days, ''of notification of the identity of the person(s) named under Rule 10310 or Rule 10321 (d) or (e), whichever comes first.''

[11] See Amendment No. 3, supra note 4.

[12] See Amendment No. 3, supra note 4.

[13] See Amendment No. 3, supra note 4.

word form and retain the Arabic numeral.

III. Discussion

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[14] in that clarifying procedures, eliminating ambiguities, and adjusting procedures to accommodate changing practices are consistent with the NASD's goal of providing the investing public with a fair, efficient, and cost-effective forum for the resolution of disputes.[15]

The Commission believes that the portion of the proposed rule change to Rule 10305, relating to dismissal of arbitration proceedings with and without prejudice, is consistent with the Act. This portion of the proposed rule change will provide for a fair, efficient and cost-effective arbitration process by clarifying that the arbitrators can dismiss the proceeding either with or without prejudice; currently, Rule 10305 does not distinguish between these two choices. Also, the proposed rule change amends Rule 10305 to add that the arbitrators, when dismissing without prejudice, can refer the parties to any dispute resolution forum agreed to by the parties, in addition to their judicial remedies. The Commission notes that the NASD stated in the notice that such dismissals without prejudice would generally occur only where appropriate and in the interest of justice, such as where the parties have agreed to the dismissal (especially if they have agreed to proceed in another forum), or where an indispensable party cannot be joined in the arbitration.

The Commission notes that the proposed change to Rule 10305 allowing for dismissal with prejudice is intended to establish clearly that arbitrators have the power to issue orders in aid of the arbitration process and to enforce those orders by use of the sanction of dismissal with prejudice. Such a sanction would be used, for example, where a party refused to produce documents that the arbitrators already have ordered them to produce as necessary for another party's claim or defense. In such instances, after the arbitrators have imposed lesser sanctions that have not induced compliance with their order, the arbitrators may dismiss a claim, defense, or the entire arbitration proceeding, with prejudice. The Commission believes that this proposed rule change would provide for a more efficient arbitration process because it will allow the arbitrators to assert greater control over the proceedings and will provide parties with clear notice of the possible consequences of non-compliance with an order of the arbitrators. It also would help to protect all parties to an arbitration, and ensure that one party to the proceeding does not take advantage of the other.[16]

The Commission believes that the proposed changes to Rules 10310, 10311, and 10313 providing for an extension of time limitations relating to arbitrator selection, peremptory challenges, and arbitrator disclosures are consistent with the Act because they allow the parties more time to gather information to prepare for the arbitration proceedings.[17]

The Commission believes that the proposed change to Section 10311 that allows the Director of Arbitration to grant additional peremptory challenges in certain circumstances is reasonable under the Act. This proposed rule change allows the Director to grant additional peremptory challenges where there is a single claimant or respondent, in appropriate circumstances, which the Director may already do in cases where there are multiple claimants or respondents. For example, the NASDR noted in its filing that on occasion a party will discover grounds for a cause challenge to one arbitrator after the party has used its peremptory challenge against the arbitrator. In such an instance, the party may argue that it would have used its peremptory challenge differently had it known of the information. Under the current rule if that circumstance arose in a multi-party case, the Director may, ''in the interests of justice,'' grant additional challenges. The proposed rule change provides clearly that the Director may grant additional challenges in a case with a single claimant or respondent.

The Commission finds good cause to approve Amendment Nos. 3 and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the proposed change to Rule 10330, including Amendment No. 3, that allows for service by means other than registered mail or personal service, such as facsimile or other electronic transmission, is reasonable under the Act because it will help to provide for more efficient service.[18] The NASD has stated that its Office frequently is asked to provide arbitration awards to parties by facsimile, but because the Code does not provide for this method of service, the Office provides the award by facsimile but it also duplicates service by one of the other methods specified in the Code. By amending the Code to permit alternative means of service, the Office will not be required to duplicate service by another approved method. The Commission notes that the proposed rule change provides adequate safeguards to allow for all parties to receive notice of the awards in a way that is reasonably expected to provide notice on the same day, for purposes of time limitations on post-award motions. Also, the NASD states that the Office will not serve awards on parties in a way that is inconvenient or unavailable to the party, and the Office will not be required to serve an award in a manner that is not readily available.[19]

Amendment No. 4, which states that the NASDR intends to modify its case tracking system to show when claims, defenses, or proceedings are dismissed with prejudice and whether the dismissal was a sanction for failing to comply with an order of the arbitrators, is consistent with the Act because it will help to protect investors and the public by monitoring when arbitrators use the sanction of dismissal with prejudice. Finally, the Commission notes that the

[14] 15 U.S.C. 78*o*-3.

[15] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] As previously noted, NASDR has stated its intention to modify its case tracking system in order to show when a claim, defense, or proceeding has been dismissed with prejudice, and whether the dismissal was a sanction for failing to comply with an order of the arbitrators. See supra note 9 and Amendment No. 4, supra note 5.

[17] The proposed changes extend the time limitations on a party to (1) seek additional information under Rules 10310 and 10313 about replacement arbitrators, and (2) exercise a peremptory challenge under Rule 10311, from 5 days to 10 business days after notification of the identity of the person(s) proposed as arbitrators. In addition, Rule 10310 is proposed to be amended to change the Office of Dispute Resolution's obligation to provide the parties with the names and histories of the arbitrators from 8 to 15 days before the date of the first hearing.

[18] Amendment No. 3 amends Rule 10330 to allow for service of awards by alternative means while still providing for service in a manner reasonably expected to ensure notice to all the parties on the same day, and in a manner that is not inconvenient or unavailable to them. Amendment No. 3 is designed to avoid confusion as to when the time to seek review of an award begins to run and to provide all parties approximately the same amount of time to prepare for and seek review of an award. In addition, by allowing for alternative means of service, such as by facsimile, the Office will not be required to make duplicative service, as they do now when they are asked to serve an award by facsimile or other means not allowed in the current rule.

[19] See Amendment No. 3, supra note 4. In addition, the proposed rule change also amends references to numbers, such as ''eight (8)'' or ''fifteen (15)'', throughout the proposed rule change to delete the word form and retain the Arabic numeral. Finally, the proposed rule change amends Rule 10310 to replace ''the Director of Arbitration'' with ''the Director'' whenever it occurs.

proposed rule change was noticed for the full comment period and no comment letters were received. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve Amendment No. 3 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4 to the rule proposal. 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. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–34 and should be submitted by September 4, 1997.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NASD–97–34), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–21445 Filed 8–13–97; 8:45 am]

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[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38909; File No. SR–NASD–96–29; Amendment No. 5]

Notice of Filing and Order Granting Temporary Accelerated Approval

August 7, 1997.

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Allocation and Delegation of Authority and Responsibilities by the National Association of Securities Dealers, Inc., to NASD Regulation, Inc., and The Nasdaq Stock Market, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 5, 1997, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 5 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change as further amended by Amendment No. 5 from interested persons and is simultaneously granting accelerated approval to the proposed rule change for a period of six months.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (''Delegation Plan'') setting forth the purpose, function, governance, procedures and responsibilities of the NASD, NASD Regulation, Inc. (''NASD Regulation'') and The Nasdaq Stock Market, Inc. (''Nasdaq''), following the reorganization of the NASD.

The initial version of the Delegation Plan (with the implementing provisions contained in Rule 0130) was originally filed with the Commission in SR–NASD–96–16. It was published for comment and approved by the Commission on a temporary basis for a period of 90 days.[2] On July 11, 1996, the Commission issued another release publishing for comment three changes to the Delegation Plan and further approving the Delegation Plan as amended for a period of 120 days.[3] On November 15, 1996 and May 15, 1997, the Commission extended temporary approval of the instant proposed rule change for two additional six month periods.[4]

On April 18, 1997, the NASD filed SR–NASD–97–28, seeking approval of, among other matters, certain proposed amendments to the Delegation Plan.[5] The proposed amendments to the Delegation Plan contained therein were withdrawn by Amendment No. 3 thereto.[6]

The NASD hereby files this Amendment No. 5 to the instant rule filing, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to continue temporary approval of the Delegation Plan, revised to conform to the Rules of the Association, as amended by Release No. 34–38908. Approval until November 15, 1997, the remaining effective period of Amendment No. 4 to the instant rule filing, is requested. During this interval, there will be no further amendments to the Delegation Plan, absent Commission approval of a corresponding Rule 19b–4 filing.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] The Commission previously published notice of the proposed rule change and granted accelerated approval thereto for periods of 120 days, six months and six months (Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 18, 1996) (''Release No. 34–37425''), Securities Exchange Act Release No. 37957 (November 15, 1996), 61 FR 59267 (November 21, 1997) (''Release No. 34–37957'') and Securities Exchange Act Release No. 38645 (May 15, 1997), 62 FR 28086 (May 22, 1997) (''Release No. 34–38645''), respectively.

[2] Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (''Release No. 34–37107'').

[3] Release No. 34–37425. Release Nos. 34–37107 and 34–37425 published the complete text of the rule change.

[4] Release Nos. 34–37957 and 34–38645, respectively.

[5] Securities Exchange Act Release No. 38545 (April 24, 1997), 62 FR 25226 (May 8, 1997) (''Release No. 34–38545''), the Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Proposed Changes in the By-Laws of the NASD, NASD Regulation, Inc., The Nasdaq Stock Market, Inc., the Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries, Membership Application Procedures, Disciplinary Proceedings, Other Proceedings, and Other Conforming Changes (''Release No. 34–38545''). The comment period for Release No. 34–38545 expired on June 6, 1997. SR–NASD–97–28 is being approved simultaneously with the instant filing, see Securities Exchange Act Release No. 38908 (''Release No. 34–38908'').

[6] See Letter from Alden S. Adkins, Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 11, 1997).

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose.

The purpose of this Amendment No. 5 is to ensure continued effectiveness of the Delegation Plan while the Commission considers whether to grant permanent approval to the instant NASD rule filing.

Description of Delegation Plan: The Delegation Plan is organized in three principal parts, one for each of the three major entities that will constitute the reorganized self-regulatory organization: the parent corporation, NASD; the regulatory subsidiary, NASD Regulation; and the stock market operating subsidiary, Nasdaq.[7] The Delegation Plan, the contents of which are self-explanatory, describes the purposes, functions, governance, procedures and responsibilities of each of these entities.

The first part of the Delegation Plan describes the parent corporation, the NASD. The Delegation Plan sets forth the purpose and function of the NASD; the composition of the Board of Governors, including provisions relating to the qualifications for Governors, election procedures, creation of a National Nominating Committee,[8] term of office, vacancies and removal from office,; the function, composition and reporting structure of the Audit Committee and the Office of Internal Review; the function and composition of the Management Compensation Committee; and the Commission's access to and status of officers, directors, employees, books, records and premises of the subsidiaries.

The second part of the Delegation Plan describes the regulatory subsidiary, NASD Regulation. The Delegation Plan sets forth the delegation of authority to NASD Regulation by the NASD; the purpose, function and authority of NASD Regulation; the composition of, and qualifications for members of, the Board of Directors, including provisions relating to election procedures; the function and composition of the National Business Conduct Committee; the Board's procedures for reviewing disciplinary actions, statutory disqualification decisions and proposed rule change recommendations; and the Board's procedures for initiating actions.

The third part of the Delegation Plan describes the stock market operating subsidiary, Nasdaq. The Delegation Plan sets forth the delegation of authority to Nasdaq; the purpose and function of Nasdaq; the composition of and qualifications for members of the Board of Directors, including provisions relating to election procedures and the authority of the Board; the Board's procedures for reviewing listing/delisting decisions, and rule change recommendations; the Board's procedures for initiating actions; the functions and composition of the Quality of Markets Committee; and functions of the Stockwatch Department.

The Rules of the Association, as amended by Release No. 34–38908, include modifications of the time periods for certain procedures described in the Delegation Plan. The amendments to the Delegation Plan proposed by this Amendment No. 5 conform to these modifications and further amplify the delegation of functions and authority to NASD Regulation.

2. Statutory Basis for the Proposed Rule Change

The NASD believes that the proposed rule change as further amended by Amendment No. 5 is consistent with the provisions of Section 15A(b)(2) of the Act[9] in that the terms of the Delegation Plan will provide for the organization of the Association in a manner that will permit the NASD, through its operating subsidiaries, to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by Association members and persons associated with members with the Act, the rules and regulations thereunder, the rules of the Association and the federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change as further amended by Amendment No. 5 will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.[10] However, in connection with the NASD's publication for member vote of proposed amendments to the By-Laws to implement the Delegation Plan in Notice 95–101 (December 11, 1995) (''Notice 95–101''), attached as Exhibit 2 to proposed rule change SR–NASD–96–02, the NASD received three comments which were attached as Exhibit 4 to that proposed rule change. The NASD's statement on the comments received with respect to notice 95–101 is set forth in SR–NASD–96–02 and was published by the Commission in Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996). SR–NASD–96–02 proposed certain of the By-Law amendments issued for member vote in Notice 95–101 in order to permit the reorganization of its Board of Governors consistent with the Delegation Plan submitted in SR–NASD–96–16.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change as further amended by Amendment No. 5 prior to the 30th day after publication in the **Federal Register**.

IV. Discussion

The Commission finds that the proposed rule change as further amended by Amendment No. 5 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission believes that the proposed rule change will allow the NASD to

[7] The NASD, NASD Regulation and Nasdaq are collectively referred to herein as the ''Association.'' The Delegation Plan does not discuss other wholly owned subsidiary corporations of the NASD, such as the Securities Dealers Risk Purchasing Group, Inc. and the Securities Dealers Insurance Co., Ltd. These and any other wholly owned subsidiaries of the NASD not described in the Delegation Plan do not perform any of the Association's regulatory functions or the operating functions related to the operation of Nasdaq. In addition, the Delegation Plan does not address the NASD's ownership role in corporations such as the National Securities Clearing Corporation or the Depository Trust Company.

[8] The National Nominating Committee is composed of at least six and not more than nine members equally balanced between Industry and Non-Industry Committee Members. It is anticipated that there will be at least three Non-Industry Members, including at least two Public Committee Members.

[9] 15 U.S.C. 70*o*–3

[10] The comment letters received in connection with Release No. 34–38545 did not address the Delegation Plan.

carry out the purposes of the Act to comply with, and enforce compliance by its members and associated persons with, the provisions of the Act, the rules and regulations thereunder, the rules of the NASD and the federal securities laws. Furthermore, the amendments are designed (with amendments to the Rules of the Association simultaneously approved in Release No. 34–38908, as discussed above) to insure a fair representation of the NASD's members in the selection of its directors and administration of its affairs as well as to comply with the public and non-industry participation requirements of the Act. It is envisioned that these rules and any subsequent changes that may be implemented from time-to-time will enable the NASD to better comply with the requirements of Section 15A(b)(2) in particular and the Act in general.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will enhance the NASD's ability to carry out its regulatory obligations under the Act. The Commission believes that the proposed rule change is intended to accomplish certain allocations and delegations of authority necessary to reorganize the NASD, and establish as separate subsidiaries NASD Regulation and Nasdaq in accordance with the September 1995 recommendations of The Select Committee on Structure and Governance in order to enable the NASD to meet its regulatory and business obligations. The Delegation Plan sets forth the purpose, functions, governance, procedures, and responsibilities of the NASD, NASD Regulation and Nasdaq following the reorganization of the NASD. The NASD's Board of Governors, which has been reorganized to be consistent with the proposed rule change, has held meetings to carry out the business of the Association. The subsidiaries also have held meetings of the Board of Directors of NASD Regulation and Nasdaq in order to carry out the business of the subsidiaries during the period in which the Delegation Plan has been effective.

The instant proposed rule change was previously published for comment and approved by the Commission on a temporary basis for periods of 120 days, six months, and six months.[11] The second six month approval period is scheduled to expire on November 15, 1997. No comment letters concerning the instant proposed rule change were received by the Commission.

Accordingly, the Commission believes that accelerating the approval of the proposed rule change as further amended by Amendment No. 5 will benefit members and the public interest by more fully implementing the reorganization of the NASD and its subsidiaries.[12]

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 4, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–96–29, as amended by Amendment No. 5, be, and hereby is, approved through November 15, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–21446 Filed 8–13–97; 8:45 am]

BILLING CODE 8010–01–M

[11] Release Nos. 34–37425, 34–37957, and 34–38645, respectively.

[12] In approving this rule filing, the Commission has considered the proposed rule filing's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2973]

State of Alabama

As a result of the President's major disaster declaration on July 25, 1997, I find that Baldwin, Choctaw, and Mobile Counties in the State of Alabama constitute a disaster area due to damages caused by storms, flooding, and high winds which occurred July 17–22, 1997. Applications for loans for physical damages may be filed until the close of business on September 23, 1997, and for loans for economic injury until the close of business on April 28, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Clarke, Escambia, Marengo, Monroe, Sumter, and Washington Counties in Alabama; Clarke, George, Greene, Jackson, Lauderdale, and Wayne Counties in Mississippi; and Escambia County in Florida.

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 297306. For economic injury the numbers are 956800 for Alabama; 956900 for Mississippi; and 957000 for Florida.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 1, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–21509 Filed 8–13–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2975]

State of Colorado

As a result of the President's major disaster declaration on August 1, 1997, I find that Larimer, Logan, and Morgan Counties in the State of Colorado constitute a disaster area due to

damages caused by severe storms, heavy rain, flash floods, flooding, mud slides, landslides, and severe ground saturation beginning on July 28, 1997 and continuing. Applications for loans for physical damages may be filed until the close of business on September 30, 1997, and for loans for economic injury until the close of business on May 1, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, Texas 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Boulder, Grand, Jackson, Phillips, Sedwick, Washington, Weld, and Yuma Counties in Colorado; Albany and Laramie Counties in Wyoming; and Cheyenne, Deuel, and Kimball Counties in Nebraska.

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 297506. For economic injury the numbers are 957200 for Colorado; 957300 for Wyoming; and 957400 for Nebraska.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 6, 1997.

Becky C. Brantley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–21511 Filed 8–13–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2976]

State of North Carolina (And Contiguous Counties in South Carolina)

Mecklenburg and Stanly Counties and the contiguous Counties of Anson, Cabarrus, Davidson, Gaston, Iredell, Lincoln, Montgomery, Richmond, Rowan, and Union in the State of North Carolina, and Lancaster and York in the State of South Carolina constitute a disaster area as a result of flooding damages caused by Hurricane Danny on July 22 and 23, 1997. Applications for loans for physical damages may be filed until the close of business on October 6, 1997 and for economic injury until the close of business on May 5, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE, 8.000%.

HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE, 4.000%.

BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE, 8.000%.

BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE, 4.000%.

OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE, 7.250%.

For Economic Injury

BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE, 4.000%.

The numbers assigned to this disaster for physical damage are 297608 for North Carolina and 297708 for South Carolina. For economic injury, the numbers are 957500 for North Carolina and 957600 for South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 5, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–21512 Filed 8–13–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2974]

State of Ohio

Fairfield and Licking Counties and the contiguous Counties of Coshocton, Delaware, Franklin, Hocking, Knox, Muskingum, Perry, and Pickaway in the State of Ohio constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding which occurred on July 26 and 27, 1997. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on October 6, 1997 and for economic injury until the close of business on May 5, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE, 8.000%.

HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE, 4.000%.

BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE, 8.000%.

BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE, 4.000%.

OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE, 7.250%.

For Economic Injury

BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE, 4.000%.

The number assigned to this disaster for physical damage is 297406 and for economic injury the number is 957100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 5, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–21510 Filed 8–13–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2978]

State of Texas

Hays County and the contiguous Counties of Blanco, Caldwell, Comal, Guadalupe, and Travis in the State of Texas constitute a disaster area as a result of severe thunderstorms and flooding which occurred on June 9, 1997. Applications for loans for physical damages may be filed until the close of business on October 6, 1997 and for economic injury until the close of business on May 7, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

The interest rates are:

For Physical Damage

HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE, 8.000%.

HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE, 4.000%.

BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE, 8.000%.

BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE, 4.000%.

OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE, 7.250%.

For Economic Injury

BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE, 4.000%.

The number assigned to this disaster for physical damage is 297811 and for economic injury the number is 957900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: August 7, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–21513 Filed 8–13–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2972]

State of Vermont

As a result of the President's major disaster declaration on July 25, 1997, I find that Caledonia, Franklin, Lamoille, Orleans, and Washington Counties in the State of Vermont constitute a disaster area due to damages caused by excessive rainfall, high winds, and flooding which occurred July 15–17, 1997. Applications for loans for physical damages may be filed until the close of business on September 23, 1997, and for loans for economic injury until the close of business on April 27, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Addison, Chittenden, Essex, Grand Isle, and Orange Counties in Vermont, and Grafton County in New Hampshire.

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 297206. For economic injury the numbers are 956600 for Vermont and 956700 for New Hampshire.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 1, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–21508 Filed 8–13–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Addition of a New Routine Use for All of the Agency's Privacy Act Systems of Records

AGENCY: Small Business Administration.

ACTION: Addition of new routine use.

SUMMARY: This Notice is to publish in the **Federal Register** a new routine use for each of the Agency's Privacy Act Systems of Records. The new routine use will allow Agency volunteers and interns to access, for official purposes, records in all Agency Systems of Records.

SUPPLEMENTARY INFORMATION: SBA is publishing a new routine use for inclusion in all of the Agency's Privacy Act Systems of Records as listed below. The new routine use will allow Agency volunteers and interns to access, for official purposes, records in all Agency Systems of Records.

SBA 005 .. Administrator's Executive Secretariat Files (SBA Controlled Document System).
SBA 010 .. Advisory Council Files.
SBA 015 .. Audit Reports.
SBA 020 .. Automated Personnel History.
SBA 025 .. Boards of Survey.
SBA 030 .. Business Development Resource Files.
SBA 035 .. Combined Federal Campaign.
SBA 040 .. Congressional Inquiries and Correspondence.
SBA 045 .. EEO Pre-Complaint Counseling.
SBA 050 .. EEO Complaint Cases.
SBA 055 .. Employee Identification Card Files.
SBA 060 .. Grievances and Appeals.
SBA 065 .. Legal Work Files on Personnel Problems.
SBA 070 .. Litigation and Claims Files.
SBA 075 .. Loan Case Files.
SBA 080 .. Occupational Injuries.
SBA 085 .. Official Travel Files.
SBA 090 .. Outside Employment Files.
SBA 095 .. Payroll Files.
SBA 100 .. Personnel Security Files.
SBA 105 .. Portfolio Reviews.
SBA 110 .. SCORE/ACE Master Files.
SBA 115 .. Power of Attorney Files.
SBA 120 .. Security and Investigations Files.
SBA 125 .. Office of Inspector General Referrals.
SBA 130 .. Investigations Division Management Information System.
SBA 135 .. Small Business Person and Advocate Awards.
SBA 140 .. Standards of Conduct Files.
SBA 145 .. Temporary Disaster Employees.
SBA 150 .. Tort Claims.
SBA 155 .. SBA Employee Activity Files.
SBA 160 .. Freedom of Information Act and Privacy Act Case Files.
SBA 165 .. Civil Rights Compliance Files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES: These records and information in these records may be used:

Agency volunteers and interns in the course of their official duties.

FOR FURTHER INFORMATION CONTACT: Lisa Babcock (202)401–8203.

Dated: August 7, 1997.

Mona Koppel Mitnick,

Assistant Administrator for Hearings and Appeals.

[FR Doc. 97–21440 Filed 8–13–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 18, 1997 [62 FR 19160].

DATES: Comments must be submitted on or before September 15, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scott, Office of Motor Carriers,

(202) 366–4104, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Utility Use and Occupancy Agreements.

OMB Number: 2125–0522.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Highway authorities.

Abstract: In carrying out the requirements of 23 USC 116 to assure Federal-aid highway projects are being properly maintained, the Secretary of Transportation is authorized by 23 USC 315 to prescribe and promulgate rules and regulations. This authority is delegated to the Federal Highway Administrator at 49 CFR 1.48. Further, 23 CFR 1.23 and 1.27 establish the authority and responsibility of the Administrator to prescribe policies and procedures for the use, occupancy, and maintenance of the rights-of-way of Federal-aid projects. Under the Federal-aid highway program, States, or their political subdivisions, actually own the highway rights-of-way. State and/or local highway authorities are responsible for maintaining the highway rights-of-way, which includes controlling utility use of it. The FHWA regulations found in 23 CFR part 645, subpart B require that in controlling utility use on Federal-aid highway projects, the highway authority is to document the terms under which the utility is to cross or otherwise occupy highway rights-of-way. This documentation, consisting of a use and occupancy agreement, is to be in writing and must be contained in the highway authority's files. No submission to the FHWA is required. The use and occupancy agreement issued by the highway authority serves to document the arrangements made between it and a utility to allow the utility to use public right-of-way under the control of the highway authority. These agreements are reviewed periodically by the FHWA to determine whether or not the State is effectively maintaining the highway right-of-way and fulfilling its responsibilities under its utility accommodation policy. The use and occupancy agreements are an important means of controlling the installation of utilities in order to provide a safe environment for highway users.

Estimated Annual Burden Hours: 552,000.

Number of Respondents: 4,600.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 8, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–21568 Filed 8–13–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33438]

Alabama & Gulf Coast Railway, LLC—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

The Alabama & Gulf Coast Railway LLC of Dallas, TX (ALA), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 *et seq.* to acquire from The Burlington Northern and Santa Fe Railway Company (BNSF) and operate a 140.58-mile rail line between milepost 776.10 near Kimbrough, AL, and milepost 916.68 in Pensacola, FL. ALA will also acquire incidental trackage rights over 13.6 miles of BNSF's line between milepost 776.10 near Kimbrough, AL, and milepost 762.5 near Magnolia, AL. ALA will also be temporarily assigned trackage rights over a 43.1-mile line of CSX Transportation, Inc., between milepost L621.7 near Atmore, AL, and milepost L635.4 near Catonment, FL, pending completion of repairs to the line to be acquired from BNSF. The transaction is scheduled to be consummated on or after September 1, 1997.

This proceeding is related to *Kauri, Inc., and StatesRail LLC—Continuance in Control Exemption—Alabama & Gulf Coast Railway LLC,* STB Finance Docket No. 33439, in which Kauri, Inc. and StatesRail LLC have concurrently filed a verified notice of exemption to continue in control of ALA when it becomes a Class III railroad.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33438 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

Decided: August 5, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–21551 Filed 8–13–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33436]

Corpus Christi Terminal Railroad, Inc.—Lease and Operation Exemption—Port of Corpus Christi Authority of Nueces County, Texas, Union Pacific Railroad Company, Southern Pacific Transportation Company, The Texas Mexican Railway Company and The Burlington Northern and Santa Fe Railway Company

Corpus Christi Terminal Railroad, Inc. (CCPN), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate all of the lines (lines) owned by Port of Corpus Christi Authority of Nueces County, Texas (Authority), within the Corpus Christi, TX terminal area, a distance of approximately 20 route miles.[1] In

[1] The lines are currently operated by the Corpus Christi Terminal Association and its member railroads (currently Union Pacific Railroad Company (UP), Southern Pacific Transportation Company (SP), The Texas Mexican Railway Company (TM), and The Burlington Northern and Santa Fe Railway Company (BNSF)). With the consent, and at the request of Authority, UP, SP, TM, and BNSF will assign all of their existing operating rights (except for specified nonexclusive rights to provide unit train service to facilities that may be built on or adjacent to Authority's trackage after commencement of CCPN's operations) over the lines to CCPN and will discontinue their current operations with respect to the Authority's terminal facilities.

addition, CCPN will acquire incidental trackage rights over lines of UP between milepost 145.9 and milepost 149.0, together with the ''loop'' trackage off of the main line, all in the terminal area of Corpus Christi, TX, a distance of approximately 3.1 miles.

The transaction was expected to be consummated on or after August 1, 1997.

This transaction is related to STB Finance Docket No. 33437, *Genesee & Wyoming Inc.—Continuance in Control Exemption—Corpus Christi Terminal Railroad, Inc.,* wherein the Genesee & Wyoming Inc. has concurrently filed a verified notice to continue in control of CCPN, upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33436, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, West Chester, PA 19381–0796.

Decided: August 5, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–21547 Filed 8–13–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33437]

Genesee & Wyoming Inc.—Continuance in Control Exemption—Corpus Christi Terminal Railroad, Inc.

Genesee & Wyoming, Inc. (GWI) has filed a notice of exemption to continue in control of the Corpus Christi Terminal Railroad, Inc. (CCPN), upon CCPN's becoming a Class III railroad.

The transaction was expected to be consummated on or after August 1, 1997.

This transaction is related to STB Finance Docket No. 33436, *Corpus Christi Terminal Railroad, Inc.—Lease and Operation Exemption—Port of Corpus Christi Authority of Nueces County, Texas, Union Pacific Railroad Company, Southern Pacific Transportation Company, The Texas Mexican Railway Company and The Burlington Northern and Santa Fe Railway Company,* wherein CCPN seeks to acquire and operate certain rail lines from Port of Corpus Christi Authority of Nueces County, Texas.

GWI directly controls one existing Class II rail carrier subsidiary: Buffalo & Pittsburgh Railroad, Inc., operating in New York and Pennsylvania. GWI directly controls 11 existing Class III rail carrier subsidiaries: Genesee & Wyoming Railroad Company, Inc., operating in western New York; Dansville and Mount Morris Railroad Company, operating in New York; Rochester & Southern Railroad, Inc., operating in New York; Louisiana & Delta Railroad, Inc., operating in Louisiana; Bradford Industrial Rail, Inc., operating in Pennsylvania and New York; Allegheny & Eastern Railroad, Inc., operating in Pennsylvania; Willamette & Pacific Railroad, Inc., operating in Oregon; GWI Switching Services, operating in Texas; Illinois & Midland Railroad, Inc., operating in Illinois; Pittsburg & Shawmut Railroad, Inc., operating in Pennsylvania; and Portland & Western Railroad, Inc., operating in Oregon.

GWI indirectly controls 3 Class III rail carriers through its ownership of Rail Link, Inc.: Carolina Coastal Railway, Inc., operating in North Carolina; Commonwealth Railway, Inc., operating in Virginia; and Talleyrand Terminal Railroad, Inc., operating in Florida.

GWI states that: (i) The rail lines to be operated by CCPN do not connect with any railroad in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect CCPN with any railroads in the corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

As a condition to this exemption, the continuance in control of CCPN by GWI is subject to the labor protection requirements of 49 U.S.C. 11326(b).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33437, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, West Chester, PA 19381–0796.

Decided: August 5, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary,

[FR Doc. 97–21548 Filed 8–13–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33439]

Kauri, Inc. and StatesRail LLC—Continuance in Control—Alabama & Gulf Coast Railway LLC

Kauri, Inc. (Kauri) and StatesRail LLC (StatesRail) filed a notice of exemption under 49 CFR 1180.2(d)(2) and 1180.4(g) to continue in control of Alabama & Gulf Coast Railway LLC (ALA) upon ALA's becoming a Class III rail carrier. The transaction is expected to be consummated on or after September 1, 1997.

ALA, a noncarrier, has concurrently filed a notice of exemption in *Alabama & Gulf Coast Railway LLC—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 33438, to acquire from The Burlington Northern and Santa Fe Railway Company (BNSF) and operate a 140.58-mile rail line between milepost 776.10 near Kimbrough, AL, and milepost 916.68 in Pensacola, FL. ALA will also acquire incidental trackage rights over 13.6 miles of BNSF's line between milepost 776.10 near Kimbrough, AL, and milepost 762.5 near Magnolia, AL. ALA will also be temporarily assigned trackage rights over a 43.1-mile line of CSX Transportation, Inc., between milepost L621.7 near Atmore, AL, and milepost L635.4 near Catonment, FL, pending completion of repairs to the line to be acquired from BNSF.

Kauri, a noncarrier, through its noncarrier subsidiary, StatesRail, controls: (1) Kiamichi Railroad Company, L.L.C. (Kiamichi), which operates lines in Arkansas, Oklahoma, and Texas; and (2) through its noncarrier subsidiary StatesRail, Inc., and its noncarrier subsidiary, Kyle Railways, Inc., controls: (a) Arizona Eastern Railway Company, which

operates lines in Arizona; (b) Eastern Alabama Railway Company, which operates lines in Alabama; (c) Kyle Railroad Company, which operates lines in Colorado, Kansas, and Nebraska; (d) San Joaquin Valley Railroad Company, which operates lines in California; and (e) SWKR Operating Co., which operates lines in Arizona.[1]

As noted, StatesRail controls Kiamichi and would be in control of ALA upon its becoming a carrier.

Kauri states that: (1) The rail lines to be acquired by ALA will not connect with other rail lines under Kauri's or StatesRail's control or with any railroads within their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in the corporate family; and (3) the transaction does not involve a Class I railroad. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33439, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Fritz Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

Decided: August 5, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–21550 Filed 8–13–97; 8:45 am]

BILLING CODE 4915–00–P

[1] See *StatesRail, Inc.—Acquisition of Control Exemption—Kyle Railways, Inc.*, STB Finance Docket No. 33340 (STB served Apr. 17. 1997).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33432]

Paducah & Louisville Railway—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Paducah & Louisville Railway (P&L) between the P&L/CSXT connection at Madisonville, KY, at or near milepost OOH 275, and the Providence 1 Mine and Diamond J Mine (Mines) located on CSXT's Morganfield Branch, at or near mileposts MB 288.8 and MB 294.1, respectively, a distance of approximately 18.8 miles in Hopkins and Webster Counties, KY.

The transaction is scheduled to be consummated on August 8, 1997.

The purpose of the trackage rights is to allow P&L to handle movements of coal from the Mines to the BRT Terminal for blending and for barge movement beyond to the Gallatin Steam Plant of the Tennessee Valley Authority, and to handle empties via the reverse route under contract PAL–C–0761.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33432, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on (1) J. Thomas Garrett, Esq., Paducah & Louisville Railway, 1500 Kentucky Avenue, Paducah, KY 42003, and (2) Fred R. Birkholz, Esq., CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

Decided: August 5, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–21549 Filed 8–13–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 113)]

Union Pacific Railroad Company—Discontinuance of Trackage Rights and Abandonment—In Natrona and Converse Counties, WY

On July 25, 1997, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board, Washington, DC 20423, an application for permission for the abandonment of and discontinuance of service on a line of railroad known as the Casper Branch extending from railroad milepost 590.0 to the end of the line at milepost 607.8, near Casper (Air Base), a distance of 17.8 miles, in Natrona County, WY, and for discontinuance of UP's trackage rights over The Burlington Northern and Santa Fe Railway Company trackage from UP milepost 532.5 near Orin to UP milepost 600.0 near Casper, a distance of 67.5 miles in Natrona and Converse Counties, Wyoming. The line includes the non-agency stations of Strouds at milepost 595.0, Casper at milepost 599.7, and Air Base at milepost 607.5 and traverses through United States Postal Service ZIP Codes 82601–82609 and 82633.

The line does contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment and discontinuance was filed with the application.

This line of railroad has appeared on the applicant's system diagram map or has been included in its narrative in category 1 since August 1, 1992.

The interest of railroad employees will be protected by the conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file with the Surface Transportation Board written comments concerning the proposed abandonment and discontinuance or protests (including the protestant's entire opposition case), by September 8, 1997. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must be filed by September 8, 1997. Persons who may

oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and § 1152.29.

Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB No. AB–33 (Sub-No.113) and should be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, no later than September 8, 1997. Interested persons may file a written comment or protest with the Board to become a party to this proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant, Joseph D. Anthofer, General Attorney, 1416 Dodge Street, Omaha, NE 68179, Tel: (402) 271–4315. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned/discontinued will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment/discontinuance, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Decided: August 8, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–21553 Filed 8–13–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) for review an information collection titled (MA)—Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal.

DATES: Comments regarding this information collection are welcome and should be submitted to the OMB Reviewer and the OCC. Comments are due on or before September 15, 1997.

ADDRESSES: A copy of the submission may be obtained by calling the OCC Contact listed. Direct all written comments to the Communications Division, Attention: 1557–0184, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

SUPPLEMENTARY INFORMATION:

OMB Number: 1557–0184.

Form Number: MSD, MSDW, MSD–4, MSD–5, G–FIN, and G–FINW.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: (MA)—Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal.

Description: This information collection covers the following forms: Form MSD (Application for Registration as a Municipal Securities Dealer Pursuant to Rule 1 5BA2–1 Under the Securities Exchange Act of 1934 or Amendment to Such Application), Form MSDW (Notice of Withdrawal From Registration From Registration as a Municipal Securities Dealer), Form MSD–4 (Uniform Application For Municipal Securities Principal or Municipal Securities Representative Associated With a Bank Municipal Securities Dealer), Form MSD–5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated With a Bank Municipal Securities Dealer), Form G–FIN (Notice of Government Securities Broker or Government Securities Dealer Activities to be Filed by a Financial Institution Under Section 15C(a)(1)(B) of the Securities Exchange Act of 1934, and Form G–FINW (Notice by a Financial Institutions of Termination of Activities as a Government Securities Broker or Government Securities Dealer). This information collection is required to satisfy the requirements of the Securities Act Amendments of 1975 and the Government Securities Act of 1986 which requires that any entity, including a national bank, that acts as a government securities broker/dealer or a municipal securities dealer notify the OCC of its broker/dealer activities. The OCC uses this information to determine

which national banks are government and municipal securities broker/dealers, to monitor institutions entry into and exit from government and municipal broker/dealer activities and to comply with examination requirements. The OCC also uses the information in planning bank examinations.

Respondents: Businesses or other for-profit; individuals.

Number of Respondents: 100.

Total Annual Responses: 3,080.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 2,706.

OCC Contact: Jessie Gates or Dionne Walsh, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0184, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

The OCC may not conduct or sponsor, and respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Comments are invited on: (a) Whether the proposed revisions to the following collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility; (b) the accuracy of the OCC's estimate of the burden of the information collection as it is proposed to be revised; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 4, 1997.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 97–21443 Filed 8–13–97; 8:45 am]

BILLING CODE 4810–33–P

Corrections

Federal Register

Vol. 62, No. 157

Thursday, August 14, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218-AA95

Methylene Chloride; Approval of Information Collection Requirements; Extension of Start-up Dates

Correction

In rule document 97–20890 beginning on page 42666 in the issue of Friday, August 8, 1997, make the following correction:

§ 1910.8 [Corrected]

On page 42666, in the third column, in amendatory instruction 2., in the second line, ''1910.52***1218-0179'' should read ''1910.1052.....1218-0179''.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 232, 239, 240, and 249

[Release Nos. 33-7431 and 34-38850; S7-15-96]

RIN 3235-AG80

Phase Two Recommendations of Task Force on Disclosure Simplification

Correction

In rule document 97–19444 beginning on page 39755 in the issue of Thursday, July 24, 1997, make the following corrections:

1. On page 39755, in the third column, in the sixth line, ''13a1'' should read ''13a-1''.

PART 239 [CORRECTED]

2. On page 39764, in the second column, in the fifth line, insert ''14.'' in front of ''By''.

3. On page 39764, in the third column:

a. In the seventh line, insert ''15.'' in front of ''By''.

b. In the 12th line, insert ''16.'' in front of ''By''.

4. On page 39766, in the second column:

a. In the 11th line, ''public'' should read ''public_____''.

b. In the 12th line, remove the ''Q'' and the line.

5. On page 39766, in the second column, under **GENERAL INSTRUCTIONS**:

a. In the seventh line, ''following: The'' should read ''following: the''.

b. In the tenth line from the bottom, ''(i) Such'' should read ''(i) such''.

§ 240.12d1-2 [Corrected]

6. On page 39766, in § 240.12d1-2, in the third column, insert five asterisks under the undesignated center heading **''Certification by Exchanges and Effectiveness of Registration''**.

PART 249 [CORRECTED]

7. On page 39770, in the second column, in the second paragraph, in the first line, insert ''41.'' in front of ''By''.

BILLING CODE 1505-01-D

Federal Register

Thursday
August 14, 1997

Part II

Small Business Administration

13 CFR Parts 121, 124, and 134
Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals; Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, and 134

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative and the Department of Justice's review of Federal procurement affirmative action programs, the Small Business Administration (SBA) proposes to amend both the eligibility requirements for, and contractual assistance provisions within, the SBA's 8(a) Business Development (8(a) BD) program. The proposed rule would change the name of the program from the Minority Small Business and Capital Ownership Development program to the 8(a) BD program to better reflect the purpose of the program. This rule is designed to streamline the operation of the 8(a) BD program, to ease certain restrictions perceived to be burdensome on Program Participants, to clarify certain eligibility requirements, and to delete obsolete regulations.

DATES: Comments must be submitted on or before October 14, 1997.

ADDRESSES: Written comments should be addressed to William Fisher, Acting Associate Administrator for Minority Enterprise Development, U.S. Small Business Administration, 409 3rd Street, SW., Suite 13, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Arthur E. Collins, Jr., Assistant Administrator for Program Development, Office of Minority Enterprise Development, at (202) 205–6410.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to federal agencies, directing them to simplify their regulations. In response to this directive, SBA completed a page-by-page, line-by-line review of all of its then existing regulations to determine which might be revised or eliminated. Revisions to 13 CFR Part 124 awaited a review of all Federal procurement affirmative action programs by the Department of Justice (DOJ). On May 23, 1996, DOJ published in the **Federal Register** a comprehensive proposal for tailoring affirmative action programs in the Federal procurement arena (*see* 61 FR 26042), and on May 9, 1997 the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration proposed amendments to the federal Acquisition Regulation (FAR) concerning programs for small disadvantaged business (SDB) concerns. In response to and in conjunction with the DOJ and FAR reform proposals, SBA proposes specific amendments to 13 CFR Part 124, its regulations governing the 8(a) Business Development (8(a) BD) program which is authorized by sections 7(j)(10) and 8(a) of the Small Business Act, 15 U.S.C. 636(j)(10), 637(a) (contained in subpart A of part 124), and those relating to the certification and protest of small disadvantaged businesses (subpart B of part 124). For the most part, SBA's proposed changes in response to the DOJ and FAR proposals are contained in subpart B of part 124. At the same time, SBA also proposes to streamline the entire Part 124, and to make several substantive changes in part A of the 8(a) BD regulations where needed. SBA also proposes to make changes to SBA's size regulations (part 121) to permit size protests and appeals of Standard Industrial Classification (SIC) code designations in connection with 8(a) competitive procurements, and to exclude certain joint venture arrangements from SBA's affiliation rules. These latter changes should increase the potential pool of small businesses available to compete for particular procurements. SBA believes that this change should encourage contracting officers to consider small business contractors more closely before determining a procurement strategy. Finally, this proposed rule would transfer the procedures relating to certain statutorily authorized appeals in the 8(a) program from part 124 to part 134 of 13 CFR.

In response to the DOJ review of Federal affirmative action procurement programs, this rule would develop standards and procedures by which a firm can apply to be recognized as a small disadvantaged business (SDB). Under the proposal, private sector organizations or business concerns (called Private Certifiers when approved by SBA) would determine whether a firm is owned and controlled by specified individuals claiming to be disadvantaged. Use of the term ''Private Certifier'' is not meant to exclude state agencies from applying for and receiving Private Certifier status. Once a firm receives a determination that it is owned and controlled by the individual(s) claiming to be disadvantaged from a Private Certifier (or from SBA if a Private Certifier is not reasonably available), it would be required to submit evidence of that determination to the appropriate procuring agency, or to SBA if the agency has an agreement with SBA, for a disadvantaged status determination and SDB certification. Individuals that are members of designated groups would be presumed to be socially and economically disadvantaged. Other individuals would be required to submit a narrative statement identifying personally how their entry into or advancement in the business world has been impaired because of their individual social disadvantage, and how their ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities. These standards and procedures would be completely separate from the 8(a) BD requirements and contained in an entirely rewritten subpart B to part 124. The rule would develop procedures for placing firms on and removing them from an SBA-maintained on-line register of certified SDBs. It would also provide regulatory authority for SBA, in its discretion, to limit 8(a) BD program entry, accelerate program graduation, and limit the numbers of 8(a) contracts available as a means of responding to benchmark achievements in particular industries.

The proposed rule is also designed to streamline the operation of the 8(a) BD program, to ease certain restrictions perceived to be burdensome on Participants, to amend certain eligibility procedures, and to delete obsolete regulations. SBA considered the need for each section of its current regulations in developing this proposal. Any regulatory provisions that SBA deemed duplicative are proposed to be removed, while those that appeared wordy or unclearly written have been rewritten in this proposed rule. The proposed rule also reorganizes the regulations into identifiable substantive areas for ease of use and clarity. The proposed unnumbered substantive category headings within subpart A of part 124 would be: Provisions of General Applicability; Eligibility Requirements for Participation in the Minority Enterprise Development Program; Applying to the 8(a) BD Program; Exiting the 8(a) BD Program; Business Development; Contractual Assistance; Miscellaneous Reporting Requirements; and Management and Technical Assistance Program. The proposed rule would also change all references to SBA's Office of Minority Small Business and Capital Ownership Development (MSB&COD) to the Office of 8(a) Business Development to

emphasize that individuals participating in the program need not be members of minority groups and the stress the importance of assisting participating firms in their overall business development.

SBA has attempted to rewrite the regulations in plain English wherever possible. To this end, SBA has written proposed section headings in question format for ease of use, and has tried to eliminate all unnecessary verbiage from the regulations.

This proposed rule would amend eligibility procedures for admission to the 8(a) BD program and also amend contractual assistance provisions within the 8(a) BD program. Of particular note, this rule would liberalize the standard of review for non-group members seeking disadvantaged status from a clear and convincing evidence test to a preponderance of the evidence standard, eliminate the requirement that a Participant must have specified SIC codes approved by SBA in its business plan in order to be eligible for 8(a) contracts, establish consistent remedial measures for firms that do not meet their competitive business mix targets, ease certain joint venture restrictions, and establish a mentor/protege program for developing 8(a) Participants.

This rule would clarify that 8(a) BD eligibility decisions are based on the facts before the Associate Administrator for 8(a) Business Development (AA/8(a)BD) at the time of his/her eligibility decision. The rule would specify that actual control of the applicant concern must be in the hands of one or more socially and economically disadvantaged individuals at the time the appropriate field office of the Division of Program Certification and Eligibility (DPCE) determines that an application for the 8(a) BD program is complete. Potential control or the power of disadvantaged individuals to change the applicant concern's Board of Directors or other aspects of control so that the applicant concern could be controlled by disadvantaged individuals, no matter how easily exercised, would not satisfy the requirement that the applicant be actually controlled by disadvantaged individuals at the time the DPCE field office determines an application to be complete. SBA believes that potential abuses would be greatly lessened by the clarifications made in this rule.

This proposed rule would also make changes, as needed, in various other eligibility and 8(a) contracting requirements. These changes are identified below in the section by section analysis of this proposed rule. Further, several typographical errors or inadvertent omissions would be corrected by this proposed rule. Finally, several obsolete references would be eliminated.

SBA invites comments on the proposed rule, and on any additional ways to improve the 8(a) BD program.

Section By Section Analysis

The following is a section by section analysis of each provision of SBA's regulations that would be affected by this proposed rule:

Section 121.103 would be amended so that certain joint venture arrangements would be excluded from the normal affiliation rules. The purpose of the proposal is to encourage contracting officers to use small business contractors to a greater extent. With the consolidation of procurements becoming an increasing reality, some contracting officers may feel that requirements are too big for small business to perform successfully. The proposed rule would permit two or more small business concerns to joint venture for a particular procurement and be considered a small business concern so long as each concern individually was small. In other words, the joint venture would receive an exclusion from the normal affiliation rules. SBA would not apply the exclusion to all procurements, but, rather, only to higher dollar value procurements where the likelihood that individual small business concerns can successfully offer on and perform the requirement is reduced. A large business could not, however, split into two smaller business entities under the same control in order to joint venture for a particular procurement reserved for small business.

Specifically, under the proposal, a joint venture of two or more business concerns could submit an offer as a small business for a non-8(a) federal procurement without regard to affiliation based on the joint venture arrangement so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract where the procurement exceeded a specified dollar amount. For a procurement having a revenue-based size standard, the affiliation exclusion would apply if the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract. For a procurement having an employee-based size standard, the affiliation exclusion would apply if the procurement exceeds $10 million. This same rule would apply to competitive 8(a) procurements, with two additional requirements. Pursuant to proposed § 124.512(b), in order to receive the exclusion from affiliation, there must be at least one 8(a) concern to the joint venture which is smaller than one half the size standard corresponding to the SIC code assigned to the procurement, and at least 51% of the work under the joint venture must be done by one or more of these smaller 8(a) firms.

The proposed rule also would amend the size regulations to permit firms approved by SBA under § 124.519 to be a mentor and protege to submit an offer as a joint venture and be considered a small business, provided the protege qualifies as small for the size standard corresponding to the procurement.

Sections 121.1001(a) and 121.1103(a) would be amended to permit size protests and appeals of Standard Industrial Classification code designations, respectively, in connection with competitive 8(a) procurements. SBA believes that competitive 8(a) procurements should as closely parallel normal Government contracting procedures as possible. Size protests and SIC appeals would still not be available for sole source 8(a) contracts.

Section 124.1 would be amended to delete unnecessary and duplicative language.

Section 124.1(b) would be deleted as a separate subsection. The substance of paragraph (b)(1) would be transferred to § 124.501.

Present § 124.2 would be deleted as unnecessary, administrative material.

Present § 124.3 would be deleted as unnecessary, administrative material.

Present § 124.4 would be deleted as obsolete since the Commission on Minority Business Development completed its task and no longer exists.

Section 124.5 would be deleted as unnecessary since proposed § 124.108(a) would provide for a review of an individual's character.

Section 124.6 would be deleted and the substance of paragraph (b) transferred to part 121 of this title for misrepresentations relating to size status, and § 124.501(i) for those relating to disadvantaged status.

Section 124.7 would be eliminated as duplicative of Part 103 of this title and Subpart 3.4 of the Federal Acquisition Regulation (FAR), Title 48 of the Code of Federal Regulations.

Section 124.100 would be redesignated as § 124.3. Those definitions that SBA deemed to be unnecessary or obsolete due to other changes in the proposed rule would be eliminated from this section. Also, the definition of ''Unconditional ownership'' in present § 124.100 would be amended. The revised definition would explain that a disadvantaged

owner may use his or her ownership interest (e.g., stock) in an applicant or Participant concern as collateral for financing during the normal course of business without affecting his or her ''unconditional'' ownership in such concern, provided that complete control of the ownership interest remains with the disadvantaged owner absent any default in fulfilling the terms of the financing. However, events of default must be defined in commercially reasonable ways. Events of default beyond those that are deemed commercially reasonable could lead to a conclusion that unconditional ownership is not in the hands of the disadvantaged owner. This clarification is not intended to require a concern to obtain financing through a financial institution or to preclude, for example, seller-financed transactions. It is intended only to permit financing terms that are reasonable within the marketplace. This change is essential to ensure that applicants and Participant concerns have the flexibility they need to raise necessary capital. The requirement that disadvantaged owners ''unconditionally'' own and control an applicant or Participant concern would thus be clarified so as to not restrict a firm's ability to raise capital under normal commercial terms and conditions to assist it in becoming viable.

Present § 124.100 would be amended further to correct a typographical error in the definition of ''Primary industry classification.''

Section 124.101 would be amended by rewording it for clarity, by transferring the requirement for written eligibility decisions to new § 124.204(d), and by deleting paragraph (c), which is generally contained in redesignated § 124.112(c). The provisions relating to reconsiderations would be written more plainly. An applicant denied 8(a) BD admission based solely on reasons of social disadvantage, economic disadvantage, ownership or control would still have the right to appeal to SBA's Office of Hearings and Appeals (OHA), and all applicants would continue to have the right to reapply in 12 months from the Agency's final decision denying program admission.

The portion of § 124.101(a) concerning reconsideration and that concerning appeal rights is duplicative of language currently contained in §§ 124.206(c) (1) and (2), respectively. SBA believes that it is not needed in both places. In this rule, reconsiderations would appear only in proposed § 124.205, while appeal rights would appear only in proposed § 124.206. The first sentence of current § 124.101(b) would be transferred to proposed § 124.112, and the remainder of this paragraph would be deleted as obsolete.

Sections 124.102 (a) and (b) would be amended by eliminating obsolete references. The proposed rule would further amend § 124.102 by transferring the substance of paragraph (c) to proposed § 124.112 and by transferring the substance of paragraph (d) to proposed § 124.501(h).

Section 124.103 would be amended by redesignating it as § 124.105 and by adding a new paragraph (a) that would require direct ownership of 8(a) BD applicants or Participants by disadvantaged *individuals.* This statutory requirement is currently set forth in § 124.109, but SBA believes that it should be added to this section for clarification purposes. SBA, however, recognizes the existence of current trust and estate planning techniques, such as living trusts, and invites comments on whether and, if so, how its ownership rules can be liberalized to permit trust-owned concerns in the 8(a) BD program in limited instances without violating the statutory requirement that 8(a) BD concerns be owned by individuals, and also without permitting abuses in the program.

Present §§ 124.103 (a) and (b) would be redesignated to become §§ 124.105 (b) and (d). A new paragraph (c) would be added for limited liability companies. Present §§ 124.103 (c) and (d) would be consolidated into proposed § 124.105(e).

Pursuant to proposed §§ 124.105 (g) and (h), SBA would aggregate the ownership interests of a business concern and its principal(s) in determining whether a non-disadvantaged individual or business concern exceeds the 10 percent equity ownership limitations (or, in the case of a former Participant, the 20 percent equity ownership limitations) established by present §§ 124.103 and 124.104.

Proposed § 124.105(i) would make clear that a 8(a) BD concern may substitute one disadvantaged individual for another without invoking the termination for convenience/waiver provision of present § 124.317 (redesignated as § 124.514 in the proposed rule) with respect to any 8(a) contracts that it has been awarded. Provided program eligibility is maintained and SBA approves a substitution of one disadvantaged individual for another, performance of 8(a) contracts already received could continue without seeking a waiver under present § 124.317. SBA believes that the statutory termination for convenience/waiver provision did not intend to prohibit the performance of an 8(a) contract by the Participant concern that initially received it simply where there has been one or more approved changes of particular individuals upon whom eligibility of the concern was based. This change is necessary to apprise procuring agencies and Participant concerns that termination of 8(a) contracts is not required in such instances.

This proposed rule would also add a new § 124.105(k), requiring that SBA consider applicable state community property laws on the respective ownership interests in an applicant concern or a Participant. This revision would not be a change in current SBA policy.

Section 124.104 would become proposed § 124.106 and its introductory text would be amended to clarify that the applicant concern must be actually controlled and managed by a disadvantaged individual. The unexercised right of the disadvantaged individual to bring about a change in the control or management of the applicant concern is not adequate to satisfy this requirement.

Proposed § 124.106(a) would be reorganized for greater clarity and easier use. Of particular note, § 124.106(a) would be amended to specify that one or more disadvantaged individuals who are determined to manage the applicant or Participant concern must devote full-time to the business during normal business hours. This means that a disadvantaged individual must be physically located at the offices of the applicant or Participant concern during most normal business hours, or devoting his or her full time efforts to the business away from its offices through marketing and outreach. The term ''normal business hours'' is intended to mean that the applicant or Participant concern be open during the normal 40 hour work week of most business concerns. Thus, an applicant would not meet this requirement if its disadvantaged owner was present at the applicant's offices only at night or on the weekends and worked outside the applicant during its normal business hours. This rule does not imply that business activities of the applicant or Participant concern could not be conducted by such individual(s) outside the offices of the applicant or Participant concern, nor does it prohibit a disadvantaged individual from establishing a Participant concern at his/her home. Although this proposed revision does not mean that the disadvantaged individual who manages the applicant or Participant concern

cannot leave the concern's premises to conduct business, it does mean that one or more disadvantaged owners must devote full-time to the business of the applicant or Participant concern. Under this proposed amendment, SBA would not permit an individual to be physically located at a job which is separate and distinct from the applicant or Participant concern during normal business hours and claim that he or she is managing the applicant or Participant concern from that location.

In addition, proposed § 124.106 would eliminate the requirement that the disadvantaged owner(s) have, in every instance, the technical expertise in the primary business classification of the applicant or Participant. The rule would simply require that disadvantaged managers must demonstrate that they have managerial experience to an extent and complexity necessary to run the applicant or Participant. SBA believes that sufficient management experience may be enough to overcome certain technical deficiencies in a manager.

The proposed rule would add a new paragraph (b) clarifying the control requirements for a partnership. The rule would require that one or more disadvantaged individuals must serve as general partners, with control over all partnership decisions. A partnership in which no disadvantaged individual is a general partner would be ineligible for 8(a) BD participation. The proposed rule would add a new paragraph (c) for limited liability companies.

Redesignated § 124.106(d) would be amended along the lines set forth above for proposed § 124.101. This amended paragraph would specify that the Board of Directors must actually be controlled by disadvantaged individuals. The ability of a disadvantaged individual to control the Board of Directors indirectly through his or her right to vote his or her stock (i.e., the power to remove and replace directors) would not be sufficient to establish control of the Board of Directors if non-disadvantaged individuals on the Board of Directors could control, or assert negative control on, the Board as currently structured at the time of the application for admission to the 8(a) BD program. Further, a quorum would require the presence of disadvantaged individual(s) upon whom eligibility is based, and could not be established to permit non-disadvantaged Directors to control the Board of Directors. This paragraph would also provide that non-voting, advisory or honorary Directors as well as Executive Committees may be appointed so long as they do not possess negative control over the Board or have the power to independently exercise the authority of the Board between Board meetings. Similarly, a separate board of advisors, particularly in the context of tribally-owned applicants and Participant concerns, could be established provided such board of advisors could not actually run the day-to-day operations of, or possess negative control over, the applicant or Participant business concern.

The proposed rule would revise redesignated § 124.106(e) (present § 124.104(c)) to clarify that principals of corporations or partners in a partnership are encompassed within the term ''former employer.'' Although a corporation or a partnership may technically be the former employer of a disadvantaged individual, a principal or partner (general or limited) with greater than a 20% interest would be treated as though he or she were the actual employer given their potential to exert considerable influence over the individual upon whom 8(a) BD eligibility is based.

The requirements pertaining to social disadvantage would be moved from present § 124.105 to proposed § 124.103. Paragraph (b) would be amended to clarify that the presumption of social disadvantage for members of designated groups is a rebuttable presumption. In addition, redesignated § 124.103(c) (present § 124.105(c)) would be amended to require an individual who is not a member of a designated socially disadvantaged group to establish his or her social disadvantage by a preponderance of evidence presented in the 8(a) BD application. This is a change from the current regulation which requires that an individual who is not a member of a designated group establish his or her social disadvantage on the basis of clear and convincing evidence.

SBA asks for comments on how better to define specific designated groups other than by requiring ''origins from'' specific countries. The rule makes clear that ancestral country of birth alone is not sufficient to make that country an individual's country of origin for membership in a designated group, but SBA believes a heritage or cultural requirement may be preferable to the ''origins'' requirement. SBA also specifically seeks comments regarding how an individual who is a member of a designated group can overcome his or her social disadvantage. The proposed rule states that the presumption of social disadvantage may be overcome with significant, credible evidence to the contrary, and SBA seeks comments on its application.

Proposed § 124.103(c)(2)(ii) would require that the social disadvantage experienced by a non-group member be ''longstanding.'' This clarification would not change the substance of SBA's practice in this area.

Proposed § 124.103(c)(2)(iii) (present § 124.105(c)(1)(v)) would be amended to clarify that, in evaluating whether an individual's social disadvantage has had a negative impact on his or her entry into and/or advancement in the business world, SBA will entertain any relevant evidence, but would always consider the experiences of the individual, where applicable, in education, employment and business history. The failure to establish such disadvantage in any one or even two areas (i.e., education, employment, or business history) would not prevent an individual from meeting this requirement of negative impact as long as the totality of the circumstances experienced by the individual demonstrate such disadvantage.

The proposed rule would move the economic disadvantage requirements from § 124.106 to proposed § 124.104. Under the proposed rule, in evaluating whether an individual is economically disadvantaged, SBA would focus solely on the personal financial condition of the individual. Factors in the current regulation pertaining to the financial condition of the applicant concern and the applicant concern's access to credit and capital would be eliminated as separate requirements. The financial condition of the applicant concern would be considered, but only in evaluating the individual's access to credit and capital. The authorizing legislation for the 8(a) BD program specifies that Participants must be owned and controlled by socially and economically disadvantaged individuals. It requires SBA to consider how the ability of socially disadvantaged individuals to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, but directs SBA to consider factors such as total assets and net worth in assessing the degree of diminished capital and credit opportunities. *See* 15 U.S.C. 637(a)(6)(A). The proposed rule would clarify that these factors would continue to be the focus of SBA's analysis of economic disadvantage.

The proposed rule would retain the current net worth limitations of $250,000 for initial 8(a) BD eligibility, $750,000 for continued 8(a) BD eligibility, and $750,000 for SDB eligibility. The proposed regulation would further clarify that a contingent

liability does not reduce an individual's net worth.

The proposed rule would provide that assets transferred by an individual claiming disadvantaged status to any immediate family member within two years prior to the date of application to the 8(a) BD program would be presumed to be the property of the individual claiming disadvantaged status. Currently, property or assets transferred by an individual claiming disadvantaged status to a spouse within two years of the date of 8(a) BD application is presumed to be the property of the transferor, but current regulations are silent as to property or assets transferred to children or other close family members. Several applicants may have circumvented eligibility requirements by such transfers. SBA believes that it should restrict this practice, lest it allow firms into the 8(a) BD program that should be considered ineligible.

The proposed rule would require an individual claiming disadvantaged status to disclose to SBA all transfers of funds or other assets to any immediate family member and to a trust the beneficiary of which is one or more immediate family members for purposes of continued program eligibility. At the time of the Participant's annual review, each individual claiming disadvantage status would have to certify that he or she made no transfers of assets to immediate family members within two years, or that he or she made no transfers to immediate family members within two years except as described on an attached sheet. Any transfers within two years would be attributed to the transferor in determining his or her continued economic disadvantage. SBA is considering extending this requirement beyond immediate family members so that any transfers for less than fair market value (e.g., gifts to charities) would be attributable to the transferor.

Proposed § 124.107 would clarify the potential for success requirements, without changing them substantively. Discussion of an applicant concern's access to credit and capital, currently handled under economic disadvantage in § 124.106(a)(2)(iii), would be moved to proposed § 124.107(c), and several other paragraphs would be revised for clarity and ease of use.

Section 124.108 would be amended for clarity. Proposed § 124.108(a)(4) would make an applicant to the 8(a) BD program ineligible for program participation if the proprietor, a partner, a director, officer or a holder of at least 10 percent of the stock, or a key employee, is currently incarcerated, on parole or on probation pursuant to a pre-trial diversion or following conviction for a felony or any crime involving business integrity. This provision parallels a similar provision in Part 120 of SBA's regulations, dealing with ineligibility for SBA financial assistance. It would also now include a new paragraph (c) that states that any wholesaler that applies for 8(a) BD participation need not demonstrate that it can supply the product of a small business manufacturer. Although SBA's nonmanufacturer rule generally requires a regular dealer or wholesaler to supply the product of a small business in order to be considered small for a specific 8(a) or small business set aside procurement), the 8(a) BD program should not be viewed solely as a contracting program. There is other business development assistance available to Participants which should not be foreclosed because of the nonmanufacturer rule. Moreover, the availability of small business manufactured products can change significantly over a Participant's program term. Wholesaler applicants to the 8(a) BD program should be aware, however, that they must meet the requirements of the nonmanufacturer rule in order to be awarded specific 8(a) contracts.

In addition, a new § 124.108(d) would be added that would authorize SBA, in its discretion, to reject an application if the applicant's primary industry classification falls within an industry where actual participation by disadvantaged businesses in Government contracting in a particular industry exceeds the benchmark limitations established under the DOJ proposal by the Department of Commerce for that industry. SBA would consider the developmental needs of the firm, as well as contracting opportunities outside its primary SIC code. A firm whose application was rejected on this basis could resubmit its application earlier than the normal 12 month waiting period whenever the benchmark was adjusted or a determination made that the benchmark was no longer exceeded. Similar language regarding the achievement of benchmarks in a particular industry would also be added to new §§ 124.302(c) and 124.403(c) to permit SBA to accelerate graduation, and would be added to § 124.504(d) to permit SBA not to accept an 8(a) offering in an industry in which the benchmark is achieved.

The proposed rule would delete current § 124.109. Some of these provisions are duplicative of other sections of part 124, or part 121, or the Federal Acquisition Regulation. A few have been incorporated elsewhere in this proposed rule. The rule also proposes to delete franchisees as businesses that are ineligible (i.e., making them eligible) for 8(a) BD participation.

Current section 124.110 would be clarified, streamlined, and redesignated as proposed § 124.2.

Proposed § 124.112(c) repeats the current provision (current § 124.111(d)) that SBA will review a Participant's eligibility upon receipt of information that the Participant no longer meets continued 8(a) eligibility requirements. The proposed rule requires that the information received be ''specific'' and ''credible.'' Under the proposed rule, sufficient reasons for SBA to conclude that a Participant is no longer economically disadvantaged include, but are not limited to, demonstrated access to a significant new source of capital or loans, an unusually large amount of funds or other assets withdrawn from the concern by its owners, or substantial personal assets, income or net worth of any disadvantaged owner. The term ''excessive withdrawals'' is defined elsewhere in the proposed regulation at § 124.303(a)(13). SBA asks for comments on how better to clarify a ''demonstrated access to a significant new source of capital or loans.''

Proposed § 124.112 would also add needed enforcement mechanisms to the existing regulation discouraging excessive withdrawals from Participants by their owners or managers. Certain Participants have suggested that, if net worth continues to increase, large withdrawals should be allowed as not detrimental to attainment of their business objectives. SBA disagrees, and believes this restriction is necessary to safeguard the development of Participant concerns toward economic viability. Participants will increase their net worth more and will achieve greater success if they avoid excessive withdrawals by their owners and managers.

Section 124.112, redesignated as proposed § 124.109, eliminates the present paragraph (c)(2)(iv) which previously allowed a Participant owned by an Indian tribe to joint venture with a large concern to perform an 8(a) contract. The statutory authority for this provision has expired. Proposed § 124.109 also would delete other obsolete and duplicative provisions. Additionally, it would eliminate the requirement that a tribally-owned or ANC-owned concern demonstrate that the primary economic benefits of the concern accrue to the tribe or ANC by

being located on tribally-owned or ANC-owned land or otherwise. SBA has previously interpreted the requirement as not applying to ANC-owned concerns, but believes that it should also not apply to tribally-owned concerns. In other ways the proposed rule would treat tribes and ANCs and their 8(a) entities more similar. Tribes and ANCs would be restricted from qualifying a new 8(a) concern possessing the same primary SIC as another 8(a) concern only if the other concern has been operating in the 8(a) program within the previous two years. Finally, it would more narrowly focus management restrictions on tribally-owned concerns to enhance development opportunities.

Section 124.113, redesignated as § 124.110, would add an exclusion from affiliation for concerns owned by a Native Hawaiian Organization, prohibit a Native Hawaiian Organization from owning more than one current or former Participant having the same primary industry classification, and exclude from the one-time individual eligibility requirement any individual who merely manages a concern owned by a Native Hawaiian Organization. These changes would achieve consistency with restrictions on other non-individual owners.

The proposed rule would redesignate § 124.114 as § 124.111. Equating CDCs with Indian tribes, the proposed rule would permit concerns that are at least 51% owned by a wholly owned business entity of a CDC to be eligible for 8(a) BD participation.

It would amend § 124.201 by deleting the last sentence of this section which became obsolete when waivers to the two year in business rule were statutorily required, and amend section 124.202 to revise obsolete language and clarify its meaning. It would transfer § 124.203 to the sections pertaining to business development, redesignating it as proposed § 124.401.

It would delete § 124.204 as duplicative of language in other sections of part 124, and redesignate § 124.205 as § 124.203.

Section 124.206, redesignated as proposed § 124.204, would delete duplicative language from paragraph (a), which is contained in proposed § 124.206, and add new proposed §§ 124.204 (b) and (c). For further clarity, this section would delete obsolete and duplicative language in current §§ 124.206 (b) and (c), and redesignate current § 124.206(c)(4) as a separate proposed § 124.207.

Proposed § 124.204(b) would further clarify that the AA/8(a)BD's decision to approve or decline an application for 8(a) BD program participation would be based on whether the applicant concern complied with each of SBA's eligibility criteria at the time the concern's application for admission to the 8(a) BD program is deemed to be complete by the DPCE field office. A change in circumstances submitted by an applicant concern subsequent to the date that an application is deemed to be complete by the DPCE field office would not be considered, unless it causes a loss of eligibility. The structure of the concern, including all necessary corporate or other organizational formalities, would have to be in place prior to the DPCE field office's processing of an application. A disadvantaged individual's ability to immediately change the applicant's structure or cause a change in its control so that actual control of the concern is in the hands of disadvantaged individuals and/or other eligibility criteria are met would not satisfy the requirement that they be met at the time of the completed application. The rule would specify, however, that SBA, in its sole discretion, could request clarification of information contained in the application at any stage in the application process. SBA would obviously consider any information submitted in response to a request by SBA.

The decision of the AA/8(a)BD to approve or decline an application for 8(a) BD program admission would then be based on whether the application, as clarified by any information submitted in response to a request by SBA, demonstrates that the applicant concern complies with each of SBA's eligibility criteria. While SBA would be able to request and consider additional information in processing an 8(a) BD application, SBA would not consider information volunteered by an applicant concern after it submits its application. This clarification is needed to streamline the application process and ensure that SBA meets its statutorily imposed time limitation for processing applications.

The proposed rule would redesignate § 124.207 as § 124.301, amend redesignated § 124.302 by revising obsolete references, and specifically authorize a Participant to voluntarily ''graduate'' prior to the expiration of its program term.

The examples of what constitutes ''good cause'' for terminating a Participant from the 8(a) BD program would be amended from current § 124.209(a) in proposed § 124.303. Several examples of good cause previously listed for terminating a Participant would be dropped in the proposed rule and a few new examples would be added. As before, the examples of ''good cause'' are illustrative only. SBA's decision to drop several examples of good cause should in no way be read to infer that SBA no longer considers those situations as valid reasons for termination. That is not SBA's intent. The proposed rule would also define what constitutes an ''excessive'' withdrawal for purposes of determining whether termination is warranted.

The procedures for graduation and termination currently contained in §§ 124.208 and 124.209 would be combined into proposed § 124.304 to eliminate unnecessary duplication and clarify confusing language. The term graduation previously used in the regulations would be changed to ''early graduation.'' Through the years, many people have used the terms ''graduation,'' ''graduation date,'' and ''graduated 8(a) firm'' to describe the situation where a Participant has exited the 8(a) BD program through nothing more than the expiration of its program term. This proposed rule would recognize the use of the term *graduation* in this context, and would refer to graduation prior to the expiration of a firm's program term under proposed §§ 124.302 and 124.304 as ''early graduation.''

Where an SBA district office initiates early graduation or termination by sending a Notification of Early Graduation or Termination to the concern, the allowable response time would be reduced from 45 days to 30 days after service of the Notification (the date that it is mailed, FAXed or hand delivered to the concern). SBA would then review any information submitted by the concern. If the Assistant Administrator of the DPCE decides that early graduation or termination is not appropriate, he or she will notify the concern. If it appears appropriate, the Assistant Administrator will forward that recommendation to the AA/8(a)BD for a final decision. SBA will not take early graduation lightly, but will initiate it in appropriate circumstances. As part of the early graduation process, SBA will also attempt to reduce any adverse impact on the Participant's business development.

Current section 124.210 would be eliminated as a separate section setting forth all appeal rights to SBA's Office of Hearings and Appeals for the 8(a) BD program. Appeal rights for denials of 8(a) BD eligibility would be contained in proposed § 124.206, while the appeal rights for early graduation, termination, suspension, or denial of a request for waiver under current § 124.317 would

be contained in the proposed sections dealing with those substantive areas. A minor revision would be made to the first sentence of paragraph (b), and a new second sentence added to clarify that an OHA decision is the final Agency decision. The remainder of paragraph (b) and paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) would be moved from part 124 to a new subpart C of part 134 of this chapter.

Current section 124.211 would be redesignated as proposed § 124.305. Redesignated § 124.305 would be amended to revise obsolete references, and reorganized to transfer procedural rights for OHA appeals to part 134 of this title. The period to file an appeal would be extended from 30 to 45 days to be consistent with part 134. SBA is also considering ''suspension'' as a tool where ownership or control changes and a Participant seeks approval of its changed ownership or control. Where ownership or control of a Participant changed prior to SBA's approval, and the Participant seeks SBA's approval after the fact, SBA would suspend the Participant pending SBA's resolution of the request to change its ownership or control.

The proposed rule would separate general business development provisions and those dealing with contractual assistance into two distinct substantive categories. Thus, the provisions currently contained in §§ 124.300–124.321 would be separated into Business Development (proposed §§ 124.401–124.405) and Contractual Assistance (proposed §§ 124.501–124.519). Most of these provisions would be reorganized and/or clarified under the proposed rule.

Section 124.300 would be deleted from the final rule as unnecessary.

Section 124.301 (proposed § 124.402) would be divided into more subheadings for ease of use. It would eliminate the requirement that a Participant must have specified SIC codes in its approved business plan (other than the entry requirement that an applicant must identify its primary SIC code for initial size eligibility), and no longer treat a concern as ineligible for any 8(a) contracting opportunity for which a contracting officer has assigned a SIC code not in its approved business plan. SBA believes that a Participant should not be denied the opportunity to receive and perform an 8(a) contract where a procuring agency determines the firm to be capable to perform the requirement, simply because the firm does not have a particular SIC code in its approved 8(a) business plan. This also eliminates the need for a Participant to go through a sometimes lengthy and burdensome process seeking to add additional SIC codes to its business plan after being admitted to the 8(a) BD program. While an applicant would still be required to give a detailed description of the products it produces and services it performs, SBA would not prohibit the award of an 8(a) contract solely because a product or service is not so identified. In such a case, the Participant would still have to demonstrate its capability and other aspects of responsibility to perform the contract in question. As long as that burden is met, the Participant could be awarded the subcontract. Identifying SIC codes, however, may be beneficial to a concern because it will help SBA in providing business development assistance.

An applicant must still identify its primary industry classification. This identification is needed in order to permit SBA to determine initial size eligibility. The requirement to submit an annual capability statement would be moved from the miscellaneous reporting requirements provision of current § 124.501 to be included within the requirement defining how a business plan is updated (proposed § 124.403). That part of current § 124.501(a) addressing what SBA does with capability statements would be moved to proposed § 124.501(e) of this proposed rule.

Section 124.303 (proposed section 124.404) would be revised by eliminating obsolete references to the dates certain Participants were admitted to the program or received their first 8(a) contract. Those provisions were relevant to the length of 8(a) BD participation at the time Public Law 100–656 was enacted, but are not relevant today. The section would also be rewritten for clarity.

The reserved sections 124.304 and 124.305 would be eliminated in this proposed rule.

Section 124.306, financial assistance for skills training, would be eliminated from the regulations in the proposed rule because SBA has not received funding from Congress for this program.

The proposed rule would add a new section 124.405, detailing how a Participant may obtain Federal Government surplus property. The authority for Participants to receive Federal surplus property was created in Public Law 100–656. Section 301(b) of the Business Opportunity Development Act of 1988, Pub. L. 100–656, 102 Stat. 3853, amended the Small Business Act by adding a new section 7(j)(13)(F), 15 U.S.C. 636(j)(13)(F), which authorizes the transfer of surplus property owned by the Federal Government to Participants under certain conditions. This proposed rule would implement that authority in regulation form for the first time.

The proposed rule would detail the procedures for, and conditions upon which, the transfer of Federal Government surplus property could be made to Participants. Such transfers would be made from the U.S. General Services Administration (GSA) through State Agencies for Surplus Property (SASPs) to eligible Participants. Transfers to SASPs from GSA would be made in accordance with the procedures set forth in 41 CFR Part 101–44. Although the statutory language of section 7(j)(13)(F) of the Small Business Act, 15 U.S.C. 636(j)(13)(F), authorizes that ''such property * * * be transferred to program participants on a priority basis,'' the proposed rule would permit Participants to participate in the surplus property distribution program administered by the SASPs to the same extent as, but with no special priority over, other authorized donees. See 41 CFR Subpart 101–44.2. The Participant would have to certify in writing that it is eligible to receive the property and that it will use the property only for normal business activities. The Participant would have to agree to a fair market value assigned to the acquired property, and if the firm were to sell the property before one year after exiting the program, it would have to repay to the Federal Government the agreed upon fair market value of the property, or the sales price, whichever was greater.

The proposed rule would detail the eligibility requirements a Participant must meet to obtain Federal surplus property. Generally, a Participant would be able to receive surplus property if it is in good standing with the 8(a) BD Program as of the date it is to receive the property. The firm would have to be in compliance with all reporting requirements imposed by program management, and must not have been debarred or suspended from receiving contracts. The firm also could not be the subject of any termination or early graduation proceedings. Finally, the firm would have to qualify as a small business for at least one product or service identified in its business plan that it produces or performs.

Proposed §§ 124.501–124.517 would contain most of the substance currently in §§ 124.307–124.321, but in a revised organizational structure for easier use. Proposed §§ 124.518 and 124.519 would be new provisions.

Section 124.307 (proposed section 124.501) would be redrafted for clarity and revised by adding a provision

encouraging Participants to self-market their capabilities to increase their chances of receiving 8(a) sole source contracts. SBA believes that it is vital that Participants realize the importance of self-marketing to their development in the 8(a) BD program. This revised section would also recognize that SBA may delegate its 8(a) contract execution function to procuring agency contracting officers where appropriate. It is SBA's intent to enter into a Memorandum of Understanding (MOU) with each procuring agency or activity that wishes to receive a delegation of SBA's 8(a) contract execution and review functions. SBA has a model MOU that would be modified according to the particular circumstances of each agency or activity. It would only be the rare case where SBA would not approve an MOU signed by an agency or activity. SBA would, however, have the authority to rescind the delegation where it saw fit. This would include cases where an agency or activity failed to report all 8(a) contract awards, modifications, and options to SBA in a timely manner.

The proposed rule would clarify the requirements relating to offers and acceptances of procurements for the 8(a) BD program. Currently, both the offer and acceptance processes are contained in § 124.308. The proposed rule would separate the offering provisions from the procedures relating to SBA's acceptance of a procurement into proposed §§ 124.502 and 124.503, respectively.

Section 124.308(c) (proposed § 124.502(b)) would specify the SBA locations to which contracting officers must offer requirements to the 8(a) BD program. This clarification is needed in light of other recent changes made by SBA in eliminating local and national buy requirements. Under the proposed rule, all requirements that are offered to the 8(a) BD program as competitive procurements and those sole source requirements that are offered to the program without nominating a specific Participant (i.e., open requirements) would be offered to the SBA district office serving the geographical area in which the offering procuring agency is located. The only exception to this provision would be in the case of a construction requirement where the work to be performed is in a different location than that of the procuring agency. In such a case, an offering must be made to the SBA district office serving the geographical area in which the work is to be performed. Sole source requirements that are offered to the 8(a) BD program on behalf of a specific Participant would be offered to the SBA district office serving the geographical area in which the principal place of business of the Participant is located.

SBA's verification of the SIC code assigned to a particular 8(a) contract would be moved from § 124.308(b)(1)–(2) (where it was part of the ''requirement identification'' process) to proposed § 124.503(b) (where it is clearly identified as a step in SBA's acceptance of a procurement for the 8(a) BD program).

The proposed rule would amend the provision dealing with formal technical evaluations (proposed § 124.503(e)). Specifically, SBA would exclude Brooks Act procedures applying to architect-engineer services (as set forth in FAR subpart 36.6) from the general requirement that SBA will not authorize formal technical evaluations for sole source 8(a) requirements. In practice SBA has recognized the Brooks Act procedures, but believes that a specific provision in the regulations would clarify its policy in this regard.

The proposed rule would add a new provision pertaining to Basic Ordering Agreements (BOAs) as a method of contracting under the 8(a) program (proposed § 124.503(g)). Under SBA's current regulations, SBA believes that BOAs could be used to circumvent the statutory requirement that 8(a) procurements with an anticipated award value in excess of $3 million or $5 million be competed among eligible Participants. Each order issued under a BOA, and not the BOA itself, is a contracting action. A procuring agency could issue a series of $2–3 million task orders under a BOA without ever competing the basic procurement requirement. SBA believes that this is contrary to Congressional intent. As such, under the proposed rule, SBA would not accept any task order for award as an 8(a) contract if that task order added to the total task orders issued to date would exceed the applicable competitive threshold amount, unless the BOA itself was awarded on the basis of competition among eligible Participants. SBA would also determine eligibility for an order under a BOA at the time of the issuance of the order. This would require a concern to remain a small business at the time the order is to be issued and would prohibit orders from being issued to concerns whose program terms have expired or who have otherwise exited the 8(a) BD program.

Proposed § 124.504 would clarify the circumstances limiting SBA's ability to accept a procurement for award as an 8(a) contract. Existing §§ 124.309 (a) and (b) would be combined into one paragraph (proposed § 124.504(a)). The proposed rule would add a new provision (proposed § 124.504(b)) that would prohibit a procuring agency from initiating the competitive process for an 8(a) requirement prior to obtaining SBA's acceptance of the requirement for the 8(a) BD program. Any competition so held would not be considered an 8(a) competition. If a procuring agency still wanted to fulfill its requirement through the 8(a) BD program, the requirement would have to be offered to and accepted by SBA for the 8(a) BD program, and the procuring agency would have to use applicable 8(a) competitive procedures after the acceptance. A new solicitation would have to be issued, and new offers submitted and evaluated.

The proposed rule would broaden the concept of adverse impact (current § 124.309(c); proposed § 124.504(c)), finding that ''adverse impact'' could be found to exist where several requirements currently being performed by different small business concerns are consolidated into one larger requirement which could be considered ''new'' under SBA's regulations due to the magnitude of the consolidated requirement. This rule would permit SBA to find adverse impact whenever at least one of the small business concerns losing work that is to be consolidated meets the presumption of adverse impact. The proposed rule would also add objective criteria for determining whether a requirement is new. Under the proposal, the expansion or modification of an existing requirement would be considered a ''new'' requirement where the price (adjusted for inflation) increases by more than 25% or where significant additional capabilities are added to the requirement.

Proposed § 124.504(e) would clarify the limited instances where SBA may reject the offer of a repetitive 8(a) acquisition to give a Participant that is leaving or has left the 8(a) BD program the opportunity to compete for the requirement outside the 8(a) BD program. The proposal would require the applicable (former) Participant to qualify as a small business concern for the requirement now offered to the 8(a) BD program before SBA considers releasing the requirement from the 8(a) BD program.

The proposed rule would eliminate section 124.310 as unnecessary or duplicative. Debarment and suspension is adequately covered in the FAR. Current § 124.314 (proposed § 124.509), deals with the required percentages of work that a Participant must perform on any 8(a) contract and need not be duplicated in this section.

Current section 124.311 would be separated into two sections: proposed § 124.506, regarding the dollar thresholds above which procurements accepted for 8(a) award must be competed among eligible Participants, and proposed § 124.507, describing the procedures that apply to competitive 8(a) procurements. Proposed § 124.506 would eliminate unnecessary language, but leave most of the substance of current §§ 124.311 (a)–(e) unchanged. It would clarify that there is no order of precedence between accepting requirements for competition and accepting requirements for sole source award above the applicable threshold amounts for a tribally-owned or ANC-owned concern. Current § 124.311(d) permits SBA to accept a contract opportunity above the applicable competitive threshold amount for a sole source 8(a) award where SBA determines that only one eligible Participant in the 8(a) BD portfolio is capable of performing the requirement at a fair price. The proposed rule would eliminate this authority. SBA believes that such a requirement should either be awarded under the sole source authority of the FAR, if applicable, or competed as a small business set aside requirement or as an SDB set-aside contract, where appropriate.

Proposed § 124.507 would set forth the procedures applicable to competitive 8(a) procurements. This proposed section would clarify how SBA determines whether an apparent successful offeror in an 8(a) competition is eligible to receive the award. SBA believes that the eligibility process will be much easier to follow and understand under this proposal. The proposal would also clarify which Participants engaged in construction may submit offers in response to competitive 8(a) construction requirements. The proposed rule would limit eligibility to those Participants located within the geographical boundaries of one or more SBA district offices (looking first to the district office serving the area in which the work is to be performed). Any concern with a bona fide place of business in the applicable geographic area would be eligible for the procurement. In order to be considered a *bona fide* place of business, the Participant would have to regularly maintain an office which employs at least one full-time individual within that geographical boundary. Construction trailers or other temporary construction sites would not qualify as *bona fide* places of business under the regulation, nor would merely occupying a government-furnished office to oversee the performance of a specific contract qualify as having a bona fide place of business within that geographic location. The term is meant to extend beyond one or more individual contracts. SBA specifically requests comments on how best to define ''bona fide place of business,'' and how eligibility for 8(a) construction procurements should be limited.

Proposed § 124.507(b)(5) would add the Certificate of Competency (COC) procedures to competitive 8(a) procurements. Where a procuring agency contracting officer finds the apparent successful offeror for a competitive 8(a) procurement not to be responsible to perform the contract, he or she would be required to refer the Participant to SBA for a possible COC under the procedures set forth in § 125.5 of this chapter. SBA seeks to make competitive 8(a) procurements as similar as possible to non-8(a) Government contracting procedures. COC procedures would not, however, be available for sole source 8(a) procurements. In most cases, the procuring agency would have selected the Participant for the sole source contract by assessing the firm's capabilities prior to offering the procurement to SBA. It is unlikely that the procuring agency would select a Participant, go through negotiations with the firm, and then find the firm not to be responsible. If that does happen, or if the procuring agency determines that a firm nominated by SBA for an open requirement cannot perform the contract, SBA would review the situation to determine whether it agrees with the procuring agency. If SBA agrees, it can nominate another Participant to perform the contract, if one exists that is found to be eligible and responsible for the requirement, or it can permit the agency to withdraw the requirement from the 8(a) program if an eligible and responsible Participant is not found. If SBA does not agree, it can appeal the procuring agency's decision to the head of the procuring agency pursuant to § 124.505.

Proposed § 124.507(d) (current § 124.311(i)) would clarify SBA's implementation of § 8(a)(1)(C) of the Small Business Act, 15 U.S.C. § 637(a)(1)(C), which authorizes competitive 8(a) awards in limited circumstances to firms which have completed their terms of participation in the 8(a) BD program. Of particular note, eligibility would be determined as of the initial date specified for the receipt of offers set forth in the solicitation without regard to extensions of time through amendments to the solicitation. The only legislative history to the statutory provision authorizing competitive 8(a) awards to firms which have completed their terms of participation in the 8(a) BD program indicates that Congress did not want Participants to go through the expense of submitting offers for competitive 8(a) procurement requirements only to be told that they were ineligible for such requirements months later at the time of award. *See* 136 Cong. Rec. S17645, S17648 (daily ed. October 27, 1990) (statement of Sen. Bumpers). In addition, Congress was concerned that competition among firms in the later stages of program participation would be discouraged if firms felt that they could be deemed ineligible after going through the expense of preparing an offer for a competitive 8(a) procurement requirement. *Id*.

The proposed amendment would be consistent with these Congressional purposes. The date for determining eligibility is firmly established and cannot change during the procurement process. With such a date certain, firms know up front if their program term will expire prior to that specified date. Offers cannot be prepared amid uncertainty that the date for determining eligibility could be changed. As such, firms are not dissuaded from participating in 8(a) competitive procurements during the later stages of their participation terms.

Proposed § 124.508 would contain the requirements relating to competitive business mix targets. The proposed rule would eliminate obsolete language contained in current § 124.312 regarding modified business activity targets. It would also tighten the language throughout the section, eliminating unnecessary wording where appropriate.

Proposed § 124.508(d) would revise SBA's policy on imposing remedial measures on Participants that fail to meet their applicable competitive business mix targets. Recent audits and reports have revealed that SBA needs to do a better job of encouraging firms to develop in ways that will ensure their success in the competitive marketplace after program completion. Too many firms are not meeting competitive business mix targets during the transitional stage of program participation.

If a Participant fails to meet its competitive business mix target during any year in the transitional stage, it would be ineligible for sole source 8(a) contracts during the succeeding program year unless the Participant corrects the situation. A Participant that fails to meet its applicable competitive business mix target during the transitional stage of program

participation may attempt to meet the competitive business mix target as part of the normal annual review process, or it may elect to submit quarterly information regarding its non-8(a) revenue and contract awards in an attempt to comply with the competitive business mix requirements prior to its annual review. Where the Participant elects to submit information to SBA, SBA would monitor the Participant's revenues quarterly to determine whether the Participant has come into compliance. At its 3-month or 6-month review, a Participant would be required to demonstrate that it has received non-8(a) revenue and/or new non-8(a) contract awards that are equal to or greater than the dollar amount by which it failed to meet its competitive business mix target for the just completed program year in order to again be eligible to receive 8(a) sole source contracts for the remainder of the program year. Compliance with the competitive business mix target for that program year would again be determined at the end of the program year. If the firm did not meet that target, it would again be ineligible for 8(a) sole source contracts in the succeeding program year unless and until it came into compliance during the succeeding program year. In order for a Participant to come into compliance with the competitive business mix target during the last six months of the current program year (i.e., at either the nine-month or one year review), it would be required to demonstrate that it has achieved its competitive business mix target as of that point in the current program year. At the 9-month or one-year review, SBA would look at all revenues received during that program year (including options and modifications) to determine whether the firm has achieved the competitive business mix target for that year. If it has, it would again be eligible for 8(a) sole source contracts; if it has not, it would remain ineligible for 8(a) sole source contracts. Additional remedial measures would continue to be authorized where appropriate, including program termination where the Participant makes no good faith efforts to obtain non-8(a) revenues.

Current section 124.313 would be eliminated as unnecessary.

Proposed § 124.509 would incorporate the substantive provisions currently contained in § 124.314, but would cross reference the performance of work requirements contained in § 125.6 of this chapter. Proposed § 124.510 would do the same for those requirements currently contained in § 124.315. Again, clarification would be made wherever appropriate.

Proposed § 124.511 would authorize SBA to delegate all responsibilities for administering an 8(a) contract to the appropriate procuring agency contracting officer except for the approval of novation agreements. It would eliminate the reference to advance payments contained in current § 124.316. It clarifies that a procuring agency may execute an in-scope 8(a) modification without SBA's signature.

Proposed § 124.512 would set forth the requirements for entering into a joint venture agreement to perform an 8(a) contract. SBA proposes several changes to this section from the provisions currently contained in § 124.321. Proposed § 124.512(a)(2) would require that a Participant seeking to joint venture with another firm bring something of value to the joint venture arrangement other than its status as an 8(a) concern. While the regulation would continue to state that a joint venture agreement is permissible only where an 8(a) concern lacks the necessary capacity to perform the contract on its own, it would specify for the first time that where SBA concludes that the 8(a) concern brings very little to the joint venture relationship except its 8(a) status, SBA will not approve the joint venture relationship. An 8(a) concern may lack the necessary management, technical and financial capacity to perform a contract the size of the joint venture contract on its own, but it cannot be totally reliant on its proposed joint venture partner. The purpose of permitting joint ventures is to enable an 8(a) firm to gain experience and know-how so that it can become self-reliant in the future. If the 8(a) concern will not be developing its own capabilities in any meaningful way, the joint venture will not be approved. It is also SBA's intent to delegate the approval of joint venture relationships from the AA/8(a) to the local SBA district offices.

As described above for amendments to the size regulations, the proposed rule would permit joint ventures for competitive 8(a) procurements between two or more small businesses (at least one of which is an 8(a) Participant whose size is smaller than one half the size standard corresponding to the SIC code assigned to the procurement—an eligible 8(a) Participant) so long as each small business is individually small. One of the eligible 8(a) Participants must be the lead entity in the joint venture, and the eligible 8(a) Participants combined must perform the applicable percentage of work required by proposed § 124.509.

Joint ventures for sole source 8(a) procurements and competitive 8(a) procurements that do not exceed one half the size standard corresponding to the SIC code assigned to the procurement would continue to be authorized under current requirements, unless a mentor/protege relationship exists, as discussed below. The joint venture partners would be considered affiliates, and their revenues or employees aggregated in determining whether the joint venture qualifies as small.

The rule would also move certain requirements contained in ''Other requirements'' of current § 124.321(d) to provisions that must be contained in the joint venture agreement itself.

The proposed rule would transfer current § 124.321(i) concerning joint ventures for Small Disadvantaged Business (SDB) set-asides and evaluation preferences to proposed § 124.1002(f) of subpart B of these regulations. SBA believes that moving SDB joint ventures into the subpart dealing with SDB protests and appeals makes more sense organizationally.

Proposed § 124.513 would contain the provisions currently contained in § 124.318, but eliminate duplicative language.

The provisions of § 124.317 requiring an 8(a) contract to be performed by the Participant that was initially awarded it, and requiring the contract to be terminated for convenience if there is a change in the ownership or control of the concern, would be incorporated into proposed § 124.514, with minor clarifications. The proposed rule would specify that only physical or mental incapacity (and not factors like criminal incarceration or bankruptcy) could justify a waiver of the termination for convenience requirement imposed by this section. In addition, this section would make clear that the concern requesting a waiver must demonstrate that it has met the grounds upon which the waiver is being sought. The Agency need not consider and dismiss every possible basis for waiver. Finally, with respect to determining whether a Participant seeking to acquire ownership or control in another Participant is ''otherwise eligible'' to receive the award directly, the proposed rule would require SBA to consider whether prior to the transaction the acquiring Participant is eligible for and responsible with respect to each contract to be transferred. For example, were a concern with ten employees seeking to acquire a concern with 150 employees, responsibility would be considered prior to the transaction (i.e., could the ten-employee concern

perform the transferring contracts without the resources of the 150-employee concern).

The proposed rule would add a new paragraph 124.517(c), clarifying that SBA may substitute one Participant for another (with the consent of the procuring agency) where the first concern cannot complete performance of an 8(a) contract, without seeking the approval of the Administrator under § 124.317. The original 8(a) concern would be liable for any reprocurement costs, as is now the case.

The proposed rule would separate current § 124.320 into two sections: One dealing with SBA appeals of the terms and conditions of a particular 8(a) contract or of a procuring agency decision not to reserve a requirement for the 8(a) BD program (proposed § 124.505); and one concerning contract disputes arising between a Participant and a procuring agency after the award of an 8(a) contract (proposed § 124.515). Both are clarified for easier use.

Proposed § 124.505 would specify that SBA may appeal to the head of the procuring agency a contracting officer's decision to reject a specific Participant for award of an 8(a) contract after SBA's acceptance of the requirement for the 8(a) BD program. This basis for appeal has been used many times in practice. SBA believes that it should be added to the regulation to apprise all contracting officers of its existence.

Proposed § 124.515 would improve the language of current § 124.320(a), eliminating unnecessary references to advance payments, business development expense, and surety bond waivers (all three of which the proposed rule would also eliminate).

The proposed rule would add a third appeal-related section, pertaining to the ability of another party to question the eligibility of a Participant for award of an 8(a) contract (proposed § 124.516). No party may challenge the eligibility of a Participant for a specific sole source or competitive 8(a) requirement at SBA or any other administrative forum. The authority to determine eligibility for an 8(a) contract is exclusively SBA's. Much of this provision is currently contained in § 124.311(g) for competitive 8(a) requirements, but no such specific language was set forth for sole source 8(a) requirements. Prior to the enactment of Public Law 100–656, there were no 8(a) competitive requirements, and it was clear that a determination concerning a Participant's eligibility for specific 8(a) contract awards was exclusively within the jurisdiction of SBA's Office of 8(a)BD. After the enactment of Public Law 100–656, SBA's regulations were amended to specify that eligibility protests would not be authorized for competitive 8(a) procurements. This notified interested parties that SBA intended to make eligibility for competitive 8(a) procurements consistent with SBA's longstanding practice with regard to sole source 8(a) procurements (that is, that the Office of 8(a)BD (Minority Small Business and Capital Ownership Development (MSB&COD) at that time) would retain exclusive authority for determining eligibility for any 8(a) contract). The current regulations contain specific language regarding protest restrictions for competitive 8(a) procurements, but not for sole source procurements. This proposed rule would clarify that these restrictions were always meant to apply to both sole source and competitive 8(a) procurements. The regulatory language appearing in § 124.311(g) would be moved into this new provision and would be expanded to apply to sole source 8(a) procurements as well. Paragraph 124.311(g) would be deleted as unnecessary.

SBA has historically included a Participant's size as part of a concern's eligibility that cannot be protested. This proposed rule would amend that policy with respect to competitive 8(a) contracts. Another offeror for a competitive 8(a) contract would be able to protest the size status of the apparent successful offeror in accord with part 121 of this chapter. In addition, the proposed rule would authorize appeals of SIC code designations in connection with 8(a) competitive requirements. The policy for size protests and SIC appeals would, however, remain unchanged for sole source 8(a) contracts (i.e., size protests would not be authorized for sole source 8(a) contracts; SIC appeals would not be permitted for sole source contracts, except by the AA/8(a)BD). In connection with a sole source 8(a) contract, any party may submit evidence to SBA to explain why it believes another SIC code should be assigned to the procurement. SBA will consider such information and will seek a SIC code change if it believes that the SIC code assigned by the procuring agency is unreasonable.

SBA is currently examining ways to further address the perceived problem of concentration of 8(a) contracts. Concerns about contract concentration have been cited by several SBA oversight entities, including the General Accounting Office, SBA's Office of Inspector General, and the U.S. Senate and House of Representatives Committees on Small Business. SBA believes that it has addressed this issue, in part, by removing the indefinite delivery, indefinite quantity exception to competition (*see* 60 FR 29969, 29971–72 and 29976), and by limiting sole source 8(a) awards as described below in proposed § 124.518. Although not part of this rulemaking, SBA wishes to solicit comments on how best to achieve a broader distribution of 8(a) contracts beyond these proposals.

Proposed section 124.518 would authorize most Participants (other than firms owned by an Indian tribe or an ANC) to receive any combination of 8(a) sole source and 8(a) competitive contracts up to a specified dollar amount. Once that dollar amount of 8(a) contracts is reached, the firm would not be eligible to receive any more 8(a) sole source contracts, but could remain eligible for competitive 8(a) awards. For a firm having a revenue-based primary SIC code at time of program entry, the limit above which it could no longer receive sole source 8(a) contracts would be set at five times the size standard corresponding to that SIC code or $100,000,000, whichever is less. For a firm having an employee-based primary SIC code at time of program entry, the limit above which it could no longer receive sole source 8(a) contracts would be set at $100,000,000. Under the proposed rule, SBA would not consider 8(a) contracts awarded under $100,000 in determining whether a Participant has reached its limit.

This change is designed to promote the equitable distribution of 8(a) contracts to an increased number of 8(a) Participants and to foster 8(a) business development on a wider scale. Smaller developing 8(a) Participants should have an increased opportunity of receiving sole source 8(a) contracts. SBA does not view this change as a penalty for those firms reaching the dollar limit. They will still be eligible for competitive 8(a) awards. SBA's mission is to advance the development of Participants so that they can be viable businesses after graduation from the 8(a) BD program. After a certain amount of contract support within the 8(a) sheltered market, sole source 8(a) awards may be counterproductive to a firm's development because they do not prepare a firm for the competitive marketplace after graduation. A firm that has received five times its applicable size standard or $100,000,000 in 8(a) contracts, whichever is applicable, should not need the business development tool of additional sole source contracts, and should spend more resources refining its competitive skills. SBA asks for comments on whether the restriction should apply to competitive as well as sole source 8(a) contracts once the

specified level of 8(a) contract dollars has been reached.

Proposed section 124.519 would establish a mentor/protege program. As proposed, firms that have graduated from the 8(a) BD program and those that are in the transitional stage of program participation may be approved as mentors for particular developing 8(a) Participants. This could include businesses that have grown to be other than small. The idea is to link firms that have gone through the 8(a) program with developing 8(a) firms so that the more mature firms can impart their knowledge and practical experience from their own program participation to the developing firms. Although the proposed rule limits mentors to current or former 8(a) Participants, SBA seeks comments on whether other firms should be mentors. If mentors are limited to current and former 8(a) Participants, SBA desires comments as to whether former Participants should be permitted where their ownership or control has changed since they were in the 8(a) program. SBA also seeks comments regarding whether a mentor should be able to be a large business, or whether mentors should be limited to firms that are small in their primary industry category (whether or not they would qualify as small under the protégé's primary SIC code, or under a particular contract for which the mentor and protégé seek to perform as a joint venture). Finally, SBA requests comments on appropriate safeguards SBA should impose on mentors to ensure that mentors do not unjustly benefit from the 8(a) BD program. SBA recognizes that some commenters may oppose any mentor/protege program as a method of extending 8(a) participation for firms that have graduated from the program, or of providing program benefits to non-disadvantaged firms (if SBA were to allow mentors to be other than current and former 8(a) Participants). SBA believes, however, that such a program will provide substantial benefits for developing 8(a) Participants, and that the assistance received through the program will enhance their ability to be viable businesses after they leave the 8(a) BD program.

The advantages to a protege firm in terms of management and technical assistance, knowledge of the procurement process, and personal relationships can be substantial. In order to encourage mentors to participate, the proposed rule would permit a mentor and protege to joint venture as a small business for various government procurement opportunities, including procurements less than half the size standard corresponding to the assigned SIC code and 8(a) sole source contracts, provided the protege qualifies as small for the procurement (and has not reached the limit described above in proposed § 124.518). The mentor/protege relationship would extend beyond the 8(a) BD program, and would encourage mentors and proteges to submit offers as joint ventures for non-8(a) competitive contracts as well. Because SBA would waive the affiliation requirements for a mentor/protege joint venture, more contracts may become available for small businesses that are 8(a) Participants. The regulation would also permit a mentor firm to own up to 33% in the protege firm to assist the protege firm raise needed capital. A protege firm could also qualify for other assistance as a small business, including SBA financial assistance, notwithstanding the mentor/protege relationship.

A mentor would have to possess good character and be operating profitably. A mentor could have no more than one protege at a time. SBA does not believe that proteges would be adequately served were one firm able to mentor more than one Participant at a time. In addition, were a mentor able to have more than one protege at a time, the perception could exist that the mentor is ''chasing'' many different 8(a) contracts through its various proteges. For a mentor that has left the 8(a) program or has grown large, there would be a concern that such a mentor was unjustly benefitting from the 8(a) program. In order to be recognized as mentors/proteges, the AA/8(a)BD would have to approve a written agreement between the mentor and protege firms under which the mentor commits to provide management and/or technical assistance to the protege firm for at least one year.

The proposed rule would eliminate current § 124.401 dealing with advance payments. Funding for advance payments does not exist.

The proposed rule would also eliminate current § 124.402, concerning business development expense (BDE). References to it are obsolete.

Proposed §§ 124.601–124.603 would set forth reporting requirements not contained elsewhere in the regulations. These requirements are largely unchanged from the current regulations. However, in keeping with President Clinton's request that Federal agencies reduce reporting requirements wherever feasible, proposed § 124.601 would reduce from twice a year to once a year the number of times a Participant must submit a report to SBA regarding its agents and other representatives.

Sections 124.701–124.704 of the proposed rule would reduce and clarify the provisions for its 7(j) management and technical assistance program (currently contained in §§ 124.403 and 124.404).

Subpart B, Eligibility, Certification, and Protests relating to Federal Small Disadvantaged Business Programs, is an entirely new subpart and is proposed in response to the DOJ's review on Federal affirmative action procurement programs. Current subpart B, dealing with SDB protests would be incorporated into the revised subpart. The subpart would be expanded to include procedures by which Private Certifiers will determine whether a firm is owned and controlled by one or more individuals claiming disadvantaged status, procedures by which a procuring agency or SBA (if the procuring agency has an agreement with SBA) will certify businesses as SDBs for purposes of all Federal procurement programs, and provisions defining how firms will be added to and deleted from an SBA-maintained on line register of SDBs.

The proposed rule would add a clarifying provision that potential for success would not be considered in determining the disadvantaged status of a concern for purposes other than the 8(a) BD program. Potential for success goes to the developmental purposes of the 8(a) BD program, and should not be a criterion in determining disadvantaged status for other programs. The proposed rule would add a provision to the section regarding who can protest the disadvantaged status in an SDB set-aside or evaluation procurement. It would not permit a firm that had previously been found not to be disadvantaged for a specific SDB set-aside to then protest the disadvantaged status of an apparent successful offeror.

Proposed § 124.1008(c)(2) would provide that the burden is on the firm seeking an SDB certification to demonstrate that those individuals claiming disadvantaged status own and control the concern. Similarly, proposed § 124.1020(c) would provide that the burden is on the protested concern to demonstrate its disadvantaged status. The protested concern must submit all information it deems relevant to such a determination. A protested concern cannot challenge a disadvantaged status determination by claiming that it did not submit a specific piece of information because SBA did not request it.

Proposed new subpart D of part 134 would contain the rules of procedure applying to appeals of denials of 8(a) BD program admission based solely on a negative finding(s) of social

disadvantage, economic disadvantage, ownership or control pursuant to § 124.206; early graduation pursuant to §§ 124.302 and 124.304; termination pursuant to §§ 124.303 and 124.304; and denials of requests to issue a waiver of the performance of work/termination for convenience requirements pursuant to § 124.514. The substance of these provisions was previously contained in § 124.210. This proposed rule transfers them to part 134 so that all procedures relating to appeals before OHA are contained in one part of SBA's regulations. Proposed § 134.406(d) clarifies that where SBA files its answer to the appeal petition after the date specified in § 134.206, the Administrative Law Judge may ignore the answer and base his or her decision solely on a review of the administrative record. All the Administrative Law Judge has the authority to do is to determine whether the Agency's decision is arbitrary or capricious. In order to do so, he or she must review the administrative record.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not be considered a significant rule within the meaning of Executive Order 12866, but may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

Regulatory Flexibility Analysis

We do not know the extent to which this proposed rule would have a significant economic impact on a substantial number of small businesses but are interested in receiving comments from the public on what they believe the impact of this regulation will be.

Summary of the Proposed Rule

The SBA's proposed rule would improve and strengthen the 8(a) program. The rule changes would also respond to the challenges posed by the findings in the *Adarand* v. *Pena* court case and improve the success rates for firms after participation in the 8(a) program. We believe this to be the appropriate regulatory alternative to meet the judicial requirements applicable to the agency.

The proposed 8(a) rule changes fall under four major categories. They are: (1) Equitable distribution of 8(a) contracts; (2) small business affiliation rule revisions; (3) a new 8(a) mentor-protege program; and (4) SBA's responsibilities for implementing the Small Disadvantaged Business (SDB) contracting program authorized by the Federal Acquisition Streamlining Act and developed during the U.S. Department of Justice's post-Adarand affirmative action review and recommendations.

The proposed 8(a) regulations would make changes to the existing regulations designed to distribute 8(a) contracts more equitably and encourage participating 8(a) firms to compete more effectively for contracts. The regulation would enhance the ability of 8(a) firms and other small businesses to obtain larger prime contracts that would be normally out of the reach of individual small businesses. Also, by establishing an 8(a) mentor-protege program, SBA would allow participants in the 8(a) program to tap into the expertise and capital of 8(a) graduates or more advanced participating firms. Lastly, the proposed 8(a) regulations would provide the guidelines needed to conform SBA's rules and procedures to the Department of Justice's post-Adarand guidelines, including SBA's responsibility to certify participating SDB firms and maintain and provide oversight for a national network of private sector SDB certifiers.

This proposal applies to all current and eligible participants in the SBA 8(a) program and all eligible small disadvantaged businesses (SDBs) that seek to do business with the federal government as contractors.

Current Program Participants

At present, there are approximately 5,800 SBA certified 8(a) firms. Based on information from the SBA PASS system, there are approximately 34,000 minority or SDB firms seeking contracts with the federal government. All 8(a) firms meet the eligibility requirements of an SDB firm and are included in the 34,000 number. Pursuant to PASS, there are an additional 37,000 non-minority women-owned firms and 3,000 non-minority disabled veteran-owned firms seeking contracts with the federal government. Any or all of these additional 40,000 firms could also seek SDB certification through SBA under SBA's new subpart B of part 124.

In FY '96, 8(a) firms received $6.3 billion in federal contracts and SDBs about $10.3 billion. The $10.3 billion in contracts to SDBs represents about 5 percent of all federal contract dollars spent in FY '96. In addition, the federal contract dollars that went to SDBs is about 25 percent of all federal receipts that went to small businesses for the same period.

It is believed that this rule will benefit eligible 8(a) and SDB firms because it simplifies and clearly defines eligibility requirements, especially for SDBs; streamlines the operation of the 8(a) program; increases partnering opportunities by easing affiliation rules; and, improves business assistance provided by the SBA. It is estimated that, under this proposal, the number of certified 8(a) programs will increase by 10 percent and the number of SDBs seeking federal contracts will increase by 20 to 30 percent.

Universe of Potential Program Applicants

The last official U.S. Census Statistics on women and minority-owned firms are for 1992; these data were released in 1996. In 1992, there were 2.0 million total minority-owned firms. Of these, 312 thousand (15.6 percent) had employees. If the growth in minority firms between 1992 and 1997 is the same as it was between 1987 and 1992—a conservative assumption—then an estimate of total minority firms would be 3.3 million in 1997 and perhaps half a million with employees. For the most part, only firms with employees would be affected by this proposal. The latter, of course, are only educated assumptions based upon extrapolations.

An estimate of the racial composition of minority owned firms with employees would be: Black (32 percent), Hispanic (38 percent), and the cluster of Asian-American/Pacific Islanders/ Native Americans, and Alaska Natives (30 percent).

By gender, 63 percent of minority owned firms in 1992 were likely to be owned by men; 37 percent were owned by women. For minority firms with employees, about 71 percent of the minority owned firms were likely to be owned by men; 29 percent were likely to be owned by women.

Including regular C corporations, women owned 6,407 million firms in 1992. Of these 1,25 million firms (19.4 percent) had employees. Based on estimates by the National Association of Women Business Owners, there are nearly 8.0 million women-owned firms in 1996, we can extrapolate that there were about 1.55 million women-owned firms with employees in 1996.

With this large pool of businesses which may at some point apply to the SBA's programs, we can anticipate that the number of 8(a) participants and SDBs will increase, but cannot estimate the magnitude of the increase or its effect on firms that have or may obtain contracts in the future. We believe that the impact of these regulatory changes will be beneficial to small business and,

again, would be interested in receiving any information that would shed additional light on the specific impact of these proposed regulations.

The rule is not, however, likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or recordkeeping requirements. Although the proposed rule would require small disadvantaged business concerns to submit evidence that they are owned and controlled by one or more disadvantaged individuals to private certifiers, and representations of group membership or evidence of disadvantaged status to SBA, in order to become certified as an SDB, the information sought is the same as that currently required for participation in SBA's 8(a) program. In addition, once certified, this rule would not require SDB concerns to report any other information to SBA or to maintain additional records.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR

Part 121

Government procurement, Government property, Grant programs-business, Individuals with disabilities, Loan programs-business, Small businesses.

Part 124

Government procurement; Minority businesses; Tribally-owned concerns; Hawaiian natives; Reporting and record keeping requirements; Technical Assistance.

Part 134

Administrative practice and procedure, Organization and functions (Government agencies).

Accordingly, for the reasons set forth above, SBA hereby proposes to amend Title 13, Code of Federal Regulations (CFR), as follows:

PART 121—[AMENDED]

1. The authority citation for 13 CFR part 121 would continue to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Section 121.103 is amended by redesignating paragraphs (f)(3) and (f)(4) as paragraphs (f)(4) and (f)(5), respectively, by revising paragraph (f)(2) and by adding a new paragraph (f)(3) to read as follows:

§ 121.103 What is affiliation?

* * * * *

(f) *Affiliation based on joint venture arrangements.* * * *

(2) Except as provided in paragraph (f)(3) of this section, concerns submitting offers on a particular procurement or property sale as joint venturers are affiliated with each other with regard to the performance of that contract.

(3) *Joint venture exclusion from affiliation.* (i) A joint venture of two or more business concerns may submit an offer as a small business for a non-8(a) federal procurement without regard to affiliation based on the joint venture arrangement so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(B) For a procurement having an employee-based size standard, the procurement exceeds $10 million.

(ii) A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer for a competitive 8(a) procurement without regard to affiliation based on the joint venture arrangement so long as the requirements of § 124.512(b)(1) of this chapter are met.

(iii) Two firms approved by SBA to be a mentor and protege under § 124.519 of this chapter may joint venture as a small business for any government procurement, provided the protege qualifies as small for the size standard corresponding to the SIC code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in § 124.518 of this chapter.

* * * * *

2a. Section 121.1001 is amended by redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(3) through (a)(6), by adding the following new paragraph (a)(2), and by revising paragraph (b)(2) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) *Size Status Protests.* * * *

(2) For competitive 8(a) contracts, the following entities may protest:

(i) Any offeror;

(ii) The contracting officer; or

(iii) The SBA District Director, or designee, in either the district office serving the geographical area in which the procuring agency is located or the district office that services the apparent successful offeror, or the Associate Administrator for Minority Enterprise Development.

* * * * *

(b) *Request for Size Determinations.* * * *

(2) For SBA's 8(a) BD program:

(i) Concerning initial or continued 8(a) BD eligibility, the following entities may request a formal size determination:

(A) The 8(a) BD applicant concern or Participant; or

(B) The Assistant Administrator of the Division of Program Certification and Eligibility or the Associate Administrator for 8(a)BD.

(ii) Concerning individual sole source 8(a) contract awards, the following entities may request a formal size determination:

(A) The Participant nominated for award of the particular sole source contract;

(B) The SBA program official with authority to execute the 8(a) contract; or

(C) The SBA District Director in the district office that services the Participant, or the Associate Administrator for 8(a)BD.

* * * * *

3. Section 121.1103 is amended by revising paragraph (a) to read as follows:

§ 121.1103 What are the procedures for appealing a SIC code designation?

(a) Generally, any interested party who has been adversely affected by a SIC code designation may appeal the designation to OHA. However, with respect to a particular sole source 8(a) contract, only the Associate Administrator for 8(a)BD may appeal.

* * * * *

PART 124—[AMENDED]

4. Part 124 is revised to read as follows:

PART 124—8(A) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

Subpart A—8(a) Business Development

Provisions of General Applicability

Eligibility Requirements for Participation in the 8(a) Business Development Program

Applying to the 8(a) BD Program

Exiting the 8(a) BD Program

Business Development

Contractual Assistance

Miscellaneous Reporting Requirements

Management and Technical Assistance Program

Subpart B—Eligibility, Certification, and Protests Relating to Federal Small Disadvantaged Business Programs

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

Subpart A—8(a) Business Development

Provisions of General Applicability

§ 124.1 What is the purpose of the 8(a) Business Development program?

Sections 8(a) and 7(j) of the Small Business Act authorize a Minority Small Business and Capital Ownership Development program (designated the 8(a) Business Development or ''8(a) BD'' program for purposes of the regulations in this part). The purpose of the 8(a) BD program is to assist eligible small disadvantaged business concerns compete in the American economy through business development.

§ 124.2 What length of time may a business participate in the 8(a) BD program?

A Participant receives a program term of nine years from the date of SBA's approval letter certifying the concern's admission to the program. A firm that completes its nine year term of participation in the 8(a) BD program is deemed to graduate from the program. The nine year program term may be shortened only by termination, early graduation or voluntary withdrawal as provided for in this part.

§ 124.3 What definitions are important in the 8(a) BD Program?

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen who a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation or ANC means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.)

Bona fide place of business, for purposes of 8(a) construction procurements, means that a Participant regularly maintains an office which employs at least one full-time individual within the appropriate geographical boundary. The term does not include construction trailers or other temporary construction sites.

Community Development Corporation or CDC means a nonprofit organization responsible to residents of the area it serves which has received financial assistance under 42 U.S.C. 9805 *et seq.*

Concern is defined in part 121 of this title.

Days means calendar days unless otherwise specified.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step-father, step-mother, step-son, step-daughter, step-brother, step-sister, half-brother, and half-sister.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of ''tribally-owned concern.''

Native Hawaiian means any individual whose ancestors were natives prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Negative control is defined in part 121 of this title.

Nondisadvantaged individual means any individual who does not claim disadvantaged status, does not qualify as disadvantaged, or upon whose disadvantaged status an applicant or Participant does not rely in qualifying for 8(a) BD program participation.

Participant means a small business concern admitted to participate in the 8(a) BD program.

Primary industry classification means the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business activity of the 8(a) BD applicant or Participant. The SIC code designations are described in the Standard Industrial Classification Manual published by the U.S. Office of Management and Budget.

Principal place of business means the business location at which the individuals who manage the concern's day-to-day operations spend most working hours and where top management's business records are kept. If different, SBA may determine the principal place of business for program purposes.

Program year means a 12-month period of an 8(a) BD Participant's program participation. The first program year begins on the date that the concern is certified to participate in the 8(a) BD program and ends one year later. Each subsequent program year begins on the Participant's anniversary of program certification and runs for one 12-month period.

Same or similar line of business means business activities within the same two-digit ''Major Group'' of the SIC Manual as the primary industry classification of the applicant or Participant. The phrase ''same business area'' is synonymous with this definition.

Self-marketing of a requirement occurs when a Participant identifies a requirement that has not been committed to the 8(a) BD program and, through its marketing efforts, causes the procuring agency to offer that specific requirement to the 8(a) BD program on the Participant's behalf. A firm which identifies and markets a requirement which is subsequently offered to the 8(a) BD program as an open requirement or on behalf of another Participant has not ''self-marketed'' the requirement within the meaning of this part.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

Unconditional ownership means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

Eligibility Requirements for Participation in the 8(a) Business Development Program

§ 124.101 What are the basic requirements a concern must meet for the 8(a) BD program?

Generally, a concern meets the basic requirements for admission to the 8(a) BD program if it is a small business which is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States, and which demonstrates potential for success.

§ 124.102 What size business is eligible to participate in the 8(a) BD program?

(a) An applicant concern must qualify as a small business concern as defined in part 121 of this title. The applicable size standard is the one for its primary industry classification. The rules for calculating the size of a tribally-owned concern, a concern owned by an Alaska Native Corporation, a concern owned by a Native Hawaiian Organization, or a concern owned by a Community Development Corporation are additionally affected by §§ 124.109, 124.110, and 124.111, respectively.

(b) If 8(a) BD program officials determine that a concern may not qualify as small, they may deny an application for 8(a) BD program admission or may request a formal size determination under part 121 of this title.

(c) A concern whose application is denied due to size by 8(a) BD program officials may request a formal size determination under part 121 of this title. A favorable determination will enable the firm to submit a new 8(a) BD application without waiting one year.

§ 124.103 Who is socially disadvantaged?

(a) *General.* Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control.

(b) *Members of designated groups.* (1) There is a rebuttable presumption that the following individuals are socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated from time to time by SBA according to procedures set forth at paragraph (d) of this section. Being born in a country does not, by itself, suffice to make the birth country an individual's country of origin for purposes of being included within a designated group.

(2) An individual must demonstrate identification by others as a member of a designated group if SBA requires it.

(3) The presumption of social disadvantage may be overcome with significant, credible evidence to the contrary. Individuals possessing or knowing of such evidence should submit the information in writing to the Associate Administrator for 8(a) BD (AA/8(a)BD) for consideration.

(c) *Individuals not members of designated groups.* (1) An individual who is not a member of one of the groups presumed to be socially disadvantaged in paragraph (b)(1) of this section must establish individual social disadvantage by a preponderance of the evidence.

(2) Evidence of individual social disadvantage must include the following elements:

(i) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(ii) Personal experiences of social disadvantage, not merely membership in a non-designated group which might be socially disadvantaged, but has not been so designated by SBA. The experiences must have been in American society, not in other countries, and must have been substantial, chronic, and longstanding; and

(iii) Negative impact on entry into or advancement in the business world because of the disadvantage. SBA will consider any relevant evidence in assessing this element. In every case, however, SBA will consider education, employment and business history to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(A) *Education.* SBA considers such factors as denial of equal access to institutions of higher education, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(B) *Employment.* SBA considers such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer; and social patterns or pressures which have channelled the individual into nonprofessional or non-business fields.

(C) *Business history.* SBA considers such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

(d) *Socially disadvantaged group inclusion.* (1) *General.* Representatives of an identifiable group whose members believe that the group has suffered chronic racial or ethnic prejudice or cultural bias may petition SBA to be included as a presumptively socially disadvantaged group under paragraph (b)(1) of this section. Upon an adequate preliminary showing that the group has suffered such prejudice or bias, SBA will publish a notice in the **Federal Register** that it has received and is considering such a request, and that it will consider public comments.

(2) *Standards to be applied.* In determining whether a group has made an adequate preliminary showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this regulation, SBA must determine:

(i) Whether the group has suffered prejudice, bias, or discriminatory practices;

(ii) Whether those conditions have resulted in economic deprivation for the group of the type which Congress has found exists for the groups named in the Small Business Act; and

(iii) Whether those conditions have produced impediments in the business world for members of the group over which they have no control and which are not common to small business owners generally.

(3) *Procedure.* The notice published under paragraph (d)(1) of this section will authorize a specified period for the receipt of public comments supporting or opposing the petition for socially disadvantaged group status. If appropriate, SBA may hold hearings. SBA may also conduct its own research relative to the group's petition.

(4) *Decision.* SBA will advise the petitioners of its final decision in writing, and publish its conclusion as a notice in the **Federal Register**. If appropriate, SBA will amend paragraph (b)(1) of this section to include a new group.

§ 124.104 Who is economically disadvantaged?

(a) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(b) *Submission of narrative and financial information.* (1) Each individual claiming economic disadvantage must describe it in a narrative statement, and must submit personal financial information.

(2) When married, an individual claiming economic disadvantage also must submit separate financial information for his or her spouse, unless the individual and the spouse are legally separated.

(c) *Factors to be considered.* In considering diminished capital and credit opportunities, SBA will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. SBA will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that SBA compares include total assets, net sales, pre tax profit, sales/working capital ratio, and net worth.

(1) *Assets.* Assets which an individual claiming disadvantaged status has transferred within two years of the application to an immediate family member, or to a trust the beneficiary of which is an immediate family member, for less than fair market value will be attributed to the individual claiming disadvantaged status.

(2) *Net worth.* For initial 8(a) BD eligibility, the net worth of an individual claiming disadvantage must be less than $250,000. For continued 8(a) BD eligibility after admission to the program, net worth must be less than $750,000. In determining such net worth, SBA will exclude the ownership interest in the applicant or Participant and the equity in the primary personal residence (except any portion of such equity which is attributable to excessive withdrawals from the applicant or Participant). Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

(i) A contingent liability does not reduce an individual's net worth.

(ii) The personal net worth of an individual claiming to be an Alaska Native will include assets and income from sources other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation: cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and an interest in a settlement trust.

§ 124.105 What does it mean to be unconditionally owned by one or more disadvantaged individuals?

An applicant or Participant must be at least 51 percent unconditionally and directly owned by one or more socially and economically disadvantaged individuals who are citizens of the United States, except for concerns owned by Indian tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations (CDCs). See § 124.3 for definition of unconditional ownership; and §§ 124.109, 124.110, and 124.111, respectively, for special ownership requirements for concerns owned by Indian tribes, ANCs, Native Hawaiian Organizations, and CDCs.

(a) *Ownership must be direct.* Ownership by one or more disadvantaged individuals must be direct ownership. An applicant or Participant owned principally by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more disadvantaged individuals does not meet this requirement.

(b) *Ownership of a partnership.* In the case of a concern which is a partnership, at least 51 percent of every class of partnership interest must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged. The ownership must be reflected in the concern's partnership agreement.

(c) *Ownership of a limited liability company.* In the case of a concern which is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged.

(d) *Ownership of a corporation.* In the case of a concern which is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged.

(e) *Stock options' effect on ownership.* In determining unconditional ownership, SBA will disregard any unexercised stock options or similar agreements held by disadvantaged individuals. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by non-disadvantaged individuals will be treated as exercised, except for any ownership interests which are held by investment companies licensed under the Small Business Investment Act of 1958.

(f) *Dividends and distributions.* One or more disadvantaged individuals must be entitled to receive:

(1) At least 51 percent of the annual distribution of dividends paid on the stock of a corporate applicant concern;

(2) 100 percent of the unencumbered value of each share of stock owned in the event that the stock is sold; and

(3) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock owned in the event of dissolution of the corporation.

(g) *Ownership of another Participant.* The individuals determined to be disadvantaged for purposes of one Participant, their immediate family members, and the Participant itself, may not hold, in the aggregate, more than a 10 percent equity ownership interest in any other single Participant.

(h) *Ownership restrictions for non-disadvantaged individuals and concerns.* (1) A non-disadvantaged individual (in the aggregate with all immediate family members) or a non-Participant concern that is a general partner or stockholder of at least 10 percent in one Participant may not own more than 10 percent in another Participant. This restriction does not apply to financial institutions licensed or chartered by Federal, state or local government, including investment companies which are licensed under the Small Business Investment Act of 1958.

(2) A non-Participant concern in the same or similar line of business may not own more than 10 percent in a Participant, except that a former Participant or a principal of a former Participant (except those that have been terminated from 8(a) BD program participation pursuant to §§ 124.303 and 124.304) may have an equity ownership interest of up to 20 percent in a current Participant in the same or similar line of business.

(i) *Change of ownership.* A Participant may change its ownership so long as one or more disadvantaged individuals would own and control it after the change and it obtains the prior written approval of SBA.

(1) The Participant that was awarded one or more 8(a) contracts may substitute one disadvantaged individual for another disadvantaged individual without requiring the termination of those contracts or a request for waiver under § 124.514, as long as it receives SBA's approval prior to the change.

(2) Where the previous owner held less than a 10 percent interest in the concern, or the transfer results from the death or incapacity due to a serious, long-term illness or injury of a disadvantaged principal, prior approval is not required, but the concern must notify SBA within 60 days.

(3) Continued participation of the Participant with new ownership and the award of any new 8(a) contracts requires SBA's determination that all eligibility requirements are met by the concern and the new owners.

(4) The Participant's program term is in no way extended by the change in ownership.

(j) *Public offering.* A Participant's request for SBA's approval for the issuance of a public offering will be treated as a request for a change of ownership. Such request will cause SBA to examine the concern's continued need for access to the business development resources of the 8(a) BD program.

(k) *Community property laws given effect.* In determining ownership interests when an owner resides in any of the community property states or territories of the United States (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington and Wisconsin), SBA considers applicable state community property laws. If only one spouse claims disadvantaged status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws. A transfer or relinquishment of interest by the non-disadvantaged spouse may be necessary in some cases to establish eligibility.

§ 124.106 When do disadvantaged individuals control an applicant or Participant?

SBA regards control as including both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations. An applicant or Participant's management and daily business operations must be conducted by one or more disadvantaged individuals, except for concerns owned by Indian tribes, ANCs, Native Hawaiian Organizations, or Community Development Corporations (CDCs). (See §§ 124.109, 124.110, and 124.111, respectively, for the requirements for concerns owned by Indian tribes or ANCs, for concerns owned by Native Hawaiian Organizations, and for CDC-owned concerns). Disadvantaged individuals managing the concern must have managerial experience of the extent and complexity needed to run the concern. Control is not the same as ownership, although both may reside in the same person. A disadvantaged owner's unexercised right to cause a change in the control or management of the applicant concern does not constitute disadvantaged control and management, regardless of how quickly or easily the right could be exercised.

(a)(1) An applicant or Participant must be managed on a full-time basis by one or more disadvantaged individuals who possess requisite management capabilities.

(2) A disadvantaged full-time manager must hold the highest officer position (usually President or Chief Executive Officer) in the applicant or Participant.

(3) One or more disadvantaged individuals who manage the applicant or Participant must devote full-time to the business during normal working hours.

(4) Any disadvantaged manager who wishes to engage in outside employment must notify SBA of the nature and anticipated duration of the outside employment and obtain the prior written approval of SBA. SBA will deny a request for outside employment which could conflict with the management of the firm or could hinder it in achieving the objectives of its business development plan.

(b) In the case of a partnership, one or more disadvantaged individuals must serve as general partners, with control over all partnership decisions. A partnership in which no disadvantaged individual is a general partner will be ineligible for participation.

(c) In the case of a limited liability company, one or more disadvantaged individuals must serve as management members, with control over all decisions of the limited liability company.

(d) Disadvantaged individuals must control the Board of Directors of a corporate applicant or Participant, either through a majority of voting directors or through weighted voting.

(1) The powers to appoint, remove and replace directors (e.g., through ownership of voting stock) is not sufficient to satisfy the requirement that one or more disadvantaged individuals actually control the Board of Directors.

(2) Non-voting, advisory, or honorary Directors may be appointed.

(3) Any Executive Committee of Directors must be controlled by disadvantaged directors unless the Executive Committee can only make recommendations to and cannot independently exercise the authority of the Board of Directors.

(4) Arrangements regarding the structure and voting rights of the Board of Directors must comply with applicable state law.

(5) Provisions for the establishment of a quorum cannot permit non-disadvantaged Directors to control the Board of Directors.

(e) Non-disadvantaged individuals may be involved in the management of an applicant or Participant, and may be stockholders, partners, limited liability members, officers, and/or directors of the applicant or Participant. No such non-disadvantaged individual or immediate family member may:

(1) Exercise actual control or have the power to control the applicant or Participant;

(2) Be a former employer or a principal of a former employer of any disadvantaged owner of the applicant or Participant, unless it is determined by the AA/8(a)BD that the relationship between the former employer or principal and the disadvantaged individual or applicant concern does not give the former employer actual control or the potential to control the applicant or Participant and such relationship is in the best interests of the 8(a) BD firm; or

(3) Receive compensation from the applicant or Participant in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest officer (usually CEO or President). The highest ranking officer may elect to take a lower salary than a non-disadvantaged individual only upon demonstrating that it helps the concern and upon obtaining the prior

written consent of the AA/8(a)BD or designee).

(f) Non-disadvantaged individuals or entities may be found to control or have the power to control in any of the following circumstances, which are illustrative only and not all inclusive:

(1) Non-disadvantaged individuals control the Board of Directors of the applicant or Participant, either directly through majority voting membership, or indirectly, where the by-laws allow non-disadvantaged individuals to effectively block actions proposed by the disadvantaged individuals.

(2) A non-disadvantaged individual or entity provides critical financial or bonding support to the applicant or Participant which directly or indirectly allows the non-disadvantaged individual to significantly influence business decisions of the Participant.

(3) A non-disadvantaged individual or entity controls the applicant or Participant or an individual disadvantaged owner through loan arrangements. Providing a loan guaranty on commercially reasonable terms does not, by itself, give a nondisadvantaged individual or entity the power to control a firm.

(4) Business relationships exist with non-disadvantaged individuals or entities which cause such dependence that the applicant or Participant cannot exercise independent business judgment without great economic risk.

§ 124.107 What is potential for success?

The applicant concern must possess reasonable prospects for success in competing in the private sector. To do so, it must be in business in its primary industry classification for at least two full years immediately prior to the date of its 8(a) BD application, unless a waiver for this requirement is granted pursuant to paragraph (b) of this section.

(a) Income tax returns for each of the two previous tax years must show operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification.

(b)(1) SBA may waive the two years in business requirement if each of the following five conditions are met:

(i) The individual or individuals upon whom eligibility is based have substantial business management experience;

(ii) The applicant has demonstrated technical experience to carry out its business plan with a substantial likelihood for success.

(iii) The applicant has adequate capital to sustain its operations and carry out its business plan;

(iv) The applicant has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category; and

(v) The applicant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform contracts.

(2) The concern seeking a waiver under this paragraph (b) must provide information on governmental and nongovernmental contracts in progress and completed (including letters of reference) in order to establish successful contract performance, and must demonstrate how it otherwise meets the five conditions for waiver. SBA considers an applicant's performance on both government and private sector contracts in determining whether the firm has an overall successful performance record. If, however, the applicant has performed only government contracts or only private sector contracts, SBA will review its performance on those contracts alone to determine whether the applicant possesses a record of successful performance.

(c) In assessing potential for success for all concerns, SBA considers the concern's access to credit and capital, including, but not limited to, access to long-term financing, access to working capital financing, equipment trade credit, access to raw materials and supplier trade credit, and bonding capability.

(d) In assessing potential for success, SBA will also consider the technical and managerial experience of the applicant concern's managers, the operating history of the concern, the concern's record of performance on previous Federal and private sector contracts in the primary industry in which the concern is seeking 8(a) BD certification, and its financial capacity. The applicant concern as a whole must demonstrate both technical knowledge in its primary industry category and management experience sufficient to run its day-to-day operations.

(e) The Participant or individuals employed by the Participant must hold all requisite licenses if the concern is engaged in an industry requiring professional licensing (e.g., public accountancy, law, professional engineering).

(f) An applicant will not be denied admission into the 8(a) BD program due solely to a determination that potential 8(a) contract opportunities are unavailable to assist in the development of the concern unless:

(1) The Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(2) The purchase of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Participants providing the same or similar items or services.

§ 124.108 What other eligibility requirements apply for individuals or businesses?

(a) *Good character.* The applicant or Participant and all its principals must have good character.

(1) If, during the processing of an application, adverse information is obtained from the applicant or a credible source regarding possible criminal conduct by the applicant or any of its principals, no further action will be taken on the application until SBA's Inspector General has collected relevant information and has advised the AA/8(a)BD of his or her findings. The AA/8(a)BD will consider those findings when evaluating the application.

(2) Violations of any of SBA's regulations may result in denial of participation in the 8(a) BD program. The AA/8(a)BD will consider the nature and severity of the violation in making an eligibility determination.

(3) Debarred or suspended concerns or concerns owned by debarred or suspended persons are ineligible for admission to the 8(a) BD program.

(4) An applicant is ineligible for admission to the 8(a) BD program if a proprietor, partner, limited liability member, director, officer, or holder of at least 10 percent of the stock, or another person (including a key manager) with significant authority over the concern is currently incarcerated, or on parole or probation pursuant to a pre-trial diversion or following conviction for a felony or any crime involving business integrity.

(5) If, during the processing of an application, SBA determines that an applicant has submitted false information, regardless of whether correct information would cause SBA to deny the application, and regardless of whether correct information was given to SBA in accompanying documents, SBA will deny the application. If SBA determines that such false information has been submitted after a firm is admitted to the 8(a) BD program, SBA will initiate termination proceedings and suspend the firm under §§ 124.304 and 124.305. Whenever SBA determines that the applicant submitted false information, the matter will be referred

to SBA's Office of Inspector General for review.

(b) *One-time eligibility.* Once a concern or disadvantaged individual upon whom eligibility was based has participated in the 8(a) BD program, neither the concern nor that individual will be eligible again.

(1) An individual who claims disadvantage and completes the appropriate SBA forms to qualify an applicant has participated in the 8(a) BD program if SBA approves the application.

(2) Use of eligibility will take effect on the date of the concern's approval into the program.

(3) An individual who uses his/her one-time eligibility to qualify a concern for the 8(a) BD program will be considered a non-disadvantaged individual for ownership or control purposes of another applicant or Participant. The criteria restricting participation by non-disadvantaged individuals will apply to such an individual. See §§ 124.105 and 124.106.

(4) When at least 50% of the assets or liabilities of a concern are the same as those of one or more former Participants, it will not be eligible for participation.

(5) Participants which change their form of business organization and transfer their assets and liabilities to the new organization may do so without affecting the eligibility of the new organization provided the previous business is dissolved and all other eligibility criteria are met. In such a case, the new organization may complete the remaining program term of the previous organization. A request for a change in business form will be treated as a change of ownership under § 124.105(i).

(c) *Wholesalers.* An applicant concern seeking admission to the 8(a) BD program as a wholesaler need not demonstrate that it is capable of meeting the requirements of the nonmanufacturer rule for its primary industry classification.

(d) *Achievement of benchmarks.* Where actual participation by disadvantaged businesses in a particular industry exceeds the benchmark limitations established by the Department of Commerce, in consultation with the General Services Administration and the SBA, for that industry, SBA, in its discretion, may decide not to accept an application for 8(a) BD participation from a concern whose primary industry classification falls within that industry.

(e) *Multiple concerns for immediate family members.* Immediate family members may not each use their individual disadvantaged status to qualify more than one business concern for 8(a) BD program participation if the concerns are in the same or similar line of business. When the concerns are in separate lines of business, each concern must establish that it is separately owned, managed and controlled.

(f) *Brokers.* Brokers are ineligible to participate in the 8(a) BD program. A broker is a concern that adds no value to an item being supplied to a procuring activity.

§ 124.109 Do Indian tribes and Alaska Native Corporations have any special rules for applying to the 8(a) BD program?

(a) *Special rules for ANCs.* Small business concerns owned and controlled by ANCs are eligible for participation in the 8(a) program, subject to the same conditions that apply to tribally-owned concerns, as described in paragraphs (b) and (c) of this section, except that the following provisions and exceptions apply only to ANC-owned concerns:

(1) Alaska Natives and descendants of Natives must own a majority of both the total equity of the ANC and the total voting powers to elect directors of the ANC through their holdings of settlement common stock. Settlement common stock means stock of an ANC issued pursuant to 43 U.S.C. 1606(g)(1), which is subject to the rights and restrictions listed in 43 U.S.C. 1606(h)(1).

(2) An ANC that meets the requirements set forth in paragraph (a)(1) of this section is deemed economically disadvantaged under 43 U.S.C. 1626(e), and need not establish economic disadvantage as required by paragraph (b)(2) of this section.

(3) Even though an ANC can be either for profit or non-profit, a small business concern owned and controlled by an ANC must be for profit to be eligible for the 8(a) program. The concern will be deemed owned and controlled by the ANC where both the majority of stock or other ownership interest and total voting power are held by the ANC and holders of its settlement common stock.

(4) The Alaska Native Claims Settlement Act provides that a concern which is majority owned by an ANC shall be deemed to be both owned and controlled by Alaska Natives and an economically disadvantaged business. Therefore, an individual responsible for control and management of an ANC-owned applicant or Participant need not establish personal social and economic disadvantage.

(5) Paragraphs (b)(3) (i), (ii) and (iv) of this section are not generally applicable to an ANC, provided its status as an ANC is clearly shown in its articles of incorporation.

(6) Paragraph (c)(1) of this section is not applicable to an ANC-owned concern to the extent it requires an express waiver of sovereign immunity or a ''sue and be sued'' clause.

(b) *Tribal eligibility.* In order to qualify a concern which it owns and controls for participation in the 8(a) BD program, an Indian tribe must establish its own economic disadvantaged status under paragraph (b)(2) of this section. Thereafter, it need not reestablish such status in order to have other businesses that it owns certified for 8(a) BD program participation, unless specifically required to do so by the AA/8(a)BD or designee. Each tribally-owned concern seeking to be certified for 8(a) BD participation must comply with the provisions of paragraph (c) of this section.

(1) *Social disadvantage.* An Indian tribe as defined in § 124.3 is considered to be socially disadvantaged.

(2) *Economic disadvantage.* In order to be eligible to participate in the 8(a) BD program, the Indian tribe must demonstrate to SBA that the tribe itself is economically disadvantaged. This must involve the consideration of available data showing the tribe's economic condition, including but not limited to, the following information:

(i) The number of tribal members.

(ii) The present tribal unemployment rate.

(iii) The per capita income of tribal members, excluding judgment awards.

(iv) The percentage of the local Indian population below the poverty level.

(v) The tribe's access to capital.

(vi) The tribal assets as disclosed in a current tribal financial statement. The statement must list all assets including those which are encumbered or held in trust, but the status of those encumbered or in trust must be clearly delineated.

(vii) A list of all wholly or partially owned tribal enterprises or affiliates and the primary industry classification of each. The list must also specify the members of the tribe who manage or control such enterprises by serving as officers or directors.

(3) *Forms and documents required to be submitted.* Except as otherwise provided in this section, the Indian tribe generally must submit the forms and documents required of 8(a) BD applicants as well as the following material:

(i) A copy of all governing documents such as the tribe's constitution or business charter.

(ii) Evidence of its recognition as a tribe eligible for the special programs

and services provided by the United States or by its state of residence.

(iii) Copies of its articles of incorporation and bylaws as filed with the organizing or chartering authority, or similar documents needed to establish and govern a non-corporate legal entity.

(iv) Documents or materials needed to show the tribe's economically disadvantaged status as described in paragraph (b)(2) of this section.

(c) *Business eligibility.* In order to be eligible to participate in the 8(a) BD program, a concern which is owned by an eligible Indian tribe (or wholly owned business entities of such tribe) must meet the conditions set forth in paragraphs (c)(1) through (c)(7) of this section.

(1) *Legal business entity organized for profit and susceptible to suit.* The applicant or participating concern must be a separate and distinct legal entity organized or chartered by the tribe, or Federal or state authorities. The concern's articles of incorporation, partnership agreement or limited liability company articles of organization must contain express sovereign immunity waiver language, or a ''sue and be sued'' clause which designates United States Federal Courts to be among the courts of competent jurisdiction for all matters relating to SBA's programs including, but not limited to, 8(a) BD program participation, loans, and contract performance. Also, the concern must be organized for profit, and the tribe must possess economic development powers in the tribe's governing documents.

(2) *Size.* (i) A tribally-owned applicant concern must qualify as a small business concern as defined for purposes of Government procurement in part 121 of this title. The particular size standard to be applied shall be based on the primary industry classification of the applicant concern.

(ii) A tribally-owned Participant must certify to SBA that it is a small business pursuant to the provisions of part 121 of this title for the purpose of performing each individual contract which it is awarded.

(iii) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe) for either 8(a) BD program entry or contract award, the firm's size shall be determined independently without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally-owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(3) *Ownership.* For corporate entities, a tribe must own at least 51 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock. For non-corporate entities, a tribe must own at least a 51 percent interest. A tribe cannot own 51% or more of another firm which, either at the time of application or within the previous two years, has been operating in the 8(a) program under the same primary Standard Industry Classification code as the applicant. The restrictions of § 124.105(h) do not apply to tribes; they do, however, apply to non-disadvantaged individuals or other business concerns that are partial owners of a tribally-owned concern.

(4) *Control and management.* (i) The management and daily business operations of a tribally-owned concern must be controlled by the tribe, through one or more disadvantaged individual members who possess sufficient management experience of an extent and complexity needed to run the concern, or through management as follows:

(A) Management may be provided by committees, teams, or Boards of Directors which are controlled by one or more members of an economically disadvantaged tribe, or

(B) Management may be provided by non-tribal members if SBA determines that such management is required to assist the concern's development, that the tribe will retain control of all management decisions common to boards of directors, including strategic planning, budget approval, and the employment and compensation of officers, and that a written management development plan exists which shows how disadvantaged tribal members will develop managerial skills sufficient to manage the concern or similar tribally-owned concerns in the future.

(ii) Members of the management team, business committee members, officers, and directors are precluded from engaging in any outside employment or other business interests which conflict with the management of the concern or prevent the concern from achieving the objectives set forth in its business development plan. This is not intended to preclude participation in tribal or other activities which do not interfere with such individual's responsibilities in the operation of the applicant concern.

(5) *Individual eligibility limitation.* SBA does not deem an individual involved in the management or daily business operations of a tribally-owned concern to have used his or her individual eligibility within the meaning of § 124.108(b).

(6) *Potential for success.* (i) A tribally-owned applicant concern must be in business for at least two years, as evidenced by income tax returns for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification, or demonstrate potential for success as set forth in paragraph (c)(6)(ii) of this section.

(ii) In determining whether a tribally-owned concern has the potential for success, SBA will look at a number of factors including, but not limited to:

(A) The technical and managerial experience and competency of the individual(s) who will manage and control the daily operation of the concern;

(B) The financial capacity of the concern; and

(C) The concern's record of performance on any previous Federal or private sector contracts in the primary industry in which the concern is seeking 8(a) certification.

(7) *Other eligibility criteria.* (i) As with other 8(a) applicants, a tribally-owned applicant concern shall not be denied admission into the 8(a) program due solely to a determination that specific contract opportunities are unavailable to assist the development of the concern unless:

(A) The Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(B) The purchase of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other program participants providing the same or similar items or services.

(ii) Except for the tribe itself, the concern's officers, directors, and 20% or more shareholders must demonstrate good character. See § 124.108(a).

§ 124.110 Do Native Hawaiian Organizations have any special rules for applying to the 8(a) BD program?

(a) Concerns owned by economically disadvantaged Native Hawaiian Organizations as defined in § 124.3 are eligible for participation in the 8(a) program and other federal programs requiring SBA to determine social and economic disadvantage as a condition of eligibility. Such concerns must meet all eligibility criteria set forth in §§ 124.101 through 124.108 and § 124.112(a) to the extent that they are not inconsistent with this section.

(b) A concern owned by a Native Hawaiian Organization must qualify as a small business concern as defined in part 121 of this title. The size standard corresponding to the primary industry classification of the applicant concern applies for determining size. Ownership by the Native Hawaiian Organization will not, by itself, cause affiliation with the Native Hawaiian Organization or with other entities owned by the Native Hawaiian Organization. However, affiliation with the Native Hawaiian Organization or with other entities owned by the Native Hawaiian Organization may be caused by circumstances other than common ownership.

(c) A Native Hawaiian Organization cannot own more than one current or former Participant having the same primary industry classification.

(d) SBA does not deem an individual involved in the management or daily business operations of a Participant owned by a Native Hawaiian Organization to have used his or her individual eligibility within the meaning of § 124.108(b).

(e)(1) An applicant concern owned by a Native Hawaiian Organization must be in business for at least two years, as evidenced by income tax returns for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification, or demonstrate potential for success as set forth in paragraph (e)(2) of this section.

(2) In determining whether a concern owned by a Native Hawaiian Organization has the potential for success, SBA will look at a number of factors including, but not limited to:

(i) The technical and managerial experience and competency of the individual(s) who will manage and control the daily operation of the concern;

(ii) The financial capacity of the concern; and

(iii) The concern's record of performance on any previous Federal or private sector contracts in the primary industry in which the concern is seeking 8(a) certification.

§ 124.111 Do Community Development Corporations (CDCs) have any special rules for applying to the 8(a) BD program?

(a) Concerns owned at least 51 percent by CDCs (or a wholly owned business entity of a CDC) are eligible for participation in the 8(a) BD program and other federal programs requiring SBA to determine social and economic disadvantage as a condition of eligibility. These concerns must meet all eligibility criteria set forth in § 124.101 through § 124.108 and § 124.112(a) to the extent that they are not inconsistent with this section.

(b) A concern that is at least 51 percent owned by a CDC (or a wholly owned business entity of a CDC) is considered to be controlled by such CDC and eligible for participation in the 8(a) BD program, provided it meets all eligibility criteria set forth or referred to in this section and its management and daily business operations are conducted by one or more individuals determined to have managerial experience of an extent and complexity needed to run the concern.

(c) A concern that is at least 51 percent owned by a CDC (or a wholly owned business entity of a CDC) must qualify as a small business concern as defined in part 121 of this title. The size standard corresponding to the primary industry classification of the applicant concern applies for determining size. Ownership by the CDC will not, by itself, cause affiliation with the CDC or with other CDC-owned entities. However, affiliation with the CDC or other CDC-owned entities may arise due to circumstances other than common CDC ownership.

(d) A CDC cannot own more than one current or former Participant having the same primary industry classification.

(e) SBA does not deem an individual involved in the management or daily business operations of a CDC-owned concern to have used his or her individual eligibility within the meaning of § 124.108(b).

(f)(1) A CDC-owned applicant concern must be in business for at least two years, as evidenced by income tax returns for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification, or demonstrate potential for success as set forth in paragraph (e)(2) of this section.

(2) In determining whether a CDC-owned concern has the potential for success, SBA will look at a number of factors including, but not limited to:

(i) The technical and managerial experience and competency of the individual(s) who will manage and control the daily operation of the concern;

(ii) The financial capacity of the concern; and

(iii) The concern's record of performance on any previous Federal or private sector contracts in the primary industry in which the concern is seeking 8(a) certification.

(g) A CDC-owned applicant and all of its principals must have good character as set forth in § 124.108(a).

§ 124.112 What criteria must a business meet to remain eligible to participate in the 8(a) BD program?

(a) *Standards.* In order for a concern to remain eligible for 8(a) BD program participation, it must continue to meet all eligibility criteria contained in § 124.101 through § 124.108. For continued economic disadvantage, transfers of assets by an individual claiming disadvantaged status to an immediate family member, or to a trust the beneficiary of which is an immediate family member, for less than fair market value will be attributed to the individual claiming disadvantaged status for a period of two years after the transfer. Any concern that fails to meet the eligibility requirements after being admitted to the program will be subject to termination or early graduation under §§ 124.302 through 124.304, as appropriate.

(b) *Submissions supporting continued eligibility.* As part of an annual review, each Participant must annually submit to the servicing district office the following:

(1) A certification that it meets the 8(a) BD program eligibility requirements as set forth in § 124.101 through § 124.108 and paragraph (a) of this section;

(2) Personal financial information for each disadvantaged owner;

(3) A certification from each individual claiming disadvantaged status regarding the transfer of assets to any immediate family member, or to a trust the beneficiary of which is an immediate family member, within two years of the date of the annual review. The individual must certify that he or she has not transferred assets or that he or she has not transferred assets except to the extent described in an attachment to the certification.

(4) A record of all payments, compensation, and distributions (including loans, advances, salaries and dividends) made by the Participant to each of its owners, officers or directors, or to any person or entity affiliated with such individuals; and

(5) Such other information as SBA may deem necessary. For other required annual submissions, *see* § 124.601 through § 124.603.

(c) *Eligibility reviews.* (1) Upon receipt of specific and credible information alleging that a Participant no longer meets the eligibility requirements for continued program eligibility, SBA will review the concern's eligibility for continued participation in the program.

(2) Sufficient reasons for SBA to conclude that a 8(a) BD Participant is no longer economically disadvantaged include, but are not limited to,

demonstrated access to a significant new source of capital or loans, an unusually large amount of funds or other assets withdrawn from the concern by its owners, or substantial personal assets, income or net worth of any disadvantaged owner.

(3) If SBA determines that funds or other assets have been withdrawn to the detriment of the achievement of the targets, objectives and goals of the Participant's business plan, or to the detriment of its overall business development, SBA may initiate a termination proceeding under §§ 124.303 and 124.304, or require an appropriate reinvestment of funds or other assets, as well as any other actions SBA deems necessary to counteract the detrimental effects of the withdrawals, as a condition of the Participant maintaining program eligibility. The fact that a concern's net worth has increased despite withdrawals that are deemed excessive will not preclude SBA from determining that such withdrawals were detrimental to the attainment of the concern's business objectives or to its overall business development.

Applying to the 8(a) BD Program

§ 124.201 May any business submit an application?

Any concern or any individual on behalf of a business has the right to apply for 8(a) BD program participation whether or not there is an appearance of eligibility.

§ 124.202 Where must an application be filed?

An application for 8(a) BD program admission must be filed in the SBA Division of Program Certification and Eligibility (DPCE) field office serving the territory in which the principal place of business is located. The SBA district office will provide an applicant concern with information regarding the 8(a) BD program and with all required application forms.

§ 124.203 What must a concern submit to apply to the 8(a) BD program?

Each 8(a) BD applicant concern must submit those forms and attachments required by SBA when applying for admission to the 8(a) BD program. These forms and attachments will include, but not be limited to, financial statements, Federal personal and business tax returns, and personal history statements. The application package may be in the form of an electronic application.

§ 124.204 How does SBA process applications for 8(a) BD program admission?

(a) The AA/8(a)BD is authorized to approve or decline applications for admission to the 8(a) BD program. The DPCE will receive, review and evaluate all 8(a) BD applications except those from ANC-owned applicants. The SBA's Anchorage District Office will receive those applications and review them for completeness before sending them to the AA/8(a)BD for further processing. The field DPCE office will advise each program applicant within 15 days after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. SBA will process an application for 8(a) BD program participation within 90 days of receipt of a complete application package by the field DPCE office. Incomplete application packages will not be processed.

(b) An applicant concern's eligibility will be based on circumstances existing on the date of application except as provided in paragraph (c) of this section. SBA, in its sole discretion, may request clarification of information contained in the application at any time in the application process.

(c) Changed circumstances for an applicant concern occurring subsequent to its application and which adversely affect eligibility will be considered and may constitute grounds for decline. The applicant must inform SBA of any changed circumstances during its application review.

(d) The decision of the AA/8(a)BD to approve or deny an application will be in writing. A decision to deny admission will state the specific reasons for denial, and will inform the applicant of any appeal rights.

(e) If the AA/8(a)BD approves the application, the date of the approval letter is the date of program certification for purposes of determining the concern's program term. However, an applicant is not entitled to receive program benefits until SBA has approved the concern's business plan.

§ 124.205 Can an applicant ask SBA to reconsider SBA's initial decision to decline its application?

(a) An applicant may request the AA/8(a)BD to reconsider his or her initial decline decision. To do so, the applicant must ask for reconsideration by sending a certified letter, return receipt requested, to the regional office of the DPCE that originally processed its application. The applicant must submit its request for reconsideration within 45 days of receiving notice that its application was declined. The applicant must provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline.

(b) The AA/8(a)BD will issue a written decision within 45 days of the regional DPCE's receipt of the applicant's request. The AA/8(a)BD may either approve the application, deny it on the same grounds as the original decision, or deny it on other grounds. If denied, the AA/8(a)BD will explain why the applicant is not eligible for admission to the 8(a) BD program and give specific reasons for the decline.

(c) If the AA/8(a)BD declines the application solely on issues not raised in the initial decline, the applicant can ask for reconsideration as if it were an initial decline.

§ 124.206 What appeal rights are available to an applicant that has been denied admission?

(a) An applicant may appeal a denial of program admission if it is based solely on a negative finding of social disadvantage, economic disadvantage, ownership, control, or any combination of these four criteria. A denial decision that is based at least in part on the failure to meet any other eligibility criterion is not appealable and is the final Agency decision.

(b) The applicant may appeal an initial decision of the AA/8(a)BD without requesting reconsideration, or may appeal the decision of the AA/8(a)BD on reconsideration.

(c) The applicant may initiate an appeal by filing a petition in accordance with part 134 of this title with SBA's Office of Hearings and Appeals (OHA) within 45 days of the date of service (as defined in § 134.204) of the Agency decision.

(d) If an appeal is filed with OHA, the written decision of the Administrative Law Judge is the final Agency decision. If an appealable decision is not appealed, the decision of the AA/8(a)BD is the final Agency decision.

§ 124.207 Can an applicant reapply for admission to the 8(a) BD program?

A concern which has been declined for 8(a) BD program admission may submit a new application for admission to the program 12 months after the date of the final Agency decision to decline.

Exiting the 8(a) BD Program

§ 124.301 What are the ways a business may leave the 8(a) BD program?

A concern participating in the 8(a) BD program may leave the program by any of the following means:

(a) Voluntary early graduation or withdrawal;

(b) Expiration of the program term established pursuant to § 124.2;

(c) Early graduation pursuant to the provisions of §§ 124.302 and 124.304; or

(d) Termination pursuant to the provisions of §§ 124.303 and 124.304.

§ 124.302 What is early graduation?

(a) *General.* The Small Business Act authorizes SBA to graduate a firm from the 8(a) BD program prior to the expiration of its Program Term for two reasons:

(1) When a Participant is recognized as successfully completing the 8(a) BD program by substantially achieving the targets, objectives and goals set forth in its business plan prior to the expiration of its program term, and has demonstrated the ability to compete in the marketplace without assistance under the 8(a) BD program; or

(2) When SBA determines that one or more of the disadvantaged owners upon whom the Participant's eligibility is based are no longer economically disadvantaged.

(b) *Early graduation criteria.* In determining whether a Participant has substantially achieved the targets, objectives and goals of its business plan and in assessing the overall competitive strength and viability of a Participant, SBA considers the totality of circumstances, including the following factors:

(1) Degree of sustained profitability;

(2) Sales trends, including improved ratio of non-8(a) sales to 8(a) sales since program entry;

(3) Business net worth, financial ratios, working capital, capitalization, and access to credit and capital;

(4) Current ability to obtain bonding;

(5) A comparison of the Participant's business and financial profiles with profiles of non-8(a) BD businesses having the same primary four-digit SIC code as the Participant;

(6) Strength of management experience, capability, and expertise; and

(7) Ability to operate successfully without 8(a) contracts.

(c) *Benchmark achievement.* SBA may graduate a Participant prior to the expiration of its program term where the Participant has substantially achieved the targets, objectives and goals of its business plan as adjusted under § 124.403(c) because of benchmark achievement.

§ 124.303 What is termination?

(a) SBA may terminate the participation of a concern in the 8(a) BD program prior to the expiration of the concern's Program Term for good cause. Examples of good cause include, but are not limited to, the following:

(1) Submission of false information in the concern's 8(a) BD application, regardless of whether correct information would have caused the concern to be denied admission to the program, and regardless of whether correct information was given to SBA in accompanying documents or by other means.

(2) Failure by the concern to maintain its eligibility for program participation.

(3) Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by disadvantaged individuals.

(4) Failure by the concern to obtain written approval from SBA for any changes in ownership, management or control pursuant to §§ 124.105 and 124.106.

(5) Failure by the concern to disclose to SBA the extent to which non-disadvantaged persons or firms participate in the management of the Participant business concern.

(6) Failure by one or more of the concern's principals to maintain good character.

(7) A pattern of failure to make required submissions or responses to SBA in a timely manner, including a failure to provide required financial statements, requested tax returns, reports, updated business plans, information requested by SBA's Office of Inspector General, or other requested information or data within 30 days of the date of request.

(8) Cessation of business operations by the concern.

(9) Failure by the concern to pursue competitive and commercial business in accordance with its business plan, or failure in other ways to make reasonable efforts to develop and achieve competitive viability.

(10) A pattern of inadequate performance by the concern of awarded section 8(a) contracts.

(11) Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.

(12) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters.

(13) Excessive transfers of funds or other business assets hindering development of the concern, or excessive withdrawals from the concern for the personal benefit of any of its owners or any person or entity affiliated with the owners. Withdrawals are excessive if they exceed:

(i) $150,000 for firms with sales up to $1,000,000;

(ii) $200,000 for firms with sales between $1,000,000 and $2,000,000; and

(iii) $300,000 for firms with sales over $2,000,000.

(14) Unauthorized use of SBA direct or guaranty loan proceeds or violation of an SBA loan agreement.

(15) Submission on behalf of a Participant of false information to SBA, including false certification of compliance with non-8(a) business activity targets under § 124.508, where responsible officials of the 8(a) BD concern knew or should have known the submission to be false.

(16) Debarment, suspension, voluntary exclusion, or ineligibility of the concern or its principals pursuant to 13 CFR part 145 or FAR subpart 9.4 (48 CFR part 9, subpart 9.4).

(17) Conduct by the concern, or any of its principals, indicating a lack of business integrity. Such conduct may be demonstrated by information in a criminal indictment, a criminal conviction, or a civil judgment.

(18) Suspension or revocation of any professional license required to run the business.

(19) Willful failure by the Participant business concern to comply with applicable labor standards and obligations.

(20) Material breach of any terms and conditions of the 8(a) BD Program Participation Agreement.

(21) Willful violation by a concern, or any of its principals, of any SBA regulation.

(b) The examples of good cause listed in paragraph (a) of this section are intended to be illustrative only. Other grounds for terminating a Participant from the 8(a) BD program for cause may exist and may be used by SBA.

§ 124.304 What are the procedures for early graduation and termination?

(a) *General.* The same procedures apply to both early graduation and termination of Participants from the 8(a) BD program.

(b) *Letter of Intent to Terminate or Early Graduate.* When SBA believes that a Participant should be terminated or graduated prior to the expiration of its program term, SBA will notify the concern in writing. The Letter of Intent to Terminate or Early Graduate will set forth the specific facts and reasons for SBA's findings, and will notify the concern that it has 30 days from the date of service of the letter to submit a written response to SBA. Service is defined in § 134.204.

(c) *Recommendation and decision.* Following the 30-day response period,

the Assistant Administrator, DPCE, will consider the proposed early graduation or termination and any information submitted in response by the concern. Upon determining that early graduation or termination is not warranted, the Assistant Administrator will notify the Participant in writing. If early graduation or termination appears warranted, the Assistant Administrator will make such a recommendation to the AA/8(a)BD, who will then make a decision whether to early graduate or terminate the concern.

(d) *Notice requirements.* Upon deciding that early graduation or termination is warranted, the AA/8(a)BD will issue a Notice of Early Graduation or Termination. The Notice will set forth the specific facts and reasons for the decision, and will advise the concern that it may appeal the decision in accordance with the provisions of part 134 of this title.

(e) *Appeal to Office of Hearings and Appeals.* Procedures governing appeals of early graduation or termination to SBA's OHA are set forth in part 134. If a Participant does not appeal a Notification of Early Graduation or Termination within 45 days of the date of service (as defined in § 134.204), the decision of the AA/8(a)BD is the final agency decision effective on the date the appeal right expired.

(f) *Effect of early graduation or termination.* After the effective date of early graduation or termination, a Participant is no longer eligible to receive any 8(a) BD program assistance. However, such concern is obligated to complete previously awarded 8(a) contracts, including any priced options which may be exercised.

§ 124.305 What is suspension and how is a Participant suspended from the 8(a) BD program?

(a) At any time after SBA issues a Letter of Intent to Terminate pursuant to § 124.304, the AA/8(a)BD may suspend 8(a) contract support and all other forms of 8(a) BD program assistance to that concern until the issue of the concern's termination from the program is finally decided. The AA/8(a)BD may suspend a Participant when he or she determines that suspension is needed to protect the interests of the Government, such as where information showing a clear lack of program eligibility or conduct indicating a lack of business integrity exists, including where the concern or one of its principals submitted false statements to the Government. SBA will suspend a Participant where SBA determines that the Participant submitted false information in its 8(a) BD application.

(b) SBA will issue a Notice of Suspension to the Participant's last known address by certified mail, return receipt requested. Suspension is effective as of the date of the issuance of the Notice. The Notice will provide the following information:

(1) The basis for the suspension;

(2) A statement that the suspension will continue pending the completion of further investigation, a final program termination determination, or some other specified period of time;

(3) A statement that awards of competitive and non-competitive 8(a) contracts, including those which have been ''self-marketed'' by a Participant, will not be made during the pendency of the suspension unless it is determined by the head of the relevant procuring agency or an authorized representative to be in the best interest of the Government to do so, and SBA adopts that determination;

(4) A statement that the concern is obligated to complete previously awarded section 8(a) contracts;

(5) A statement that the suspension is effective nationally throughout the SBA;

(6) A statement that a request for a hearing on the suspension will be considered by an Administrative Law Judge at OHA, and granted or denied as a matter of discretion.

(7) A statement that the firm's participation in the program is suspended effective on the date the Notice is issued, and that the program term will resume only if the suspension is lifted or the firm is not terminated.

(c) The applicant concern may appeal a Notice of Suspension by filing a petition in accordance with part 134 of this title with OHA within 45 days of the date of service (as defined in § 134.204) of a Notice of Suspension pursuant to paragraph (b) of this section. It is contemplated that in most cases a hearing on the issue of the suspension will be afforded if the Participant requests one, but authority to grant a hearing is within the discretion of the Administrative Law Judge in OHA. A suspension remains in effect pending the result of its appeal.

(d) SBA has the burden of showing that substantial evidence exists in support of at least one of the grounds for termination cited in the Letter of Intent to Terminate, and that protection of the Government's interest requires suspension before OHA makes a final determination regarding the termination.

(e) If there is a timely appeal, the decision of the Administrative Law Judge is the final Agency decision. If there is not a timely appeal, the decision of the AA/8(a)BD is the final Agency decision.

(f) Upon the request of SBA, OHA may consolidate suspension and termination proceedings when the issues presented are identical.

(g) Any program suspension which occurs in accordance with this part will continue in effect until such time as the SBA lifts the suspension or the Participant's participation in the program is fully terminated. If the concern is ultimately not terminated from the 8(a) BD program, the suspension will be lifted and the length of the suspension will be added to the concern's program term.

(h) SBA does not recognize the concept of de facto suspension. Adding time to the end of a Participant's program term equal to the length of a suspension will occur only where a concern's program participation has been formally suspended in accordance with the procedures set forth in this section.

(i) A suspension from 8(a) BD participation under this section has no effect on a concern's eligibility for non-8(a) Government contracts. However, a debarment or suspension under the Federal Acquisition Regulation (48 CFR chapter 1) will disqualify a concern from receiving all Government contracts, including 8(a) contracts.

Business Development

§ 124.401 Which SBA field office services a Participant?

The SBA district office which serves the geographical territory where a Participant's principal place of business is located normally will service the concern during its participation in the 8(a) BD program.

§ 124.402 How does a Participant develop a business plan?

(a) *General.* In order to assist the SBA servicing office in determining the business development needs of its portfolio Participants, each Participant must develop a comprehensive business plan setting forth its business targets, objectives, and goals.

(b) *Submission of initial business plan.* Each Participant must submit a business plan to its SBA servicing office as soon as possible after program admission. The Participant will not be eligible for 8(a) BD program benefits, including 8(a) contracts, until SBA approves its business plan.

(c) *Contents of business plan.* The business plan must contain at least the following:

(1) A detailed description of any products currently being produced and any services currently being performed

by the concern, as well as any future plans to enter into one or more new markets;

(2) The applicant's designation of its primary industry classification, as defined in § 124.3;

(3) An analysis of market potential, competitive environment, and the concern's prospects for profitable operations during and after its participation in the 8(a) BD program;

(4) An analysis of the concern's strengths and weaknesses, with particular attention on ways to correct any financial, managerial, technical, or work force conditions which could impede the concern from receiving and performing non-8(a) contracts;

(5) Specific targets, objectives, and goals for the business development of the concern during the next two years;

(6) Estimates of both 8(a) and non-8(a) contract awards that will be needed to meet its targets, objectives and goals; and

(7) Such other information as SBA may require.

§ 124.403 How is a business plan updated and modified?

(a) *Annual review.* Each Participant must annually review its business plan with its assigned Business Opportunity Specialist (BOS), and modify the plan as appropriate. The Participant must submit a modified plan and updated information to its BOS within thirty (30) days after the close of each program year. It also must submit a capability statement describing its current contract performance capabilities as part of its updated business plan.

(b) *Contract forecast.* As part of the annual review of its business plan, each Participant must annually forecast in writing its needs for contract awards for the next program year. The forecast must include:

(1) The aggregate dollar value of 8(a) contracts to be sought, broken down by sole source and competitive opportunities where possible;

(2) The aggregate dollar value of non-8(a) contracts to be sought;

(3) The types of contract opportunities to be sought, identified by product or service; and

(4) Such other information as SBA may request to aid in providing effective business development assistance to the Participant.

(c) *Benchmark achievement.* Where actual participation by disadvantaged businesses in a particular industry exceeds the benchmark limitations established by the Department of Commerce, in consultation with the General Services Administration and the SBA, for that industry, SBA may adjust the targets, objectives and goals contained in the business plans of Participants whose primary industry classification falls within that industry. Any adjustment will take into account projected decreases in 8(a) and SDB contracting opportunities.

(d) *Transition management strategy.* Beginning in the first year of the transitional stage of program participation, each Participant must annually submit a transition management strategy to be incorporated into its business plan. The transition management strategy must describe:

(1) How the Participant intends to meet the applicable non-8(a) business activity target imposed by § 124.508 during the transitional stage of participation; and

(2) The specific steps the Participant intends to take to continue its business growth and promote profitable business operations after the expiration of its program term.

§ 124.404 What business development assistance is available to Participants during the two stages of participation in the 8(a) BD program?

(a) *General.* Participation in the 8(a) BD program is divided into two stages, a developmental stage and a transitional stage. The developmental stage will last four years, and the transitional stage will last five years, unless the concern has exited the program by one of the means set forth in § 124.301 prior to the expiration of its program term.

(b) *Developmental stage of program participation.* A Participant, if otherwise eligible, may receive the following assistance during the developmental stage of program participation:

(1) Sole source and competitive 8(a) contract support;

(2) Financial assistance pursuant to § 120.385 of this title;

(3) The transfer of technology or surplus property owned by the United States pursuant to § 124.405; and

(4) Training to aid in developing business principles and strategies to enhance their ability to compete successfully for both 8(a) and non-8(a) contracts.

(c) *Transitional stage of program participation.* A Participant, if otherwise eligible, may receive the following assistance during the transitional stage of program participation:

(1) The same assistance as that provided to Participants in the developmental stage;

(2) Assistance from procuring agencies (in cooperation with SBA) in forming joint ventures, leader-follower arrangements, and teaming agreements between the concern and other Participants or other business concerns with respect to contracting opportunities outside the 8(a) BD program for research, development, or full scale engineering or production of major systems (these arrangements must comply with all relevant statutes and regulations, including applicable size standard requirements); and

(3) Training and technical assistance in transitional business planning.

§ 124.405 How does a Participant obtain Federal Government surplus property?

(a) *General.* (1) Surplus Federal Government property may be transferred to eligible Participants from State Agencies for Surplus Property (SASPs) in accordance with the procedures set forth in 41 CFR Part 101–44 and this section.

(2) The property which may be transferred to SASPs for further transfer to eligible Participants includes all personal property which has been determined to be ''donable'' as defined in 41 CFR 101–44.001–3.

(b) *Eligibility to receive Federal surplus property.* To be eligible to receive Federal surplus property, on the date of transfer a concern must:

(1) Be in the 8(a) BD program;

(2) Be in compliance with all program requirements, including any reporting requirements;

(3) Not be debarred, suspended or declared ineligible under part 9, subpart 9.4 of the Federal Acquisition Regulations, Title 48 of the Code of Federal Regulations;

(4) Not be under a pending 8(a) BD program suspension, termination or early graduation proceeding; and

(5) Be engaged or expect to be engaged in business activities making the item useful to it.

(c) *Use of acquired surplus property.* (1) Eligible Participants may acquire surplus Federal property from any SASP located in any State, provided the concern represents and agrees in writing:

(i) As to what the intended use of the surplus property is to be and that this use is consistent with the objectives of the concern's 8(a) business plan;

(ii) That it will use the property to be acquired in the normal conduct of its business activities or be liable for the fair rental value from the date of its receipt;

(iii) That it will not sell or transfer the property to be acquired to any party other than the Federal Government during its term of participation in the 8(a) program and for one year after it leaves the program;

(iv) That, at its own expense, it will return the property to a SASP or transfer

it to another Participant if directed to do so by the SBA because it has not used the property as intended within one year of receipt;

(v) That, should it breach its agreement not to sell or transfer the property, it will be liable to the Government for the established fair market value or the sale price, whichever is greater, of the property sold or transferred; and

(vi) That it will give SBA access to inspect the property and all records pertaining to it.

(2) A firm receiving surplus property pursuant to this section assumes all liability associated with or stemming from the use of the property.

(3) If the property is not placed in use for the purposes for which it was intended within one year of its receipt, SBA may direct the concern to deliver the property to another Participant or to the SASP from which it was acquired.

(4) Failure to comply with any of the commitments made under paragraph (c)(1) of this section constitutes a basis for termination from the 8(a) program.

(d) *Procedures for acquiring Federal Government surplus property.* (1) Participants may participate in the surplus property distribution program administered by the SASPs to the same extent, but with no special priority over, other authorized transferees. *See* 41 CFR subpart 101–44.2.

(2) Each Participant seeking to acquire Federal Government surplus property from a SASP must:

(i) Certify in writing to the SASP that it is eligible to receive the property pursuant to paragraph (b) of this section;

(ii) Make the written representations and agreement required by paragraph (c)(1) of this section; and

(iii) Identify to the SASP its servicing SBA field office.

(3) Upon receipt of the required certification, representations, agreement, and information set forth in paragraph (d)(2) of this section, the SASP must contact the appropriate SBA field office and obtain the SBA's verification that the concern seeking to acquire the surplus property is eligible, and that the identified use of the property is consistent with the concern's business activities. SASPs may not release property to a Participant without this verification.

(4) The SASP and the Participant must agree on and record the fair market value of the surplus property at the time of the transfer to the Participant. The SASP must provide to SBA a written record, including the agreed upon fair market value, of each transaction to a Participant when any property has been transferred.

(e) *Costs.* Participants acquiring surplus property from a SASP must pay a service fee to the SASP which is equal to the SASP's direct costs of locating, inspecting, and transporting the surplus property. If a Participant elects to incur the responsibility and the expense for transporting the acquired property, the concern may do so and no transportation costs will be charged by the SASP. In addition, the SASP may charge a reasonable fee to cover its costs of administering the program. In no instance will any SASP charge a Participant more for any service than their established fees charged to other transferees.

(f) *Title.* The title to surplus property acquired from a SASP will pass to the Participant when the Participant executes the applicable SASP distribution documents and takes possession of the property.

(g) *Compliance.* (1) SBA will periodically review whether Participants that have received surplus property have used and maintained the property as agreed. This review may include site visits to visually inspect the property to ensure that it is being used in a manner consistent with the terms of its transfer.

(2) Participants must provide SBA with access to all relevant records upon request.

(3) Where SBA receives credible information that transferred surplus property may have been disposed of or otherwise used in a manner that is not consistent with the terms of the transfer, SBA may investigate such claim to determine its validity.

(4) SBA may, either by itself or through a SASP, take any action to correct any noncompliance involving the use of transferred property still in possession of the Participant or to enforce any terms, conditions, reservations, or restrictions imposed on the property by the distribution document. Actions to enforce compliance, or which may be taken as a result of noncompliance, include the following:

(i) Requiring that the property be placed in proper use within a specified time;

(ii) Requiring that the property be transferred to another Participant having a need and use for the property, returned to the SASP serving the area where the property is located for distribution to another eligible transferee or to another SASP, or transferred through GSA to another Federal agency;

(iii) Recovery of the fair rental value of the property from the date of its receipt by the Participant; and

(iv) Initiation of proceedings to terminate the Participant from the 8(a) BD program.

(5) Where SBA finds that a recipient has sold or otherwise disposed of the acquired surplus property in violation of the agreement covering sale and disposal, the Participant is liable for the agreed upon fair market value of the property at the time of the transfer, or the sale price, whichever is greater. However, a Participant need not repay any amount where it can demonstrate to the SBA's satisfaction that the property is no longer useful for the purpose for which it was transferred and receives the SBA's prior written consent to transfer the property. For example, if a piece of equipment breaks down beyond repair, it may be disposed of without being subject to the repayment provision, so long as the concern receives the SBA's prior consent.

(6) Any funds received by the SBA in enforcement of this section will be remitted promptly to the Treasury of the United States as miscellaneous receipts.

Contractual Assistance

§ 124.501 What general provisions apply to the award of 8(a) contracts?

(a) Pursuant to section 8(a) of the Small Business Act, SBA is authorized to enter into all types of contracts with other Federal Government agencies, including contracts to furnish equipment, supplies, services, leased real property, or materials to the Government or to perform construction work for the Government, and to contract the performance of these contracts to qualified Participants. Where appropriate, SBA may delegate the contract execution function to procuring activities. In order to receive and retain a delegation of SBA's contract execution and review functions, a procuring activity must report all 8(a) contract awards, modifications, and options to SBA.

(b) 8(a) contracts may either be sole source awards or awards won through competition with other Participants.

(c) Admission into the 8(a) BD program does not guarantee that a Participant will receive 8(a) contracts.

(d) While a Participant's projected level of 8(a) contract support is required as part of its business plan as a planning and development tool, the proposed level contained in the business plan will not prevent contract awards above that level so long as:

(1) The Participant is competent and responsible to perform a particular 8(a) contract; and

(2) The Participant is in compliance with any applicable competitive

business mix target or remedial measure imposed by § 124.508.

(e) A requirement for possible award may be identified by SBA, a particular Participant or the procuring agency itself. SBA will submit the capability statements provided to SBA annually under § 124.403 to appropriate procuring agencies for the purpose of matching requirements with Participants.

(f) Participants should market their capabilities to appropriate procuring agencies to increase their prospects of receiving sole source 8(a) contracts.

(g) A concern must be a current Participant in the 8(a) BD program at the time of award, except as provided in § 124.507(d).

(h) A Participant must certify that it is a small business under the size standard corresponding to the SIC code assigned to each 8(a) contract. 8(a) BD program personnel will verify size prior to award of an 8(a) contract. If the Participant is not verified as small, it may request a formal size determination from the appropriate General Contracting Area Office under part 121 of this title.

(i) Any person or entity that misrepresents its status as a ''small business concern owned and controlled by socially and economically disadvantaged individuals'' in order to obtain any 8(a) contracting opportunity will be subject to possible criminal, civil and administrative penalties, including those imposed by section 16(d) of the Small Business Act, 15 U.S.C. 645(d).

§ 124.502 How does an agency offer a procurement to SBA for award through the 8(a) BD program?

(a) A procuring agency contracting officer indicates his or her formal intent to award a procurement requirement as an 8(a) contract by submitting an offering letter to SBA.

(b) Contracting officers must submit offering letters to the following locations:

(1) For competitive 8(a) requirements and those sole source requirements for which no specific Participant is nominated (i.e., open requirements) other than construction requirements, to the SBA district office serving the geographical area in which the procuring agency is located;

(2) For competitive and open construction requirements, to the SBA district office serving the geographical area in which the work is to be performed;

(3) For sole source requirements offered on behalf of a specific Participant, to the SBA district office servicing that concern.

(c) An offering letter must contain the following information:

(1) A description of the work to be performed or items to be delivered and a copy of the statement of work, if available;

(2) The estimated period of performance;

(3) The SIC code that applies to the principal nature of the acquisition;

(4) The anticipated dollar value of the requirement, including options, if any;

(5) Any special restrictions or geographical limitations on the requirement;

(6) The location of the work to be performed for construction procurements;

(7) Any special capabilities or disciplines needed for contract performance;

(8) The type of contract to be awarded, such as firm fixed price, cost reimbursement, or time and materials;

(9) The acquisition history, if any, of the requirement;

(10) The names and addresses of any small business contractors which have performed on this requirement during the previous 24 months;

(11) A statement that prior to the offering no solicitation for the specific acquisition has been issued as a small business set-aside, as a small disadvantaged business set-aside, or as a competitive 8(a) procurement, and that no other public communication (such as a notice in the Commerce Business Daily) has been made showing the procuring agency's clear intent to use any of these means of procurement;

(12) Identification of any specific Participant that the procuring agency contracting officer nominates for award of a sole source 8(a) contract, if appropriate, including a brief justification for the nomination, such as one of the following:

(i) The Participant, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) BD program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated concern is the incumbent;

(13) Bonding requirements, if applicable;

(14) Identification of all Participants which have expressed an interest in being considered for the acquisition;

(15) Identification of all SBA field offices which have requested that the requirement be awarded through the 8(a) BD program;

(16) A request, if appropriate, that a requirement whose estimated contract value is under the applicable competitive threshold be awarded as an 8(a) competitive contract; and

(17) Any other information that the procuring agency deems relevant or which SBA requests.

§ 124.503 How does SBA accept a procurement for award through the 8(a) BD program?

(a) *Acceptance of the requirement.* Upon receipt of the procuring agency's offer of a procurement requirement, SBA will determine whether it will accept the requirement for the 8(a) BD program. SBA's decision whether to accept the requirement will be sent to the procuring agency in writing within 10 working days of receipt of the written offering letter, unless SBA requests, and the procuring agency grants, an extension. SBA is not required to accept any particular procurement offered to the 8(a) BD program.

(1) Where SBA decides to accept an offering of a sole source 8(a) procurement, SBA will accept the offer both on behalf of the 8(a) BD program and in support of a specific Participant.

(2) Where SBA decides to accept an offering of a competitive 8(a) procurement, SBA will accept the offer on behalf of the 8(a) BD program.

(b) *Verification of SIC code.* As part of the acceptance process, SBA will verify the appropriateness of the SIC code designation assigned to the requirement by the procuring agency contracting officer.

(1) SBA will accept the SIC code assigned to the requirement by the procuring agency contracting officer as long as it is reasonable, even though other SIC codes may also be reasonable.

(2) If SBA and the procuring agency are unable to agree as to the proper SIC code designation for the requirement, SBA may either refuse to accept the requirement for the 8(a) BD program, appeal the contracting officer's determination to the head of the agency pursuant to § 124.505, or appeal the SIC code designation to OHA under part 134 of this title.

(c) *Sole source award where procuring agency nominates a specific Participant.* SBA will determine whether an appropriate match exists where the procuring agency identifies a particular Participant for a sole source award.

(1) Once SBA determines that a procurement is suitable to be accepted as an 8(a) sole source contract, SBA will normally accept it on behalf of the Participant recommended by the procuring agency, provided that:

(i) The procurement is consistent with the Participant's business plan;

(ii) The Participant complies with its applicable competitive business mix target or any remedial measures imposed by § 124.508(e);

(iii) The Participant is small for the size standard corresponding to the SIC code assigned to the requirement by the procuring agency contracting officer; and

(iv) The Participant has submitted required financial statements to SBA.

(2) If an appropriate match exists, SBA will advise the procuring agency whether SBA will participate in contract negotiations and execution of award documents or whether SBA will authorize the procuring agency to negotiate and execute award directly with the identified Participant.

(3) If an appropriate match does not exist, SBA will notify the Participant and the procuring agency, and may then nominate an alternate Participant.

(d) *Open requirements.* When a procuring agency does not nominate a particular concern for performance of a sole source 8(a) contract (open requirement), the following additional procedures will apply:

(1) If the procurement is a construction requirement, SBA will examine the portfolio of Participants that have a bona fide place of business within the geographical boundaries served by the SBA district office where the work is to be performed to select a qualified Participant. If none is found to be qualified or a match for a concern in that district is determined to be impossible or inappropriate, SBA may nominate a Participant with a bona fide place of business within the geographical boundaries served by another district office within the same state, or may nominate a Participant having a bona fide place of business out of state but within a reasonable proximity to the work site. SBA's decision will ensure that the nominated Participant is close enough to the work site to keep costs of performance reasonable.

(2) If the procurement is not a construction requirement, SBA may select any eligible, responsible Participant nationally to perform the contract.

(3) In cases in which SBA selects a Participant for possible award from among two or more eligible and qualified Participants, the selection will be based upon relevant factors, including business development needs, compliance with competitive business mix requirements (if applicable), financial condition, management ability, and technical capability.

(4) To the maximum extent practicable, SBA will promote the equitable geographic distribution of 8(a) sole source contracts.

(e) *Formal technical evaluations.* Except for the procedures set forth in subpart 36.6 of the Federal Acquisition Regulation (FAR) (48 CFR part 36, subpart 36.6) for architect-engineer services, SBA will not authorize formal technical evaluations for sole source 8(a) requirements. A procuring agency:

(1) Must request that a procurement be a competitive 8(a) award if it requires formal technical evaluations of more than one Participant for a requirement below the applicable competitive threshold amount; and

(2) May conduct informal assessments of several Participants' capabilities to perform a specific requirement, so long as the statement of work for the requirement is not released to any of the Participants being assessed.

(f) *Repetitive acquisitions.* A procuring agency contracting officer must submit a new offering letter to SBA where he or she intends to award a follow-on or repetitive contract as an 8(a) award. This enables the SBA to:

(1) Evaluate whether the requirement should be a competitive 8(a) award;

(2) Assess a nominated firm's eligibility, whether or not it is the same firm that performed the previous contract; and

(3) Determine whether the requirement should continue under the 8(a) BD program.

(g) *Basic Ordering Agreements (BOAs).* A Basic Ordering Agreement (BOA) is not a contract under the FAR. *See* 48 CFR 16.703(a). Each order to be issued under the BOA is an individual contract. As such, the procuring agency must offer, and SBA must accept, each task order under a BOA in addition to offering and accepting the BOA itself.

(1) SBA will not accept for award on a sole source basis any task order under a BOA that would cause the total dollar amount of task orders issued to exceed the applicable competitive threshold amount set forth in § 124.506(a).

(2) Where a procuring agency believes that task orders to be issued under a proposed BOA will exceed the applicable competitive threshold amount set forth in § 124.506(a), the procuring agency must offer the requirement to the program to be competed among eligible Participants.

(3) Once a concern's program term expires, the concern otherwise exits the 8(a) BD program, or becomes other than small for the SIC code assigned under the BOA, new orders will not be accepted for the concern.

§ 124.504 What circumstances limit SBA's ability to accept a procurement for award as an 8(a) contract?

SBA will not accept a procurement for award as an 8(a) contract if the circumstances identified in paragraphs (a) through (e) of this section exist.

(a) *Reservation as small business or SDB set-aside.* The procuring agency issued a solicitation for or otherwise expressed publicly a clear intent to reserve the procurement as a small business or small disadvantaged business (SDB) set-aside prior to offering the requirement to SBA for award as an 8(a) contract. The AA/8(a)BD may permit the acceptance of the requirement, however, under extraordinary circumstances. *Example.* SBA may accept a requirement where a procuring agency made a decision to offer the requirement to the 8(a) BD program before the solicitation was sent out and the procuring agency acknowledges and documents that the solicitation was in error.

(b) *Competition prior to offer and acceptance.* The procuring agency competed a requirement among Participants prior to offering the requirement to SBA and receiving SBA's formal acceptance of the requirement.

(1) Any competition conducted without first obtaining SBA's formal acceptance of the procurement for the 8(a) BD program will not be considered an 8(a) competitive requirement.

(2) SBA may accept the requirement for the 8(a) BD program as a competitive 8(a) requirement, but only if the procuring agency agrees to resolicit the requirement using appropriate competitive 8(a) procedures.

(c) *Adverse impact.* SBA has made a written determination that acceptance of the procurement for 8(a) award would have an adverse impact on an individual small business, a group of small businesses located in a specific geographical location, or other small business programs. The adverse impact concept is designed to protect small business concerns which are performing Government contracts awarded outside the 8(a) BD program, and does not apply to follow-on or renewal 8(a) acquisitions.

(1) In determining whether the acceptance of a requirement would have an adverse impact on an individual small business, SBA will consider all relevant factors.

(i) In connection with a specific small business, SBA presumes adverse impact to exist where:

(A) The small business concern has performed the specific requirement for at least 24 months;

(B) The small business is performing the requirement at the time it is offered to the 8(a) BD program, or its performance of the requirement ended within 30 days of the procuring agency's offer of the requirement to the 8(a) BD program; and

(C) The dollar value of the requirement that the small business is or was performing is 25 percent or more of its most recent annual gross sales (including those of its affiliates). For a multi-year requirement, the dollar value of the last 12 months of the requirement will be used to determine whether a small business would be adversely affected by SBA's acceptance.

(ii) Except as provided in paragraph (c)(2) of this section, adverse impact does not apply to ''new'' requirements. A new requirement is one which has not been previously procured by the relevant procuring agency.

(A) Where a requirement is new, no small business could have previously performed the requirement and, thus, SBA's acceptance of the requirement for the 8(a) BD program will not adversely impact any small business.

(B) Construction contracts by their very nature (e.g., the one-time building of a specific structure) are new requirements.

(C) The expansion or modification of an existing requirement will be considered a new requirement where the magnitude of change is significant enough to cause a price adjustment of at least 25 percent (adjusted for inflation) or to require significant additional types of capabilities.

(D) SBA need not perform an impact determination where a new requirement is offered to the 8(a) BD program.

(2) In determining whether the acceptance of a requirement would have an adverse impact on a group of small businesses, SBA will consider the effects of combining or consolidating various requirements being performed by two or more small business concerns into a single contract which would be considered a ''new'' requirement as compared to any of the previous smaller requirements. SBA may find adverse impact to exist if one of the existing small business contractors meets the presumption set forth in paragraph (c)(1)(i) of this section.

(3) In determining whether the acceptance of a requirement would have an adverse impact on other small business programs, SBA will consider all relevant factors, including but not limited to, the number and value of contracts in the subject industry reserved for the 8(a) BD program as compared with other small business programs.

(d) *Benchmark achievement.* Where actual participation by disadvantaged businesses in a particular industry exceeds the benchmark limitations established by the Department of Commerce, in consultation with the General Services Administration and the SBA, for that industry, SBA may elect not to accept a requirement offered to SBA for award as an 8(a) contract in that industry, considering the developmental needs of Participants and other anticipated contracting opportunities.

(e) *Release for non-8(a) competition.* In limited instances, SBA may decline to accept the offer of a follow-on or renewal 8(a) acquisition to give a concern previously awarded the contract that is leaving or has left the 8(a) BD program the opportunity to compete for the requirement outside the 8(a) BD program.

(1) SBA will consider release only where:

(i) The procurement awarded through the 8(a) BD program is being performed by either a Participant whose program term will expire prior to contract completion, or, by a former Participant whose program term expired within one year of the date of the offering letter;

(ii) The concern requests in writing that SBA decline to accept the offer prior to SBA's acceptance of the requirement for award as an 8(a) contract; and

(iii) The concern qualifies as a small business for the requirement now offered to the 8(a) BD program.

(2) In considering release, SBA will balance the importance of the requirement to the concern's business development needs against the business development needs of other Participants that are qualified to perform the requirement. This determination will include consideration of whether rejection of the requirement would seriously reduce the pool of similar types of contracts available for award as 8(a) contracts. SBA will seek the views of the procuring agency.

(3) If SBA declines to accept the offer and releases the requirement, it will recommend to the procuring agency that the requirement be procured as a small business or SDB set-aside.

§ 124.505 When will SBA appeal the terms or conditions of a particular 8(a) contract or a procuring agency decision not to reserve a requirement for the 8(a) BD program?

(a) *What SBA may appeal.* The Administrator of SBA may appeal the following matters to the head of the procuring agency:

(1) A contracting officer's decision not to make a particular procurement available for award as an 8(a) contract;

(2) A contracting officer's decision to reject a specific Participant for award of an 8(a) contract after SBA's acceptance of the requirement for the 8(a) BD program; and

(3) The terms and conditions of a proposed 8(a) contract, including the procuring agency's SIC code designation and estimate of the fair market price.

(b) *Procedures for appeal.* (1) SBA must notify the contracting officer of the SBA Administrator's intent to appeal an adverse decision within 5 working days of SBA's receipt of the decision.

(2) Upon receipt of the notice of intent to appeal, the procuring agency must suspend further action regarding the procurement until the head of the procuring agency issues a written decision on the appeal, unless the head of the procuring agency makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a consideration of the appeal.

(3) The SBA Administrator must send a written appeal of the adverse decision to the head of the procuring agency within 15 working days of SBA's notification of intent to appeal or the appeal may be considered withdrawn.

(4) The procuring agency head must specify in writing the reasons for a denial of an appeal brought by the Administrator under this section.

§ 124.506 At what dollar threshold must an 8(a) procurement be competed among eligible Participants?

(a) *Competitive thresholds.* A procurement offered and accepted for the 8(a) BD program must be competed among eligible Participants if:

(1) There is a reasonable expectation that at least two eligible Participants will submit offers at a fair market price;

(2) The anticipated award price of the contract, including options, will exceed $5,000,000 for contracts assigned manufacturing Standard Industrial Classification (SIC) codes and $3,000,000 for all other contracts; and

(3) The requirement has not been accepted by SBA for award as a sole source 8(a) procurement on behalf of a tribally-owned or ANC-owned concern.

(i) For all types of contracts, the applicable competitive threshold amounts will be applied to the procuring agency estimate of the total value of the contract, including all options.

(ii) Where the estimate of the total value of a proposed 8(a) contract is less than the applicable competitive threshold amount and the requirement is accepted as a sole source requirement on that basis, award may be made even though the contract price arrived at through negotiations exceeds the competitive threshold, provided that the contract price is not more than ten percent greater than the competitive threshold amount. *Example.* If the anticipated award price for a

professional services requirement is determined to be $2.7 million and it is accepted as a sole source 8(a) requirement on that basis, a sole source award will be valid even if the contract price arrived at after negotiation is $3.1 million.

(iii) A proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount may not be divided into several separate procurement actions for lesser amounts in order to use 8(a) sole source procedures to award to a single contractor.

(b) *Exemption from competitive thresholds for Participants owned by Indian tribes.* SBA may award a sole source 8(a) contract to a Participant concern owned and controlled by an Indian tribe or an ANC where the anticipated value of the procurement exceeds the applicable competitive threshold if SBA has not accepted the requirement into the 8(a) BD program as a competitive procurement. There is no requirement that a procurement must be competed whenever possible before it can be accepted on a sole source basis for a tribally-owned or ANC-owned concern, but a procurement may not be removed from competition to award it to a tribally-owned or ANC-owned concern on a sole source basis.

(c) *Competition below thresholds.* The AA/8(a)BD, on a nondelegable basis, may approve a request from a procuring agency to compete a requirement that is below the applicable competitive threshold amount among eligible Participants.

(1) This authority will be used primarily when technical competitions are appropriate or when a large number of potential awardees exist.

(2) The AA/8(a)BD will consider whether the procuring agency has made and will continue to make available a significant number of its contracts to the 8(a) BD program on a noncompetitive basis.

(3) The AA/8(a)BD will deny a request if the procuring agency previously offered the requirement to the 8(a) BD program on a noncompetitive basis and the request is made following the inability of the procuring agency and the potential sole source awardee to reach an agreement on price or some other material term or condition.

(d) *Requirements above thresholds.* Except as set forth in paragraph (b) of this section, SBA will not accept a contract opportunity above the applicable competitive threshold amount as a sole source 8(a) requirement.

§ 124.507 What procedures apply to competitive 8(a) procurements?

(a) *FAR procedures.* Procuring agencies will conduct competitions among and evaluate offers received from Participants in accordance with the Federal Acquisition Regulation (48 CFR chapter 1).

(b) *Eligibility determination by SBA.* In either a negotiated or sealed bid competitive 8(a) acquisition, the procuring agency will request that the SBA district office servicing the apparent successful offeror determine that firm's eligibility for award.

(1) Within 5 working days after receipt of a procuring agency's request for an eligibility determination, SBA will determine whether the firm identified by the procuring agency is eligible for award.

(2) Eligibility is based on 8(a) BD program criteria, including whether the Participant is:

(i) A small business under the SIC code assigned to the requirement;

(ii) In compliance with any applicable competitive business mix target established or remedial measure imposed by § 124.508 that does not include the denial of future 8(a) contracts;

(iii) In the developmental stage of program participation if the solicitation restricts offerors to the developmental stage of participation; and

(iv) A concern with a bona fide place of business in the applicable geographic area if the procurement is for construction.

(3) If SBA determines that the apparent successful offeror is ineligible, SBA will notify the procuring agency. The procuring agency will then send to SBA the identity of the next highest evaluated firm for an eligibility determination. The process is repeated until SBA determines that an identified offeror is eligible for award.

(4) Except to the extent set forth in paragraph (d) of this section, SBA determines whether a Participant is eligible for a specific 8(a) competitive requirement as of the date that the Participant submitted its initial offer which includes price.

(5) If the procuring agency contracting officer believes that the apparent successful offeror is not responsible to perform the contract, he or she must refer the concern to SBA for a possible Certificate of Competency in accord with § 125.5 of this chapter.

(6) A competitive 8(a) contract will be executed using normal 8(a) award procedures (i.e., a prime contract between the procuring agency and SBA and a contract between SBA and the selected Participant).

(7) Paragraphs (b)(5) and (b)(6) of this section do not apply if SBA has delegated contract execution authority to the procuring agency.

(c) *Restricted competition.* (1) *Competition within stages of program participation.* SBA may accept a competitive 8(a) requirement that is limited to Participants in the developmental stage of program participation or limited to concerns in the transitional stage of program participation, or may accept a requirement to be competed among firms both in the developmental and transitional stages of program participation.

(2) *Construction competitions.* Based on its knowledge of the 8(a) BD portfolio, SBA will determine whether a competitive 8(a) construction requirement should be competed among only those Participants having a bona fide place of business within the geographical boundaries of one or more SBA district offices, within a state, or within the state and nearby areas. Only those Participants with their principal places of business within the appropriate geographical boundaries are eligible to submit offers.

(3) *Competition for all non-construction requirements.* Except for construction requirements, all eligible Participants regardless of location may submit offers in response to competitive 8(a) solicitations. The only geographic restrictions pertaining to 8(a) competitive requirements, other than those for construction requirements, are any imposed by the solicitations themselves.

(d) *Award to firms whose program terms have expired.* A concern that has completed its term of participation in the 8(a) BD program may be awarded a competitive 8(a) contract if it was a Participant eligible for award of the contract on the initial date specified for receipt of offers contained in the contract solicitation, and if it continues to meet all other applicable eligibility criteria.

(1) Amendments to the solicitation extending the date for submissions of offers will be disregarded.

(2) For a negotiated procurement, a Participant may submit revised offers, including a best and final offer, and be awarded a competitive 8(a) contract if it was eligible as of the initial date specified for the receipt of offers in the solicitation, even though its program term may expire after that date.

(3) An 8(a) requirement for architect-engineer services with a value less than the competitive threshold amount and which uses the evaluation procedures prescribed by part 36, subpart 36.6 of

the Federal Acquisition Regulation (48 CFR chapter 1) will not be considered a competitive 8(a) requirement under this section for which a firm whose program term has expired may be eligible.

§ 124.508 What are competitive business mix targets?

(a) *General.* (1) To ensure that Participants do not develop an unreasonable reliance on 8(a) awards, and to ease their transition into the competitive marketplace after exiting the 8(a) BD program, Participants must make maximum efforts to obtain business outside the 8(a) BD program.

(2) During both the developmental and transitional stages of the 8(a) BD program, a Participant must make substantial and sustained efforts, including following a reasonable marketing strategy, to attain the targeted dollar levels of non-8(a) revenue established in its business plan. It must attempt to use the 8(a) BD program as a resource to strengthen the firm for economic viability when program benefits are no longer available.

(b) *Required non-8(a) business activity targets during transitional stage.* (1) *General.* During the transitional stage of the 8(a) BD program, a Participant must achieve certain targets of non-8(a) contract revenue. These targets are called non-8(a) business activity targets and are expressed as a percentage of total revenue. The targets reflect an increase in non-8(a) revenue over time.

(2) *Non-8(a) business activity targets.* Firms in the transitional stage of program participation must meet the following non-8(a) business activity targets during each year of program participation in the transitional stage:

Participant's year in the transitional stage:	Percent [1]
1	15
2	25
3	35
4	45
5	55

[1] Competitive business mix targets (required minimum non-8(a) revenue as a percentage of total revenue)

(3) *Compliance with competitive business mix targets.* Compliance with the applicable competitive business mix target is measured at the end of any program year in the transitional stage of program participation based on the Participant's latest fiscal year-end total revenue (e.g., at the end of the first year in the transitional stage of program participation, non-8(a) revenue is compared to total revenue). Remedial measures, if appropriate, will be imposed during the subsequent program year (e.g., non-compliance with the required business activity target in year one of the transitional stage of program participation would cause SBA to initiate remedial measures under paragraph (d) of this section for year two in the transitional stage).

(4) *Certification of compliance.* A Participant must certify that it complies with the applicable competitive business mix target or with the measures imposed by SBA under paragraph (d) of this section before it receives any 8(a) contract during the transitional stage of the 8(a) BD program.

(c) *Reporting and verification of business activity.* (1) Once admitted to the 8(a) BD program, a Participant must provide to SBA as part of its annual review:

(i) Annual financial statements with a breakdown of 8(a) and non-8(a) revenue in accord with § 124.602; and

(ii) An annual report within 30 days from the end of the program year of all non-8(a) contracts, options, and modifications affecting price executed during the program year.

(2) At the end of each year of participation in the transitional stage, the BOS assigned to work with the Participant will review the Participant's total revenues to determine whether the non-8(a) revenues have met the applicable target.

(d) *Consequences of not meeting competitive business mix targets.* (1) Beginning at the end of the first year in the transitional stage (the fifth year of participation in the 8(a) BD program), any firm that does not meet its applicable competitive business mix target for the just completed program year will be ineligible for sole source 8(a) contracts in the current program year, unless and until the Participant corrects the situation as described in paragraph (d)(2) of this section.

(2) If SBA determines that an 8(a) Participant has failed to meet its applicable competitive business mix target during any program year in the transitional stage of program participation, SBA may increase its monitoring of the Participant's contracting activity during the ensuing program year. SBA will also notify the Participant in writing that the Participant will not be eligible for further 8(a) sole source contract awards until it has demonstrated to SBA that it has complied with its competitive business mix requirements as described in paragraphs (d)(2) (i) and (ii) of this section. In order for a Participant to come into compliance with the competitive business mix target and be eligible for further 8(a) sole source contracts, it may:

(i) Wait until the end of the current program year and demonstrate to SBA as part of the normal annual review process that it has met the revised competitive business mix target; or

(ii) At its option, submit information regarding its non-8(a) revenue to SBA quarterly throughout the current program year in an attempt to come into compliance before the end of the current program year. If the Participant satisfies the requirements of paragraphs (d)(2)(ii)(A) or (d)(2)(ii)(B) of this section, SBA will reinstate its ability to get sole source 8(a) contracts prior to its annual review.

(A) During the first six months of the current program year (i.e., at either the first or second quarterly review), the Participant must demonstrate that it has received non-8(a) revenue and new non-8(a) contract awards that are equal to or greater than the dollar amount by which it failed to meet its competitive business mix target for the just completed program year. For this purpose, SBA does not count options on existing non-8(a) contracts in determining whether a Participant has received new non-8(a) contract awards; or

(B) During the last six months of the current program year (i.e., at either the nine-month or one year review), it has achieved its competitive business mix target as of that point in the current program year.

Example 1 to paragraph (d)(2). Firm A had $10 million in total revenue during year 2 in the transitional stage (year 6 in the program), but failed to meet the minimum competitive business mix target of 25 percent. It had 8(a) revenues of $8.5 million and non-8(a) revenues of $1.5 million. Based on total revenues of $10 million, Firm A should have had at least $2.5 million in non-8(a) revenues. Thus, Firm A missed its target by $1 million (its target ($2.5 million) minus its actual non-8(a) revenues ($1.5 million)). Because Firm A did not achieve its competitive business mix target, it cannot receive 8(a) sole source awards until correcting that situation. The firm may wait until the next annual review to establish that it has met the revised target, or it can choose to report contract awards and other non-8(a) revenue to SBA quarterly. Firm A elects to submit information to SBA quarterly in year 3 of the transitional stage (year 7 in the program). In order to be eligible for sole source 8(a) contracts after either its 3 month or 6 month review, Firm A must show that it has received non-8(a) revenue and/or been awarded new non-8(a) contracts totaling $1 million (the amount by which it missed its target in year 2 of the transitional stage).

Example 2 to paragraph (d)(2). Firm B had $10 million in total revenue during year 2 in the transitional stage (year 6 in the program), of which $8.5 million were 8(a) revenues and $1.5 million were non-8(a) revenues. At its first two quarterly reviews during year 3 of the transitional stage (year 7 in the program),

Firm B could not demonstrate that it had received at least $1 million in non-8(a) revenue and new non-8(a) awards. In order to be eligible for sole source 8(a) contracts after its 9 month or 1 year review, Firm B must show that at least 35% (the competitive business mix target for year 3 in the transitional stage) of all revenues received during year 3 in the transitional stage as of that point are from non-8(a) sources.

(3) In determining whether a Participant achieved its required competitive business mix target at the end of any program year in the transitional stage, or whether a Participant that failed to meet the target for the previous program year has achieved the required level of non-8(a) business at its nine-month review, SBA measures 8(a) support by adding the base year value of all 8(a) contracts awarded during the applicable program year to the value of all options and modifications executed during that year.

(4) As a condition of eligibility for new 8(a) contracts, SBA may also impose other requirements on a Participant that fails to achieve the competitive business mix targets. These include requiring the Participant to obtain management assistance, technical assistance, and/or counseling, and/or attend seminars relating to management assistance, business development, financing, marketing, accounting, or proposal preparation.

(5) SBA will initiate proceedings to terminate a Participant from the 8(a) BD program where the firm makes no good faith efforts to obtain non-8(a) revenues.

§ 124.509 What percentage of work must a Participant perform on an 8(a) contract?

(a) To assist the business development of Participants in the 8(a) BD program, an 8(a) contractor must perform certain percentages of work with its own employees. These percentages and the requirements relating to them are the same as those established for small business set-aside prime contractors, and are set forth in § 125.6 of this title.

(b) A Participant must certify in its offer that it will meet the applicable percentage of work requirement. SBA will determine compliance as of the date of best and final offers for a negotiated procurement, and as of the date of bid opening for sealed bid procurements.

(c) *Indefinite quantity contracts.* (1) In order to ensure that the required percentage of an indefinite quantity 8(a) award is performed by the Program Participant, at any point in time the Participant must have performed the required percentage of the total value of the contract to that date. For a service or supply contract, this does not mean that the Participant must perform 50 percent of each task order with its own force. But, rather, the Participant is required to perform 50 percent of the combined total of all task orders to date. The applicable SBA District Director or his/her designee may waive this requirement in writing where a large amount of contracting is essential in the early stages of performance before the work to be done by the Participant can be performed, provided that there are written assurances from both the Participant and the procuring agency that the contract will ultimately comply with the requirements of this section. *Example.* If a Program Participant performed 90% of a $100,000 task order on an indefinite quantity service contract with its own work force, it would have to perform only 10 percent of a second task order for $100,000 because the concern would still have performed 50% of the combined total value of the contract to date ($100,000 out of $200,000).

(2) Where there is a guaranteed minimum condition in an indefinite quantity 8(a) award, the required performance of work percentage need not be met on the first task order. In such a case, however, the percentage of work that a Program Participant may further contract to other concerns on the first task order may not exceed 50 percent of the total guaranteed minimum dollar value to be provided by the contract. If the first task order exceeds 50 percent of the guaranteed minimum amount, the Participant may contract no more than 50 percent of the guaranteed amount. Once the guaranteed minimum amount is met, the general rule for indefinite quantity contracts set forth in paragraph (c)(1) of this section applies. *Example.* Where a contract guarantees a minimum of $100,000 in professional services and the first task order is for $60,000 in such services, the Program Participant may perform as little as $10,000 of that order. In such a case, however, the Participant must perform all of the next task order(s) up to $40,000 to ensure that it performs 50% of the $100,000 guaranteed minimum ($10,000 + $40,000 = $50,000, or 50% of $100,000).

§ 124.510 How is fair market price determined for an 8(a) contract?

(a) The procuring agency determines what constitutes a ''fair market price'' for an 8(a) contract.

(1) The procuring agency must derive the estimate of a current fair market price for a new requirement, or a requirement that does not have a satisfactory procurement history, from a price or cost analysis. This analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. The analysis must also consider any cost or pricing data that is timely submitted by the SBA.

(2) The procuring agency must base the estimate of a current fair market price for a requirement that has a satisfactory procurement history on recent award prices adjusted to ensure comparability. Adjustments will take into account differences in quantities, performance, times, plans, specifications, transportation costs, packaging and packing costs, labor and material costs, overhead costs, and any other additional costs which may be appropriate.

(b) Upon the request of SBA, a procuring agency will provide to SBA a written statement detailing the method used by the agency to estimate the current fair market price for the 8(a) requirement. This statement must be submitted within 10 working days of SBA's request. The procuring agency must identify the information, studies, analyses, and other data it used in making its estimate.

(c) The procuring agency's estimate of fair market price and any supporting data may not be disclosed by SBA to any Participant or potential contractor.

(d) The concern selected to perform an 8(a) contract may request SBA to protest the procuring agency's estimate of current fair market price to the Secretary of the Department or head of the agency in accordance with § 124.505.

§ 124.511 Delegation of contract administration to procuring agencies.

(a) SBA may delegate, by the use of special clauses in the 8(a) contract documents or by a separate agreement with the procuring agency, all responsibilities for administering an 8(a) contract to the procuring agency except the approval of novation agreements under 48 CFR 42.302(a)(25).

(b) Because of this delegation of contract administration, a contracting officer may execute any priced option or in scope modification without SBA's concurrence. The contracting officer must, however, notify SBA of all modifications and options exercised.

§ 124.512 Under what circumstances can a joint venture be awarded an 8(a) contract?

(a) *General.* (1) If approved by SBA, a Participant may enter into a joint venture agreement with another small business concern, whether or not an 8(a) Participant, for the purpose of performing a specific 8(a) contract.

(2) A joint venture agreement is permissible only where an 8(a) concern

lacks the necessary capacity to perform the contract on its own, and the agreement is fair and equitable and will be of substantial benefit to the 8(a) concern. However, where SBA concludes that an 8(a) concern brings very little to the joint venture relationship except its 8(a) status, SBA will not approve the joint venture arrangement.

(b) *Size of concerns to an 8(a) joint venture.* (1) A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(i) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract;

(ii) For a procurement having an employee-based size standard, the procurement exceeds $10 million;

(iii) The size of at least one 8(a) Participant to the joint venture is less than one half the size standard corresponding to the SIC code assigned to the contract; and

(iv) The 8(a) Participant(s) identified in paragraph (b)(1)(iii) of this section must perform the applicable percentage of work required by § 124.509.

(2) Except as provided in § 124.519, for sole source and competitive 8(a) procurements that do not exceed the dollar levels identified in paragraph (b)(1) of this section, an 8(a) Participant entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the SIC code assigned to the 8(a) contract.

(c) *Contents of joint venture agreement.* Every joint venture agreement to perform an 8(a) contract, including those between mentors and proteges authorized by § 124.519, must contain a provision:

(1) Setting forth the purpose of the joint venture;

(2) Designating an 8(a) Participant as the lead entity of the joint venture, and an employee of the lead entity as the project manager responsible for performance of the 8(a) subcontract;

(3) Stating that not less than 51 percent of the net profits earned by the joint venture be distributed to the 8(a) Participant(s);

(4) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on an 8(a) contract will be deposited in the special account from which all expenses incurred under the contract will be paid;

(5) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each;

(6) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract;

(7) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the lead 8(a) concern, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request;

(8) Requiring the final original records be retained by the lead 8(a) concern upon completion of the 8(a) contract performed by the joint venture;

(9) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and

(10) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.

(d) *Prior approval by SBA.* SBA must approve a joint venture agreement prior to the award of an 8(a) contract on behalf of the joint venture.

(e) *Contract execution.* Where SBA has approved a joint venture, the procuring agency will execute an 8(a) contract in the name of the 8(a) Participant(s), not the joint venture entity.

(f) *Obligation of performance.* All parties to the joint venture must sign such documents as are necessary to obligate themselves to ensure performance of the 8(a) contract.

(g) *Performance of work by 8(a) concern(s).* The 8(a) partner(s) to an eligible joint venture, and not the aggregate of all parties to the joint venture, must perform the percentages of work required by § 124.510. Employees furnished by the 8(a) Participant(s) or hired through normal employment channels by the joint venture are considered to be employees of the 8(a) Participant(s) for this purpose.

(h) *Amendments to joint venture agreement.* All amendments to the joint venture agreement must be approved by SBA.

(i) *Inspection of records.* SBA may inspect the records of the joint venture without notice at any time deemed necessary.

§ 124.513 Exercise of 8(a) options and modifications.

(a) *Unpriced options.* The exercise of an unpriced option is considered to be a new contracting action.

(1) If a concern has exited the 8(a) BD program or is no longer small under the size standard corresponding to the SIC code for the requirement, negotiations to price the option cannot be entered into and the option cannot be exercised.

(2) If the concern is still a Participant and otherwise eligible for the requirement on a sole source basis, the procuring agency contracting officer may negotiate price and exercise the option provided the option, considered a new contracting action, meets all regulatory requirements, including SBA's acceptance of the requirement for the 8(a) BD program.

(3) If the estimated fair market price of the option exceeds the applicable threshold amount set forth in § 124.506, the requirement must be competed as a new contract among eligible Participants.

(b) *Priced options.* The procuring agency contracting officer may exercise a priced option to an 8(a) contract whether the concern that received the award has exited the 8(a) BD program or is no longer eligible if to do so is in the best interests of the Government.

(c) *Modifications beyond the scope.* A modification beyond the scope of the initial 8(a) contract award is considered to be a new contracting action. It will be treated the same as an unpriced option as described in paragraph (a) of this section.

(d) *Modifications within the scope.* The procuring agency contracting officer may exercise a modification within the scope of the initial 8(a) contract whether the concern that received the award has exited the 8(a) BD program or is no longer eligible if to do so is in the best interests of the Government.

§ 124.514 Can a Participant change its ownership or control and continue to perform an 8(a) contract, and can it transfer performance to another firm?

(a) An 8(a) contract must be performed by the Participant that initially received it unless a waiver is granted under paragraph (b) of this section.

(1) An 8(a) contract, whether in the base or an option year, must be terminated for the convenience of the Government if one or more of the individuals upon whom eligibility for the 8(a) BD program was based relinquishes or enters into any agreement to relinquish ownership or control of the Participant such that the Participant would no longer be controlled or at least 51% owned by disadvantaged individuals.

(2) An 8(a) contract, whether in the base or an option year, must be terminated for the convenience of the Government if the contract is transferred or novated for any reason to another firm.

(3) The procuring agency may not assess repurchase costs or other damages against the Participant due solely to the provisions of this section.

(b) The SBA Administrator may waive the requirements of paragraphs (a)(1) and (a)(2) of this section if requested to do so by the 8(a) contractor when:

(1) It is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing;

(2) Ownership and control of the concern that is performing the 8(a) contract will pass to another Participant, but only if the acquiring firm would otherwise be eligible to receive the award directly as an 8(a) contract;

(3) Any individual upon whom eligibility was based is no longer able to exercise control of the concern due to physical or mental incapacity or death;

(4) The head of the procuring agency, or an official with delegated authority from the agency head, certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions; and

(5) It is necessary for the disadvantaged owners of the initial 8(a) awardee to relinquish ownership of a majority of the voting stock of the concern in order to raise equity capital, but only if —

(i) The concern has exited the 8(a) BD program;

(ii) The disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

(iii) The disadvantaged owners will maintain control of the daily business operations of the concern.

(c) The 8(a) contractor must request a waiver in writing prior to the relinquishment of ownership and control except in the case of death or incapacity. A request for waiver due to incapacity or death must be submitted within 60 days after such occurrence. The Participant seeking to relinquish ownership or control must specify the grounds upon which it requests a waiver, and must demonstrate that the proposed transaction would meet such grounds.

(d) SBA determines the eligibility of an acquiring Participant under paragraph (b)(2) of this section by referring to the items identified in § 124.507(b)(2) and deciding whether prior to the transaction the acquiring Participant is a responsible and eligible concern with respect to each contract to be transferred.

(e) Anyone other than a procuring agency head who submits a certification regarding the impairment of the agency's objectives under paragraph (b)(4) of this section, must also certify delegated authority to make the certification.

(f) A concern performing an 8(a) contract must notify the SBA in writing immediately upon entering into an agreement or agreement in principle (either oral or written) to transfer all or part of its stock or other ownership interest or assets to any other party. Such an agreement could include an oral agreement to enter into a transaction to transfer interests in the future.

(g) The Administrator has discretion to decline a request for waiver even though legal authority exists to grant the waiver.

(h) The 8(a) contractor may appeal SBA's denial of a waiver request by filing a petition with OHA pursuant to part 134 of this title within 45 days of the date of service (as defined in § 134.204) of the Agency decision.

§ 124.515 Who decides contract disputes arising between a Participant and a procuring agency after the award of an 8(a) contract?

For purposes of the Disputes Clause of a specific 8(a) contract, the contracting officer is that of the procuring agency. A dispute arising between an 8(a) contractor and the procuring agency contracting officer will be decided by the procuring agency, and appeals may be taken by the 8(a) contractor without SBA involvement.

§ 124.516 Can the eligibility or size of a Participant for award of an 8(a) contract be questioned?

(a) The eligibility of a Participant for a sole source or competitive 8(a) requirement may not be challenged by another Participant or any other party, either to SBA or any administrative forum as part of a bid or other contract protest.

(b) The size status of the apparent successful offeror for a competitive 8(a) procurement may be protested pursuant to § 121.1001(a)(2) of this chapter. The size status of a nominated Participant for a sole source 8(a) procurement may not be protested by another Participant or any other party.

(c) A Participant cannot appeal SBA's determination not to award it a specific 8(a) contract because the concern lacks an element of responsibility or is ineligible for the contract, other than the right set forth in § 124.501(h) to request a formal size determination where SBA cannot verify it to be small.

(d)(1) The SIC code assigned to a sole source 8(a) requirement may not be challenged by another Participant or any other party either to SBA or any administrative forum as part of a bid or contract protest. Only the AA/8(a)BD may appeal a SIC code designation with respect to a sole source 8(a) requirement.

(2) In connection with a competitive 8(a) procurement, any interested party who has been adversely affected by a SIC code designation may appeal the designation to SBA's OHA pursuant to § 121.1103 of this chapter.

(e) Anyone with information questioning the eligibility of a Participant to continue participation in the 8(a) BD program or for purposes of a specific 8(a) contract may submit such information to SBA under § 124.112(c).

§ 124.517 How can an 8(a) contract be terminated before performance is completed?

(a) *Termination for default.* A decision to terminate a specific 8(a) contract for default can be made by the procuring agency contracting officer after consulting with SBA. The contracting officer must advise SBA of any intent to terminate an 8(a) contract for default in writing before doing so. SBA may provide to the Participant any program benefits reasonably available in order to assist it in avoiding termination for default. SBA will advise the contracting officer of this effort. Any procuring agency contracting officer who believes grounds for termination continue to exist may terminate the 8(a) contract for default, in accordance with the FAR (48 CFR chapter 1). SBA will have no liability for termination costs or reprocurement costs.

(b) *Termination for convenience.* After consulting with SBA, the procuring agency contracting officer may terminate an 8(a) contract for convenience when it is in the best interests of the Government to do so. A termination for convenience is appropriate if any disadvantaged owner

of the Participant performing the contract relinquishes ownership or control of such concern, or enters into any agreement to relinquish such ownership or control, unless a waiver is granted pursuant to § 124.514.

(c) *Substitution of one 8(a) contractor for another.* Where a procuring agency contracting officer demonstrates to SBA that an 8(a) contract will otherwise be terminated for default, SBA may authorize another Participant to complete performance and, in conjunction with the procuring agency, permit novation of the contract without invoking the termination for convenience or waiver provisions of § 124.514.

§ 124.518 Are there any dollar limits on the amount of 8(a) contracts that a Participant may receive?

(a) A Participant (other than one owned by an Indian tribe or an ANC) may not receive sole source 8(a) contract awards where it has received 8(a) contracts in excess of the dollar amount set forth in this section during its participation in the 8(a) BD program.

(1) For a firm having a revenue-based primary SIC code at time of program entry, the limit above which it can no longer receive sole source 8(a) contracts is five times the size standard corresponding to that SIC code or $100,000,000, whichever is less.

(2) For a firm having an employee-based primary SIC code at time of program entry, the limit above which it can no longer receive sole source 8(a) contracts is $100,000,000.

(3) SBA will not consider 8(a) contracts awarded under $100,000 in determining whether a Participant has reached the limit identified in paragraphs (a)(1) and (a)(2) of this section.

(b) Once the limit is reached, a firm could not receive any more 8(a) sole source contracts, but could remain eligible for competitive 8(a) awards.

(c) The limitation set forth in paragraph (a) of this section will not apply for firms that are current Participants in the 8(a) BD program as of December 31, 1996.

(d) SBA includes the dollar value of 8(a) options and modifications in determining whether a Participant has reached the limit identified in paragraph (a) of this section. If an option is not exercised or the contract value is reduced by modification, SBA will deduct those values.

(e) A Participant's eligibility for a sole source award is measured as of the date of award without taking into account whether the value of that award will cause the limit to be exceeded.

§ 124.519 Mentor/protege program.

(a) *Who can be a mentor?* Concerns that have graduated from the 8(a) BD program and those that are in the transitional stage of program participation may mentor developing 8(a) Participants and receive benefits as set forth in this section. This could include businesses that have become large.

(1) In order to qualify as a mentor, a concern must demonstrate that it:

(i) Possesses favorable financial health, including profitability for at least the last two years;

(ii) Possesses good character; and

(iii) Can impart value to a protege firm due to lessons learned and practical experience gained because of the 8(a) BD program.

(2) A mentor could have no more than one protege at a time.

(3) In order to demonstrate its favorable financial health, a firm seeking to be a mentor must submit its federal tax returns for the last two years to SBA for review.

(4) Once approved, a mentor must annually certify that it continues to possess good character and a favorable financial position.

(b) *Proteges.* (1) In order to be a protege firm, a Participant must:

(i) Be in the developmental stage of program participation;

(ii) Have never received an 8(a) contract; or

(ii) Have a size that is less than half the size standard corresponding to its primary SIC code.

(2) Only firms that are in good standing in the 8(a) BD program (e.g., firms that do not have termination proceedings against them, and are up to date with all reporting requirements) may qualify as a protege.

(3) A protege firm can have only one mentor at a time.

(c) *Benefits.* (1) A mentor and protege can joint venture as a small business for any government procurement, including procurements less than half the size standard corresponding to the assigned SIC code and 8(a) sole source contracts, provided the protege qualifies as small for the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in § 124.518.

(2) Notwithstanding the requirements set forth in §§ 124.105(g) and (h), in order to raise capital for the protege firm, the mentor may own an equity interest of up to 33% in the protege firm.

(3) Notwithstanding the mentor/protege relationship, a protege firm may qualify for other assistance as a small business, including SBA financial assistance.

(d) *Written agreement.* (1) The mentor and protege firms must enter a written agreement whereby the mentor commits to provide management and/or technical assistance to the protege firm for at least one year.

(2) The written agreement must be approved by the AA/8(a) BD.

(3) The protege firm must have the right to terminate the agreement with 30 days advance notice to the mentor and to SBA.

(4) Once approved, the protege must annually certify to SBA that there has been no change in the terms of the agreement.

Miscellaneous Reporting Requirements

§ 124.601 What reports does SBA require on parties assisting Participants in obtaining federal contracts?

(a) Each Participant must submit annually a written report to its assigned BOS that includes a listing of any agents, representatives, attorneys, accountants, consultants and other parties (other than employees) receiving fees, commissions, or compensation of any kind to assist such participant in obtaining a Federal contract. The listing must indicate the amount of compensation paid and a description of the activities performed for such compensation.

(b) Failure to submit the report is good cause for the initiation of a termination proceeding pursuant to §§ 124.303 and 124.304.

§ 124.602 What kind of annual financial statement must a Participant submit to SBA?

(a) Participants with gross annual receipts of more than $5,000,000 must submit to SBA audited annual financial statements prepared by a licensed independent public accountant within 120 days after the close of the concern's fiscal year.

(1) The servicing SBA District Director may waive the requirement for audited financial statements for good cause shown by the Participant.

(2) Circumstances where waivers of audited financial statements may be granted include, but are not limited to, the following:

(i) The concern has an unexpected increase in sales towards the end of its fiscal year that creates an unforeseen requirement for audited statements;

(ii) The concern unexpectedly experiences severe financial difficulties which would make the cost of audited financial statements a particular burden; and

(iii) The concern has been a Participant less than 12 months.

(b) Participants with gross annual receipts between $1,000,000 and $5,000,000 must submit to SBA reviewed annual financial statements prepared by a licensed independent public accountant within 90 days after the close of the concern's fiscal year.

(c) Participants with gross annual receipts of less than $1,000,000 must submit to SBA an annual statement prepared in-house or a compilation statement prepared by a licensed independent public accountant, verified as to accuracy by an authorized officer, partner, limited liability member, or sole proprietor of the Participant, including signature and date, within 90 days after the close of the concern's fiscal year.

(d) Any audited or reviewed financial statements submitted to SBA pursuant to paragraphs (a) or (b) of this section must be prepared in accordance with Generally Accepted Accounting Principles.

(e) While financial statements need not be submitted until 90 or 120 days after the close of a Participant's fiscal year, depending on the receipts of the concern, a Participant seeking to be awarded an 8(a) contract between the close of its fiscal year and such 90 or 120-day time period must submit a final sales report signed by the CEO or President to SBA in order for SBA to determine the concern's eligibility for the 8(a) contract. This report must show a breakdown of 8(a) and non-8(a) sales.

(f) Notwithstanding the amount of a concern's gross annual receipts, SBA may require audited or reviewed statements whenever they are needed to obtain more complete information as to a concern's assets, liabilities, income or expenses, such as when the concern's capacity to perform a specific 8(a) contract must be determined, or when they are needed to determine continued program eligibility.

§ 124.603 What reports regarding the continued business operations of former Participants does SBA require?

Former Participants shall provide such information as SBA may request concerning such former Participant's continued business operations, contracts and financial condition for a period of three years following the date on which the concern exits the program. Failure to provide such information when requested will constitute a violation of this part, and may result in the nonexercise of options on or termination of contracts awarded through the 8(a) BD program, debarment, or other legal recourse.

Management and Technical Assistance Program

§ 124.701 What is the purpose of the 7(j) management and technical assistance program?

Section 7(j)(1) of the Small Business Act, 15 U.S.C. 636(j)(1), authorizes SBA to enter into grants, cooperative agreements, or contracts with public or private organizations to pay all or part of the cost of technical or management assistance for individuals or concerns eligible for assistance under sections 7(a)(11), 7(j)(10), or 8(a) of the Small Business Act.

§ 124.702 What types of assistance are available through the 7(j) program?

Through its private sector service providers, SBA may provide a wide variety of management and technical assistance to eligible individuals or concerns to meet their specific needs, including:

(a) Counseling and training in the areas of financing, management, accounting, bookkeeping, marketing, and operation of small business concerns; and

(b) The identification and development of new business opportunities.

§ 124.703 Who is eligible to receive 7(j) assistance?

The following businesses are eligible to receive assistance from SBA through its service providers:

(a) Businesses which qualify as small within the meaning of size standards prescribed in 13 CFR part 121, and which are located in urban or rural areas with a high proportion of unemployed or low-income individuals, or which are owned by such low-income individuals; and

(b) Businesses eligible to receive 8(a) contracts.

§ 124.704 What additional management and technical assistance is reserved exclusively for concerns eligible to receive 8(a) contracts?

In addition to the management and technical assistance available under § 124.702, Section 7(j)(10) of the Small Business Act authorizes SBA to provide additional management and technical assistance through its service providers exclusively to small business concerns eligible to receive 8(a) contracts, including:

(a) Assistance to develop comprehensive business plans with specific business targets, objectives, and goals;

(b) Other nonfinancial services necessary for a Participant's growth and development, including loan packaging; and

(c) Assistance in obtaining equity and debt financing.

Subpart B—Eligibility, Certification, and Protests Relating to Federal Small Disadvantaged Business Programs

§ 124.1001 General applicability.

(a) This subpart defines a Small Disadvantaged Business (SDB). It also sets forth procedures by which a firm can apply to be recognized as an SDB, including procedures to be used by private sector entities approved by SBA for determining whether a particular concern is owned and controlled by one or more disadvantaged individuals. Finally, this subpart establishes procedures by which SBA determines whether a particular concern qualifies as an SDB in response to a protest challenging the firm's status as disadvantaged.

(b) Only small firms that have been found to be owned and controlled by disadvantaged individuals and appear on the SBA-maintained list of qualified SDBs are eligible to participate in Federal SDB set-aside, price evaluation adjustment, evaluation factor or subfactor, or monetary subcontracting incentive programs, or SBA's section 8(d) subcontracting program.

§ 124.1002 What is a Small Disadvantaged Business (SDB)?

(a) *Reliance on 8(a) criteria.* In determining whether a firm qualifies as an SDB, use the definitions of social and economic disadvantage and other eligibility requirements established in subpart A of this part, including the requirements placed on ownership and control and disadvantaged status, unless otherwise provided in this subpart. Qualified private certifiers must use those requirements applicable to ownership and control in determining whether a particular firm is actually owned and controlled by individuals claiming disadvantaged status.

(b) *SDB eligibility criteria.* A small disadvantaged business (SDB) is a concern:

(1) Which qualifies as small under part 121 of this title for the size standard corresponding to the applicable four digit Standard Industrial Classification (SIC) code.

(i) For purposes of SDB certification, the applicable SIC code is that which relates to the primary business activity of the concern;

(ii) For purposes of an SDB protest, the applicable SIC code is that assigned by the contracting officer to the procurement at issue;

(2) Which is at least 51 percent unconditionally owned by one or more

socially and economically disadvantaged individuals, as defined by §§ 124.103 and 124.104 and paragraph (c) of this section, an Indian tribe, an Alaska Native Corporation (ANC), a Native Hawaiian Organization, or a Community Development Corporation (CDC) (See ownership requirements set forth in § 124.105, and those in §§ 124.109, 124.110, and 124.111 pertaining to concerns owned by tribes and ANCs, Native Hawaiian Organizations, or CDCs, respectively);

(3) Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals (See control requirements set forth in § 124.106; but see § 124.109(c)(4) for firms owned by Indian tribes or ANCs, and § 124.111(b) for firms owned by CDCs); and

(4) Which, for purposes of SDB set-asides and SDB evaluation adjustments relating to the Department of Defense, NASA and the Coast Guard only, has the majority of its earnings accruing directly to the socially and economically disadvantaged individuals.

(c) *Disadvantaged status.* In assessing the personal financial condition of an individual claiming economic disadvantage, the net worth must be less than $750,000 after taking into account the applicable exclusions set forth in § 124.104(c)(2).

(d) *Additional eligibility criteria.* Each individual claiming disadvantaged status must be a citizen of the United States and possess good character. See § 124.108(a).

(e) *Potential for success not required.* The potential for success requirement set forth in § 124.107 does not apply.

(f) *Joint ventures.* Joint ventures are permitted for Small Disadvantaged Business (SDB) set-asides and SDB evaluation adjustments, provided that the requirements set forth in this paragraph are met.

(1) The disadvantaged participant to the joint venture must be a certified SDB and appear on the list of qualified SDBs;

(2) For purposes of this paragraph, the term joint venture means two or more concerns forming an association to engage in and carry out a single, specific business venture for joint profit. Two or more concerns that form an ongoing relationship to conduct business would not be considered ''joint venturers'' within the meaning of this paragraph, and would also not be eligible as an entity owned and controlled by one or more socially and economically disadvantaged individuals.

(3) A concern that is owned and controlled by one or more socially and economically disadvantaged individuals entering into a joint venture agreement with one or more other business concerns is considered to be affiliated for size purposes with such other concern(s). The combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the SIC code designated for the contract.

(4) The majority of the venture's earnings must accrue directly to the socially and economically disadvantaged individuals in the SDB concern(s) in the joint venture.

(5) The percentage ownership involvement in a joint venture by disadvantaged individuals must be at least 51 percent.

Example 1 to paragraph (b)(5). Small business concern A is 100% owned by disadvantaged individuals. Small business concern B is 100% owned by nondisadvantaged individuals. The percentage involvement by concern A in a joint venture between A and B must be at least 51%.

Example 2 to paragraph (b)(5). Small business concern C is 51% owned by disadvantaged individuals. Small business concern D is 100% owned by nondisadvantaged individuals. Any joint venture between C and D would be ineligible because the amount of ownership involvement in such a joint venture by disadvantaged individuals would be less than 51%. Even a 90% involvement by concern C in a joint venture with D would mean an overall ownership involvement by disadvantaged individuals of only 45.9% (51% of 90), and an overall ownership involvement by nondisadvantaged individuals of 54.1% (10 + (49% of 90)).

(g) *Performance of work.* In order to be awarded a Federal contract reserved for SDB participation or through an SDB evaluation adjustment, a certified SDB must agree to perform certain percentages of work with its own employees. These percentages and the requirements relating to them are set forth in § 125.6 of this title.

§ 124.1003 What is a Private Certifier?

A Private Certifier is an organization or business concern approved by SBA to determine whether firms are owned and controlled by one or more individuals claiming disadvantaged status.

§ 124.1004 How does an organization or business concern become a Private Certifier?

(a) SBA may execute no-cost contracts with organizations or business concerns seeking to become Private Certifiers. Any such contract will include provisions for the oversight, monitoring, and evaluation of all certification activities by SBA.

(b) The organization or business concern must demonstrate a knowledge of SBA's regulations regarding ownership and control, as well as business organizations and the legal principles affecting their ownership and control generally, including stock issuances, voting rights, convertability of debt to equity, options, and powers and responsibilities of officers and directors, general and limited partners, and limited liability members.

(c) The organization or concern must also, along with its principals, demonstrate good character. Good character does not exist for these purposes if the organization or concern or any of its principals:

(1) Are debarred or suspended under any Federal procurement or non-procurement debarment and suspension regulations; or

(2) Have been indicted or convicted for any criminal offense or suffered a civil judgment indicating a lack of business integrity.

(d) As a condition of approval, SBA may require that the principals of the concern attend and pass a training session on SBA's rules and requirements.

(e) A Private Certifier must provide access to SBA of its books and records when requested, including records pertaining to its certification activities. SBA may review this information, as well as the decisions of a Private Certifier, in determining whether SBA will renew or extend the term of the Private Certifier, or terminate the Private Certifier for cause.

(f) Private Certifiers may not certify any company with which they have other business dealings.

§ 124.1005 Can a Private Certifier charge a fee?

A Private Certifier may charge a reasonable fee a firm in order to process the firm's determination of ownership and control.

§ 124.1006 Is there a list of Private Certifiers?

SBA maintains a list of approved Private Certifiers on the SBA's Home Page on the Internet. Any interested person may also obtain a copy of the list from the local SBA district office.

§ 124.1007 How long may an organization or concern be a Private Certifier?

(a) SBA's approval document will specify how long the organization or concern may act as a Private Certifier. If the approval is through a no cost contract, the contract will generally be for one year, with possible renewal or option years.

(b) SBA may terminate a contract with an organization or business concern to be a Private Certifier for the convenience of the Government at any time, and may terminate the contract for default where appropriate.

§ 124.1008 How does a firm become certified as an SDB?

Any firm may apply for certification as a federally recognized SDB. SBA's various district offices provide further information and required application forms to any firm interested in SDB certification. In order to become certified as an SDB, a firm must obtain a determination that it is owned and controlled by one or more individuals claiming to be disadvantaged from a Private Certifier (or from SBA if a Private Certifier is not reasonably available), and must submit evidence of that determination to SBA along with certifications or narratives regarding the disadvantaged status of those individuals as set forth in paragraph (e) of this section.

(a) *Determination regarding ownership and control.* A firm must first submit a completed application for a determination of ownership and control to an approved Private Certifier, or to SBA if a Private Certifier is not reasonably available.

(1) The firm must identify one or more individuals claiming disadvantaged status to the Private Certifier, which then will determine whether those individuals own and control the firm.

(2) Where no Private Certifier is reasonably available, the firm may submit its application for a determination of ownership and control to the Assistant Administrator, Division of Program Certification and Eligibility (DPCE), Office of Minority Enterprise Development, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

(b) *Required forms.* A firm seeking a determination of its ownership and control must submit the following forms and documents to the Private Certifier (or to SBA where no Private Certifier is reasonably available): SBA Form 1010B, ''Statement of Business Eligibility;'' stock certificates; stock register; articles of incorporation, with amendments; current by-laws; resolutions affecting rights and responsibilities of officers and directors; voting agreements; partnership agreements; limited liability articles of organization; and any other relevant information regarding the concern's ownership and control.

(c) *Application processing.* (1) A Private Certifier must advise each applicant within 15 days after the receipt of an application for an ownership and control determination whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required. The Private Certifier will process an application for an ownership and control determination within 30 days of receipt of a complete application package.

(2) The burden is on the applicant to demonstrate that those individuals claiming disadvantaged status own and control the concern.

(d) *Ownership and control decision.* The Private Certifier will issue a written decision as to whether the applicant is owned and controlled by the individuals identified as claiming disadvantaged status. If the Private Certifier finds that the applicant is not owned and controlled by the individuals claiming disadvantaged status, the decision will state the specific reasons for the finding, and inform the applicant of its right to appeal the decision to SBA pursuant to § 124.1009.

(e) *SDB certification.* Once a concern receives a decision finding that it is owned and controlled by those individuals claiming disadvantaged status (either through an initial determination or on appeal), the concern must apply to the appropriate office of the relevant procuring agency, or to SBA if the agency has entered into an agreement with SBA to have SBA make disadvantaged status determinations, for inclusion on the SBA-maintained list of qualified SDBs. A firm seeking inclusion on the list of qualified SDBs must represent that it is small for the size standard corresponding to the SIC code for its primary business activity.

(1) *Members of designated groups.* (i) Those individuals claiming disadvantaged status that are members of the same designated groups that are presumed to be socially disadvantaged for purposes of SBA's 8(a) BD program (see § 124.103(b)) are presumed to be socially and economically disadvantaged for purposes of SDB certification. These individuals must represent that they are members of one of the designated groups, that they are identified as a member of one of the designated groups, that they are socially and economically disadvantaged, and that they are citizens of the United States.

(ii) Provided that the ownership and control determination of the Private Certifier is not based to any extent on ownership and/or control by non-group members, the relevant procuring agency or SBA may accept these representations as true and certify the firm as an SDB.

(2) *Individuals not members of designated groups.* (i) Each individual claiming disadvantaged status that is not a member of one of the designated groups must submit to SBA a statement identifying personally how his or her entry into or advancement in the business world has been impaired because of personally specific factors (see § 124.103(c)), and how his or her ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities (see § 124.104).

(ii) If the relevant procuring agency or SBA determines that the individual(s) claiming disadvantage are disadvantaged, it will certify the firm as an SDB. If the relevant procuring agency or SBA determines that one or more of the individuals upon whose status the Private Certifier relied in making its ownership and control decision is not disadvantaged, it will reject the firm's application for SDB certification. The procuring agency or SBA will issue a written decision setting forth its reasons for decline.

(iii) A firm may appeal SBA's decision that one or more of the individuals claiming disadvantaged status is not disadvantaged to SBA's Office of Hearings and Appeals (OHA). OHA will determine whether SBA's decision was arbitrary, capricious, or contrary to law. OHA will issue a determination on appeal within 10 days, if possible.

(f) *Current 8(a) BD program participants.* Any firm that is currently a participant in SBA's 8(a) BD program need not apply to an Private Certifier for an ownership and control determination or to a procuring agency or SBA for a separate certification as an SDB. SBA will automatically include it on the list of qualified SDBs.

§ 124.1009 How does a firm appeal a decision of a Private Certifier?

(a) If a Private Certifier finds that a firm is not owned and controlled by the individual(s) claiming disadvantaged status, the firm may appeal that decision to OHA.

(b) Where an appeal is filed, the Private Certifier must submit the full record upon which its decision was based to OHA.

(c) OHA will perform a new ownership and control determination on the firm, without regard to the decision of the Private Certifier. OHA will issue a determination within 10 days, if possible.

(d) If OHA finds that the firm is owned and controlled by the

individual(s) claiming disadvantaged status, the firm may apply to SBA for inclusion on the list of qualified SDBs. If OHA finds that the firm is not owned and controlled by such individual(s), the administrative judge will state the reasons for that decision, which will be the final decision of the Agency.

§ 124.1010 Can a firm represent itself to be an SDB if it is not on the list of qualified SDBs?

A firm cannot represent itself to be an SDB concern in order to receive a preference as an SDB for any Federal procurement program if it is not on the SBA-maintained list of qualified SDBs. A firm may, however, represent itself to be an SDB concern for general statistical purposes without regard to its inclusion on the SBA-maintained list of qualified SDBs.

§ 124.1011 What is a misrepresentation of disadvantaged status?

(a) A representation of disadvantaged status by any firm that SBA has found not to be owned and controlled by one or more disadvantaged individuals (either in connection with an SDB application or protest) will be deemed a misrepresentation of disadvantaged status, unless and until the firm reapplies for and obtains SDB certification.

(b) Any person or entity that misrepresents its status as a ''small business concern owned and controlled by socially and economically disadvantaged individuals'' in order to obtain an 8(d) or SDB contracting opportunity for anyone will be subject to the penalties imposed by section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as well as any other penalty authorized by law.

§ 124.1012 Can a firm reapply for SDB certification?

(a) A concern which has been denied SDB certification may reapply for certification 12 months after the date of the final Agency decision to decline the application (either on appeal of an ownership and control determination, or a negative finding of disadvantaged status).

(b) A concern which received a decision that it was not owned and controlled by the individual(s) claiming disadvantaged status from an Private Certifier and does not appeal that decision to SBA may apply for a new ownership and control determination at any time.

§ 124.1013 Is there a list of certified SDBs?

(a) If a procuring agency certifies a firm to be an SDB, it must notify SBA of its certification. If SBA certifies a firm to be an SDB or receives notification of a procuring agency certification, SBA will enter the name of the firm into an SBA-maintained central on-line register.

(b) The register of SDBs will contain the names of all firms that are currently certified to be SDBs, including the names of all firms currently participating in SBA's 8(a) BD program.

(c) On a continuing basis, SBA will delete from the on-line register those firms that have:

(1) Exited SBA's 8(a) BD program for any reason and have not otherwise received SDB certification;

(2) Been determined not to be disadvantaged in response to an SDB protest brought under § 124.1015; or

(3) Not received a renewed SDB certification after being on the register for three years (*see* § 124.1014(a)).

§ 124.1014 What is the effect of receiving an SDB certification?

(a) Once SBA certifies a firm to be an SDB by placing it on the list of qualified SDBs, the firm generally will be considered to be a disadvantaged business for a period of three years from the date of the certification.

(b) Once SBA certifies a firm to be an SDB by placing it on the list of qualified SDBs, the firm may represent itself as an SDB for purposes of Federal SDB set-aside, price evaluation adjustment, evaluation factor or subfactor, monetary subcontracting incentive programs, or section 8(d) subcontract, subject to the following provisions:

(1) In order to participate as an SDB, the firm must be listed on the SBA-maintained SDB register on the date of its representation.

(2) For purposes of a particular procurement, the firm must represent that it is both disadvantaged and small at the time it submits its initial offer including price (*see* part 121 of this title). At the same time, the firm must also represent that no material change has occurred in the disadvantaged ownership and control of the firm since its SDB certification, and specifically that the net worth of the disadvantaged individuals upon whom the SDB certification was based does not exceed $750,000.

(c) A firm's status as ''disadvantaged'' or ''small'' may be protested pursuant to §§ 124.1015 through 124.1019 and §§ 121.1001 through 121.1005, respectively, despite the presence of the firm on the SDB register.

(d) A firm must submit a new application and receive a new certification in order to be recognized as an SDB after three years. If a firm does not submit a new application and receive a new certification, SBA will remove its name from the SDB register three years after the date of the certification.

§ 124.1015 Who may protest the disadvantaged status of a concern?

(a)(1) In connection with a specific SDB set-aside or a requirement for which the apparent successful offeror has invoked an SDB evaluation adjustment, the following entities may protest the disadvantaged status of the apparent successful offeror:

(i) Any other concern which submitted an offer for that requirement, unless the contracting officer has found the concern to be non-responsive or outside the competitive range, or SBA has previously found the concern to be ineligible for the SDB set-aside requirement at issue;

(ii) The procuring agency contracting officer; or

(iii) The SBA.

(2) A protest may challenge whether the apparent successful offeror is owned and controlled by one or more disadvantaged individuals, including whether one or more of the individuals claiming disadvantaged status are in fact socially or economically disadvantaged.

(b) In connection with an 8(d) subcontract, or a requirement for which the apparent successful offeror received an evaluation adjustment for proposing one or more SDB subcontractors, the procuring agency contracting officer or SBA may protest the disadvantaged status of a proposed subcontractor. Other interested parties may submit information to the contracting officer or SBA in an effort to persuade the contracting officer or SBA to initiate a protest.

§ 124.1016 When will SBA not decide an SDB protest?

(a) SBA will not evaluate the disadvantaged status of any concern other than the apparent successful offeror.

(b) SBA will not normally consider a post award protest. SBA may consider a post award protest in its discretion where it determines that an SDB determination after award is meaningful (e.g., where the contracting officer agrees to terminate the contract if the protest is sustained).

(c) The protest must be timely (*see* § 124.1018(c)).

(d) The protest must have specificity (*see* § 124.1019).

§ 124.1017 Who decides disadvantaged status protests?

In response to a protest challenging the disadvantaged status of a concern, the SBA's Assistant Administrator of DPCE in the Office of 8(a)BD, or

designee, will determine whether the concern is disadvantaged.

§ 124.1018 What submission procedures apply to disadvantaged status protests?

(a) *General.* The protest procedures described in this section are separate and distinct from those governing size protests and appeals. All protests relating to whether a concern is a ''small'' business for purposes of any Federal program, including SDB set-asides and SDB evaluation adjustments, must be filed and processed pursuant to part 121 of this title.

(b) *Filing.* (1) All protests challenging the disadvantaged status of a concern with respect to a particular Federal procurement requirement must be submitted in writing to the procuring agency contracting officer, except in cases where the contracting officer or SBA initiates a protest.

(2) Any contracting officer who initiates a protest must submit the protest in writing to SBA in accord with paragraph (c) of this section.

(3) In cases where SBA initiates a protest, the protest must be submitted in writing to the Assistant Administrator of DPCE and notification provided in accord with § 124.1020.

(c) *Timeliness of protest.* (1) *SDB Set-Aside and SDB Evaluation Adjustment protests.* (i) *General.* In order for a protest to be timely, it must be received by the contracting officer prior to the close of business on the fifth day, exclusive of Saturdays, Sundays and legal holidays, after the bid opening date for sealed bids, or after the receipt from the contracting officer of notification of the identity of the prospective awardee in negotiated acquisitions.

(ii) *Oral protests.* An oral protest relating to an SDB set-aside or SDB evaluation adjustment made to the contracting officer within the allotted 5-day period will be considered a timely protest only if the contracting officer receives a confirming letter postmarked, FAXed, or delivered no later than one calendar day after the date of such oral protest.

(iii) *Protests of contracting officers or SBA.* The time limitations in paragraph (c)(1)(i) of this section do not apply to contracting officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (c)(3) of this section.

(iv) *Untimely protests.* A protest received after the time limits set forth in this paragraph (c)(1) will be dismissed by SBA.

(2) *Section 8(d) protests.* In connection with an 8(d) subcontract, the contracting officer or SBA must submit a protest to the Assistant Administrator of DPCE prior to the completion of performance by the intended 8(d) subcontractor.

(3) *Premature protests.* Protests in connection with any procurement which are submitted by any person, including the contracting officer, before bid opening or notification of intended award, whichever applies, will be considered premature, and will be returned to the protestor without action. A contracting officer that receives a premature protest must return it to the protestor without submitting it to the SBA.

(d) *Referral to SBA.* (1) Any contracting officer who receives a protest that is not premature must promptly forward it to the SBA's Assistant Administrator of DPCE, 409 3rd Street, SW, Washington, DC 20416.

(2) A contracting officer's referral of a protest to SBA must contain the following:

(i) The written protest and any accompanying materials;

(ii) The date on which the protest was received by the contracting officer;

(iii) A copy of the protested concern's self-certification as an SDB, and the date of such self-certification; and

(iv) The date of bid opening or the date on which notification of the apparent successful offeror was sent to all unsuccessful offerors, as applicable.

§ 124.1019 What format or degree of specificity does SBA require to consider an SDB protest?

(a) An SDB protest need not be in any specific format in order for SBA to consider it.

(b) A protest must be sufficiently specific to provide reasonable notice as to all grounds upon which the protested concern's disadvantaged status is challenged.

(1) A protest merely asserting that the protested concern is not disadvantaged, without setting forth specific facts or allegations is insufficient and will be dismissed.

(2) The contracting officer must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely.

(c) A dismissal of a protest by the Assistant Administrator of DPCE for lack of specificity or lack of timeliness may be appealed to SBA's AA/8(a)BD pursuant to § 124.1022.

§ 124.1020 What will SBA do when it receives an SDB protest?

(a) Upon receipt of a protest challenging the disadvantaged status of a concern, the Assistant Administrator of DPCE will immediately notify the protestor and the contracting officer of the date the protest was received and whether it will be processed or dismissed for lack of timeliness or specificity.

(b) In cases where the protest is timely and sufficiently specific, the Assistant Administrator of DPCE will also immediately advise the protested concern of the protest and forward a copy of it to the protested concern.

(1) The Assistant Administrator of DPCE is authorized to ask the protested concern to provide any or all of the following information and documentation, completed so as to show the circumstances existing on the date of self-certification: SBA Form 1010A, ''Statement of Personal Eligibility'' for each individual claiming disadvantaged status; SBA Form 1010B, ''Statement of Business Eligibility;'' SBA Form 413, ''Personal Financial Statement,'' for each individual claiming disadvantaged status; information as to whether the protested concern, or any of its owners, officers or directors, have applied for admission to or participated in the SBA's 8(a) BD program and if so, the name of the company which applied or participated and the date of the application or entry into the program; business tax returns for the last two completed fiscal years prior to the date of self-certification; personal tax returns for the last two years prior to the date of self-certification for all individuals claiming disadvantaged status, all officers, all directors and for any individual owning at least 10% of the business entity; annual business financial statements for the last two completed fiscal years prior to the date of self-certification; a current monthly or quarterly business financial statement no older than 90 days; articles of incorporation; corporate by-laws; partnership agreements; limited liability company articles of organization; and any other relevant information as to whether the protested concern is disadvantaged.

(2) SBA's disadvantaged status determination is not limited to consideration only of the issues raised in the protest. All applicable criteria may be considered.

(3) Unless the protest presents specific credible information which calls into question the veracity of application or other documents previously submitted to SBA by a current Participant in SBA's 8(a) BD program, SBA will allow the Participant to submit, in lieu of the information specified in paragraph (b)(1) of this section, a sworn affidavit or declaration that circumstances concerning the

ownership and control of the business and the disadvantaged status of its principals have not changed since its application or entry into the program or its most recent annual review, and a copy of its most recently completed annual review.

(i) If the ownership or control of the business or the disadvantaged status of any principals have changed, the protested concern must comply with paragraph (b)(1) of this section.

(ii) An affidavit or declaration may be allowed only if SBA admitted the protested concern to the 8(a) BD program, or conducted an annual review of the protested concern, during the 12-month period preceding the date on which SBA receives the protest, and if proceedings to suspend, terminate or early graduate the concern from the 8(a) BD program are not pending.

(c) Within 10 working days of the date that notification of the protest was received from the Assistant Administrator of DPCE, the protested concern must submit to the Assistant Administrator of DPCE, by personal delivery, FAX, or mail, the information and documentation requested pursuant to paragraph (b)(1) of this section or the affidavit permitted by paragraph (b)(2) of this section. Materials submitted must be received by the close of business on the 10th working day.

(1) SBA will consider only materials submitted timely, and the late or non-submission of materials needed to make a disadvantaged status determination may result in sustaining the protest.

(2) The burden is on the protested concern to demonstrate its disadvantaged status, whether or not it is currently shown on the list of qualified SDBs.

(3) The protested concern must timely submit to SBA any information it deems relevant to a determination of its disadvantaged status.

§ 124.1021 How does SBA make disadvantaged status determinations?

(a) *General.* The Assistant Administrator of DPCE will determine a protested concern's disadvantaged status within 15 working days after receipt of a protest. If the procuring agency contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer may presume that the challenged offeror is disadvantaged, unless the SBA requests and the contracting officer grants an extension to the 15-day response period.

(b) *Award after protest.* (1) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until:

(i) The SBA has made an SDB determination, or

(ii) 15 working days have expired since SBA's receipt of a protest and the contracting officer has not agreed to an extension of the 15-day response period.

(2) Notwithstanding paragraph (b)(1) of this section, the contracting officer may award a contract after the receipt of an SDB protest where he or she determines in writing that an award must be made to protect the public interest.

(c) *Withdrawal of protest.* If a protest is withdrawn, SBA will not complete a new disadvantaged status determination, and its previous SDB certification will stand.

(d) *Basis for determination.* (1) Except with respect to a concern which is a current Participant in SBA's 8(a) BD program and is authorized under § 124.1020(b)(3) to submit an affidavit concerning its disadvantaged status, the disadvantaged status determination will be based on the protest record, including reasonable inferences therefrom, as supplied by the protestor, protested concern, SBA or others.

(2) SBA may in its discretion make a part of the protest record information already in its files, and information submitted by the protestor, the protested concern, the contracting officer, or other persons contacted for additional specific information.

(e) *Disadvantaged status.* In evaluating the social and economic disadvantage of individuals claiming disadvantaged status, SBA will consider the same information and factors set forth in §§ 124.103 and 124.104.

(f) *Disadvantaged status determination.* SBA will render a written determination including the basis for its findings and conclusions.

(g) *Notification of determination.* After making its disadvantaged status determination, the SBA will immediately notify the contracting officer, the protestor, and the protested concern of its determination. SBA will promptly provide by certified mail, return receipt requested, a copy of its written determination to the same entities, consistent with law.

(h) *Results of an SBA disadvantaged status determination.* A disadvantaged status determination becomes effective immediately.

(1) If the concern is found not to be disadvantaged, the determination remains in full force and effect unless reversed upon appeal by SBA's AA/8(a)BD pursuant to § 124.1022, or the concern is certified to be an SDB under § 124.1008. The concern is precluded from applying for SDB certification for 12 months from the date of the final agency decision (whether by the Assistant Administrator of DPCE without an appeal, or by the AA/8(a)BD on appeal).

(2) If the concern is found to be disadvantaged, the determination remains in full force and effect unless and until reversed upon appeal by SBA's AA/8(a)BD pursuant to § 124.1022. A final agency decision (whether by the Assistant Administrator of DPCE without an appeal, or by the AA/8(a)BD on appeal) finding the protested concern to be an SDB remains in effect generally for three years from the date of the decision under the same conditions as if the concern had been granted SDB certification under § 124.1008.

§ 124.1022 Appeals of disadvantaged status determinations.

(a) *Who may appeal.* Appeals of protest determinations may be filed with the SBA's AA/8(a)BD by the protested concern, the protestor, or the contracting officer.

(b) *Timeliness of appeal.* An appeal must be in writing and must be received by the AA/8(a)BD no later than 5 working days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the five-day time period.

(c) *Notice of appeal.* Notice of the appeal must be provided by the party bringing an appeal to the procuring agency contracting officer and either the protested concern or original protestor, as appropriate.

(d) *Grounds for appeal.* SBA will re-examine a protest determination only if there was a clear and significant error in the processing of the protest, or if the Assistant Administrator of DPCE failed completely to consider a significant fact contained within the information supplied by the protestor or the protested concern. SBA will not consider protest determination appeals based on additional information or changed circumstances which were not disclosed at the time of the decision of the Assistant Administrator of DPCE, or which are based on disagreement with the findings and conclusions contained in the determination.

(e) *Contents of appeal.* No specific format is required for the appeal. However, the appeal must identify the protest determination which is appealed, and set forth a full and specific statement as to why the determination is erroneous under paragraph (c) of this section.

(f) *Completion of appeal after award.* An appeal may proceed to completion

even though an award of the SDB acquisition or other procurement requirement which prompted the protest has been made, if so desired by the protested concern, or where SBA determines that a decision on appeal is meaningful, such as where the contracting officer agrees:

(1) In the case where an award is made to a concern other than the protested concern, to terminate the contract and award to the protested concern if the appeal finds that the protested concern is disadvantaged; or

(2) In the case where an award is made to the protested concern, to terminate the contract if the appeal finds that the protested concern is not disadvantaged.

(g) The appeal will be decided by the AA/8(a)BD within 5 working days of its receipt, if practicable.

(h) The appeal decision will be based only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protestor, and the protested concern, consistent with law.

(i) The decision of the AA/8(a)BD is the final decision of the SBA.

PART 134—[AMENDED]

5. The authority citation for 13 CFR part 134 would continue to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6) and 637(a).

6. Section 134.201 is amended by revising the second and third sentences to read as follows:

§ 134.201 Scope of the rules in this subpart B.

* * * Specific procedural rules pertaining to 8(a) program appeals and to proceedings under the Program Fraud Civil Remedies Act are set forth, respectively in subpart D of this part and part 142 of this chapter. In the case of a conflict between a particular rule in this subpart and a rule of procedure pertaining to OHA appearing in another subpart of this part or another part of this chapter, the latter rule shall govern.

7. Section 134.202 is amended in paragraph (c) by removing the reference to ''subpart D of this part'' and inserting in its place the phrase ''subpart E of this part,'' and in paragraph (d) by removing the phrase ''§ 124.211'' and inserting in its place the phrase ''§ 124.305.''

8. Section 134.206(a) is amended by removing the words ''the service of'' and inserting in their place the words ''the filing of.''

9. Section 134.211 is amended by adding the following new paragraph (d) at the end thereof.

§ 134.211 Motions.

* * * * *

(d) *Stay.* A motion to dismiss stays the time to answer. The Judge will establish the time for serving and filing an answer in the order determining the motion to dismiss.

§ 134.213 [Amended]

10. Section 134.213(a) is amended by removing the second sentence.

§ 134.222 [Amended]

11. Section 134.222 is amended by removing the '';'' and the word ''or'' at the end of paragraph (a)(2), by inserting a ''.'' at the end of paragraph (a)(2), and by removing paragraph (a)(3).

12. Subpart D is redesignated as Subpart E, sections 134.401 through 134.418 are redesignated as sections 134.501 through 134.518, and the following new Subpart D is inserted:

Subpart D—Rules of Practice for Appeals Under the 8(a) Program

§ 134.401 Scope of the rules in this subpart D.

The rules of practice in this subpart D apply to all appeals to OHA from:

(a) Denials of 8(a) BD program admission based solely on a negative finding(s) of social disadvantage, economic disadvantage, ownership or control pursuant to § 124.206;

(b) Early graduation pursuant to §§ 124.302 and 124.304;

(c) Termination pursuant to §§ 124.303 and 124.304; and

(d) Denials of requests to issue a waiver pursuant to § 124.514.

§ 134.402 Appeal petition.

In addition to the requirements of § 134.203, an appeal petition must state, with specific reference to the determination and the record supporting such determination, the reasons why the determination is alleged to be arbitrary, capricious or contrary to law.

§ 134.403 Service of appeal petition.

(a) Concurrent with its filing with OHA, a concern must also serve SBA's AA/8(a)BD and SBA's Office of General Counsel with a copy of the petition, including attachments.

(b) In the context of appeals relating to denials of program admission pursuant to § 124.206 or denials of requests for waivers pursuant to § 124.514, service on the Office of General Counsel must be made to the SBA's Associate General Counsel for General Law. For appeals relating to early graduation pursuant to §§ 124.302 and 124.304 or termination pursuant to §§ 124.303 and 124.304, service on the Office of General Counsel must be made to the Associate General Counsel for Litigation.

(c) Service should be addressed to the AA/8(a)BD and either Associate General Counsel at the Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

§ 134.404 Decision by Administrative Law Judge.

Appeal proceedings brought under this subpart will be conducted by an Administrative Law Judge.

§ 134.405 Jurisdiction.

(a) The Administrative Law Judge selected to preside over an appeal shall decline to accept jurisdiction over any matter if:

(1) The appeal does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the determination, including appeals of denials of 8(a) BD program admission based in whole or in part on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership or control;

(2) The appeal is untimely filed under § 134.202 or is not otherwise filed in accordance with the requirements of this subpart or the requirements in subparts A and B of this part; or

(3) The matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(b) Once the Administrative Law Judge accepts jurisdiction over an appeal, subsequent initiation of an adjudication of the matter by a court of competent jurisdiction will not preclude the Administrative Law Judge from rendering a final decision on the matter.

§ 134.406 Review of the administrative record.

(a) Except as provided in § 134.407, any proceeding conducted under this subpart shall be decided solely on a review of the written administrative record.

(b) The Administrative Law Judge's review is limited to determining whether the Agency's determination is arbitrary, capricious, or contrary to law. As long as the Agency's determination is reasonable, the Administrative Law Judge must uphold it on appeal.

(c) The administrative record must contain all documents that are relevant to the determination on appeal before the Administrative Law Judge. The administrative record, however, need not contain all documents pertaining to the appellant. For example, the administrative record in a termination proceeding need not include the

Participant's entire business plan file or documents pertaining to specific 8(a) contracts that are unrelated to the termination action.

(d) Where the Agency files its answer to the appeal petition after the date specified in § 134.206, the Administrative Law Judge may decline to consider the answer and base his or her decision solely on a review of the administrative record.

(e) The Administrative Law Judge may remand a case to the AA/8(a)BD (or, in the case of a denial of a request for waiver under § 124.514, to the Administrator) for further consideration if he or she determines that, due to the absence in the written administrative record of the reasons upon which the determination was based, the administrative record is insufficiently complete to decide whether the determination is arbitrary, capricious or contrary to law. Such a remand will be for a period of 10 working days.

§ 124.407 Evidence beyond the record and discovery.

(a) The Administrative Law Judge may not admit evidence beyond the written administrative record nor permit any form of discovery unless he or she first determines that the appellant, upon written submission, has made a substantial showing, based on credible evidence and not mere allegation, that the Agency determination in question may have resulted from bad faith or improper behavior.

(1) Prior to any such determination, the Administrative Law Judge must permit the Agency to respond in writing to any allegations of bad faith or improper behavior.

(2) Upon a determination by the Administrative Law Judge that the appellant has made such a substantial showing, the Administrative Law Judge may permit appropriate discovery, and accept relevant evidence beyond the written administrative record, which is specifically limited to the alleged bad faith or improper behavior.

(b) A determination by the Administrative Law Judge that the required showing set forth in paragraph (a) of this section has been made does not shift the burden of proof, which continues to rest with the appellant.

§ 134.408 Decision on appeal.

(a) A decision of the Administrative Law Judge under this subpart is the final agency decision, and is binding on the parties.

(b) The Administrative Law Judge shall issue a decision, insofar as practicable, within 90 days after an appeal petition is filed. If the Administrative Law Judge does not issue a decision within 90 days after an appeal petition is filed, he or she must indicate the reason that the 90-day time limit has not been met in the decision, when issued.

(c) The Administrative Law Judge may re-examine an appeal decision if there is a clear showing of an error of fact or law material to the decision.

Dated: July 23, 1997,

Aida Alvarez,

Administrator.

[FR Doc. 97–21514 Filed 8–13–97; 8:45 am]

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Thursday, August 14, 1997

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FEDERAL REGISTER PAGES AND DATES, AUGUST

41249–41804 1
41805–42036 4
42037–42208 5
42209–42384 6
42385–42646 7
42647–42896 8
42897–43066 11
43067–43260 12
43269–43452 13
43453–43628 14

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7016 42033
Executive Orders:
12722 (See Notice July 31, 1997) 41803
13057 41294
13058 43451
Administrative Orders:
Notice of July 31, 1997 41803

5 CFR

890 41486
1001 42897
4501 42897
Ch. LIV 43269
Proposed Rules:
213 42943
1650 42418

7 CFR

3 42857
29 43430
31 43430
32 43430
36 43430
46 43453
52 43430
53 43430
54 43430
58 43430
278 ..... 42037, 42857
301 ..... 43269, 43456
400 42857
401 42647
457 42647
922 41805
923 41805
924 41805
947 43457
981 43459
985 43461
993 41808
1126 41810
1220 41486
1493 42651
1767 ..... 42284, 43201
1901 42385
1951 ..... 41251, 42385
4284 42385
Proposed Rules:
56 52944
319 43487
320 43487
330 43487
352 43487
457 43236
1724 41883

8 CFR

212 43466

9 CFR

1 43272
3 43272
77 42044
94 ..... 42664, 42899
304 42901
308 42901
310 42901
320 42901
327 42901
381 42901
416 42901
417 42901
Proposed Rules:
71 42703
92 42705

10 CFR

Proposed Rules:
20 42948
35 ..... 42219, 42707
55 42426

12 CFR

205 43467
602 41253
960 41812
Proposed Rules:
3 42006
6 42006
204 42708
208 42006
225 42006
325 42006
565 42006
567 42006
701 41313
722 41313
723 41313

13 CFR

Proposed Rules:
121 43584
124 43584
134 43584

14 CFR

39 ..... 41254, 41255, 41257 41259, 41260, 41262, 41839, 42045, 42391, 42949, 42951, 42952, 43067
71 ..... 41265, 42901, 43069, 43275
97 ..... 41266, 41268, 41269
135 42364
241 43276
Proposed Rules:
39 ..... 41320, 41839, 42077, 42430, 42432, 42433, 42949, 42951, 42952, 43128
71 ..... 42954, 42955
107 41760

REMINDERS

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.

RULES GOING INTO EFFECT AUGUST 14, 1997

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Agricultural commodities; U.S. grade standards and other selected regulations removed; Federal regulatory reform; published 8-13-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Summer flounder, scup, and Black Sea bass; published 7-16-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Virginia; published 8-14-97

GENERAL SERVICES ADMINISTRATION

Federal property management:

Aviation, transportation, and motor vehicles—

Government aircraft parts; management, use, and disposal; published 8-14-97

GOVERNMENT ETHICS OFFICE

Conflict of interests:

Post-employment restrictions; exemption of positions and revision of departmental component designations; published 5-16-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Organization, functions, and authority delegations:

Center for Veterinary Medicine, Director and Deputy Director; published 8-14-97

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Nonimmigrants; documentary requirements—

Lawful domicile, establishment; section 212(c) relief eligibility; published 8-14-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:

Carolina et al.; comments due by 8-22-97; published 7-23-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Mediterranean fruit fly; comments due by 8-19-97; published 6-20-97

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Administrative regulations:

Insurance coverage by written agreement; procedures; comments due by 8-19-97; published 6-20-97

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Fees:

Official inspection and weighing services; comments due by 8-18-97; published 7-18-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic swordfish; comments due by 8-21-97; published 7-25-97

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico shrimp; comments due by 8-18-97; published 7-2-97

Carribean, Gulf, and South Atlantic fisheries—

Red snapper; comments due by 8-22-97; published 8-7-97

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Official material or information production or disclosure; service of process; and removal of standards of conduct regulations; comments due by 8-18-97; published 7-17-97

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Ambient air quality standards, national—

Particulate matter; supplemental information availability; comments due by 8-18-97; published 7-18-97

Air quality implementation plans; approval and promulgation; various States:

Florida; comments due by 8-20-97; published 7-21-97

Illinois; comments due by 8-21-97; published 7-22-97

Indiana; comments due by 8-20-97; published 7-21-97

Minnesota; comments due by 8-21-97; published 7-22-97

Pennsylvania; comments due by 8-20-97; published 7-21-97

Tennessee; comments due by 8-20-97; published 7-21-97

Virginia; comments due by 8-20-97; published 7-21-97

Air quality planning purposes; designation of areas:

Louisiana; correction; comments due by 8-18-97; published 7-17-97

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 8-18-97; published 7-17-97

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Federal claims collection; administrative offset; comments due by 8-18-97; published 6-17-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Competitive access providers and local exchange carriers; complete detariffing; comments due by 8-18-97; published 7-17-97

Correction; comments due by 8-18-97; published 7-28-97

Satellite communications—

Non-U.S. licensed satellites providing domestic and international service in U.S.; uniform standards; comment request; comments due by 8-21-97; published 7-29-97

Radio stations; table of assignments:

Iowa; comments due by 8-18-97; published 7-9-97

Mississippi; comments due by 8-18-97; published 7-9-97

GENERAL SERVICES ADMINISTRATION

Federal property management:

Utilization and disposal—

Government-owned improvements and related personal property on surplus land; comments due by 8-19-97; published 6-20-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Dietary supplements containing ephedrine alkaloids; comments due by 8-18-97; published 6-4-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Ambulance services; coverage and payment policies; comments due by 8-18-97; published 6-17-97

Physician fee schedule (1998 CY); payment policies and relative value unit adjustments and clinical psychologist fee schedule; establishment; comments due by 8-18-97; published 6-18-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:

Native American Housing Assistance and Self-Determination Act of 1996; implementation; comments due by 8-18-97; published 7-2-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Recovery plans—

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

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H.R. 1198/P.L. 105–39

To direct the Secretary of the Interior to convey certain land to the City of Grants Pass, Oregon. (Aug. 11, 1997; 111 Stat. 1116)

H.R. 1944/P.L. 105–40

Warner Canyon Ski Hill Land Exchange Act of 1997 (Aug. 11, 1997; 111 Stat. 1117)

Last List August 12, 1997